

## Purchase Order Terms and Conditions

Essex Furukawa North America

1. **Acceptance:** Acceptance of this order by any method, including by signing and returning an acknowledgement copy hereof by facsimile or other means of electronic transmission, or by making any shipment of goods or performing any services ordered hereby shall be an acceptance of the terms and conditions appearing on the face and reverse side hereof (“**Terms**”) as the only terms and conditions applying to the purchase and sale of the goods and services set forth on the face of this order, unless other terms and conditions are agreed to in writing signed by an authorized representative of Buyer and the Vendor. Any additional or contrary terms and conditions on any quote, order acknowledgement or other document of Vendor are hereby deemed to be material alterations to these terms and conditions and notice of objection to and rejection of them are hereby given.

2. **Risk of Loss and Delivery Terms:** The title and risk of loss of any goods, materials or products (“**Products**”) shall not pass to Buyer until Buyer receives the Products at the designation specified on the order, freight arranged and paid by Vendor. Risk of loss to rejected Products shall pass to Vendor at the time of rejection. Unless otherwise stated on the front of the order or agreed to by the parties, all shipments shall be DDP Buyer facility (Incoterms® 2020).

3. **Delivery:** Transportation and delivery of the Products and any work or services (“**Services**”) must be in strict accordance with the shipping instructions and delivery dates set forth on the reverse side hereof or as otherwise furnished by Buyer. Time is of the Essence. Any excessive freight costs incurred by reason of Vendor’s failure to follow such shipping instructions will be charged to Vendor. Vendor agrees to do all things necessary, including working overtime or extra shifts, or shipping by premium means, all at Vendor’s expense, to deliver the Products and Services on time. If Vendor has reason to believe that delivery of any of the Services or a Product will be delayed, Vendor shall immediately notify Buyer of the cause and duration of the anticipated delay, and Buyer at its sole option may cancel this order without any liability to Vendor. Unless otherwise agreed in writing, Vendor shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet Buyer’s delivery schedule. Vendor shall be liable for all damages, including incidental and consequential, arising out of its failure to supply or deliver the Product or Services in accordance with these Terms.

In the event Buyer agrees to be importer of record, Vendor shall provide Buyer all documentation required for entry prior to exportation. For US entries, this includes without limitation US government agency documentation and declarations such as the Food and Drug Administration, Department of Transportation and Environmental Protection Agency. Vendor must provide Buyer’s freight forwarder or ISF filer all documentation and data elements required for the ISF declaration prior to the dispatch of the Products to the carrier for any ocean shipment so that the ISF declaration can be filed with US customs within 24 hours prior to loading.

4. **Force Majeure:** Any delay or failure of either Party to perform its obligations shall be excused if it is caused by an extraordinary event or occurrence beyond the control of the nonperforming party and without the nonperforming party’s fault or negligence, such as acts of God, nature, governments or their agencies, terrorism, war or sabotage, compliance in good faith with any applicable foreign or domestic governmental regulation or order (whether or not it proves to be invalid), fires, riots, inability to supply or obtain products, materials, raw materials, supplies, fuel or utilities from normal sources of supply, labor disputes, work stoppages, lockouts, delays in transportation, earthquakes, floods, storms or other severe weather conditions, power shortages or power failures, pandemics, epidemics, quarantines or other public health emergencies of similar nature (each, a “**Force Majeure Event**”). Written notice of such delay, including the anticipated duration of the delay, must be given by the nonperforming party within three (3) days of the event. During the period of any delay or failure to perform by Vendor, Buyer, at its option, may purchase Products or Services from other sources and reduce its schedules to Vendor by such quantities, without liability to Buyer, or cause Vendor to provide the Products or Services from other sources in quantities and at times requested by Buyer and at the price set forth in the Terms. If requested by Buyer, Vendor shall, within five (5) days of such request, provide adequate assurance that the delay will not exceed such period of time as Buyer deems appropriate. If the delay lasts more than the time period specified by Buyer, or Vendor does not provide adequate assurance that the delay will cease within such time period, Buyer may, among its other remedies, immediately cancel this order or any order in whole or in part without liability. If Vendor is unable to supply the Products due to Force Majeure Event, Vendor will allocate its available supply of Product to Buyer on a basis that is no less favorable than any other party, including Vendor and its affiliates.

5. **Changes:** Vendor will notify Buyer of any product modifications or improvements that change the composition or makeup of the Products, including without limitation, modifications or changes to physical or electrical properties, manufacturing processes, performance, application, or cost. Prior to Vendor providing any modified Products to Buyer, Vendor must (i) obtain approval in writing from Buyer’s Director of Procurement; and (ii) provide Buyer any assistance, at Vendor’s cost, necessary to inspect and test the modified Product.

6. **Inspection and Returns:** Buyer shall have the right to inspect and test materials and workmanship of all Products and Services at all times and places, including when practicable, during manufacture; and if any such inspection or test is made on the premises of Vendor, Vendor shall furnish without additional charge all reasonable facilities and assistance for a safe and convenient inspection or test. Buyer retains the right to return any Product that in Buyer’s sole and absolute judgment does not process properly, does not meet the required fit, form, or function when used in Buyer’s product, does not meet the specifications or is not consistent with the Product provided previously by Vendor. Such request for returns shall be made to the Vendor’s identified or authorized sales representative by Buyer’s purchasing department or plant.

7. **Warranty:** Vendor warrants that the Products furnished under this order shall be free from defects in materials, workmanship, and design, fit for particular purpose, and shall conform to all applicable specifications, descriptions, samples, and drawings provided to or by Buyer. These warranties extend to the future performance of the Products and shall continue for the longer of (a) the warranty period provided to Buyer’s customers for the Products; or of products or material which incorporate the Products; (b) one year after the Product is accepted by Buyer or (c) such greater period as may be specified elsewhere in this order. Vendor shall perform the Services in a good, workmanlike, efficient and trustworthy manner consistent with high professional standards and in accordance with the terms and conditions of these Terms. Vendor shall immediately correct all errors, defects and omissions in the Services without any additional cost to Buyer. All warranties shall survive inspection, acceptance and payment. In addition to any other remedies, Products not meeting the warranties will be, at Buyer’s option, returned for or subject to refund, repaired, or replaced by Vendor at no cost to Buyer or its customers and with transportation costs and risk of loss and damage in transit borne by Vendor. Repaired and replacement Products shall be warranted as set forth in this clause.

8. **Indemnity:** Upon Buyer’s written notice to Vendor, Vendor agrees to indemnify, defend and hold Buyer harmless from and against all losses, claims, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys’ fees and court costs) arising out of or resulting from (i) any claim or action brought for harm, death or economic loss against Vendor or Buyer caused by the Products or Services sold hereunder, irrespective of the theory upon which the claim or action is brought, including without limitation, claims or actions designated as strict liability, breach of express or implied warranty, negligence or any other substantive legal theory; and (ii) any claim against Buyer alleging that the Products or Services, or any part thereof, infringe any patent, copyright, trademark, trade secret, mask work, or other intellectual property interest in any country. If an injunction against Buyer’s use, sale, lease, license, distribution, of the Products, or any part thereof results from an infringement claim (or, if Buyer reasonably believes such an injunction is likely), Vendor shall, at its expense (and in addition to the Vendor’s other obligations hereunder) and as Buyer requests, obtain for Buyer the right to continue using, selling, leasing, licensing Product, or otherwise non-infringing but functionally equivalent Product. There shall be no limitation on Buyer’s stated warranties, remedies or the type and amount of damages that Buyer may seek in the event of a breach by Vendor or in the event of a claim for indemnity under this paragraph.

9. **Compliance with Laws:** In filling this order, Vendor shall comply with all applicable federal, state, provincial and local employment and other laws, government regulations and orders. Vendor agrees to comply with Buyer’s Supplier Code of Conduct which is located on its website at www.superioressex.com. In addition, Vendor represents and warrants that it will not discriminate against any employee or applicant for employment because of race, color, religion, disability, sex, gender identity, sexual orientation, national origin, age, physical or mental disability, veteran status, or any other unlawful criterion and that it shall comply with all applicable laws against discrimination and all applicable rules, regulations and orders issued there under or in implementation thereof. Vendor agrees to comply with 29 CFR Part 471, Appendix A to Subpart A and the Equal Opportunity Clauses set forth in 41 C.F.R. §§ 60-1, 60-300 and 60-741. Vendor shall also comply with all applicable federal, state, provincial and local laws, government regulations and orders with respect to minimum wages and hours of employment, now in effect or hereafter enacted. The clauses set forth in 29 CFR 5.5 (a) (1) through (10) and (b)(1) through (4) are incorporated by reference herein.

If this order is issued under a United States Government prime contract or subcontract, to the extent applicable, the clauses in Federal Acquisition Regulation (“**FAR**”) 52.212-5(e)(1) and 52.244-6(c)(1) are hereby incorporated by reference. **In addition, Vendor and its subcontractors shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.** Vendor also agrees to incorporate by reference this order and abide by the terms and conditions in such prime contract or subcontract necessary to protect Buyer’s interests including, but not limited to, terms and conditions relating to government-directed changes, terminations for convenience, and stop work orders.

Vendor represents and warrants that no payments have been or will be paid, offered, given, or promised by the Vendor, his agents or employees, directly or indirectly, to: (a) Buyer or any of its divisions, subsidiaries or affiliates, or any directors, officers or employees of Buyer; or (b) any person, firm, or corporation, at the direction of or by arrangement with Buyer, or any directors, officers, or employees of Buyer; or (c) any political party or official thereof, any candidate for political office, or any officer, employee or agent of any government or instrumentality of any government for the purpose of (i) influencing any act or decision of such party, official thereof, candidate, officer, employee, or agent in his or its official capacity, including a decision to fail to perform his or its official functions; or (ii) inducing any such party, official thereof, candidate, officer, employee or agent to use his or its influence with a government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality in order to assist Buyer in obtaining or retaining business for or with, or directing business to, any person, firm, or corporation.

10. **Price and Payment:** All prices are firm unless otherwise agreed in writing. To ensure proper payment, all invoices, Bills of Lading, Packing Lists, Labels, etc. must include this order number, line item, and part number(s). Payment date of invoices shall be calculated from date of receipt of an acceptable invoice. Vendor warrants that all prices relating to the Products and Services are no less favorable than those extended to any other customer of Vendor for the same or similar products or services in like quantities. If Vendor sells to another at a price more favorable than contained in this order within thirty (30) days of receipt of this order, the price will be adjusted to meet the more favorable term, and Vendor will refund or credit the difference to Buyer. No charges of any kind including but not limited to charges for boxing, packing, loading, bracing or cartage will be allowed unless specifically agreed to by Buyer in writing.

11. **Termination and Cancellation:** If Vendor ceases to conduct its operations in the normal course of business including inability to meet its obligations as they mature or if any proceeding under the bankruptcy or insolvency laws is brought by or against Vendor, or a receiver for Vendor is appointed or applied for or an assignment for the benefit of creditors is made by Vendor, Buyer may cancel this order without liability except for the deliveries previously made or for Products and Services covered by this order then completed and subsequently delivered in accordance with all terms of this order.

Buyer may terminate this order in whole or in part by ten (10) days written notice to Vendor without cause. Upon receipt of notice of termination, Vendor shall immediately discontinue performance and shall comply with Buyer’s instructions concerning disposition of any completed and partially completed Products or Services, work in progress and materials acquired pursuant to this order. In the event of such termination, Buyer’s sole and only liability to Vendor shall be Vendor’s reasonable cost of performance incurred prior to termination in connection with completed and partially completed Products and Services, work in process and raw materials in Vendor’s possession at the time of termination, all of which Vendor shall have the burden of proof, which shall be fully documented and given to Buyer. In no event shall any payment by Buyer exceed the price specified herein for such Products or Services.

12. **Partial Invalidity:** If in any instance, any provision of this order shall be determined to be invalid or unenforceable under any applicable law, such provision shall not apply in such instance, but the remaining provisions shall be given effect in accordance with their terms.

13. **Toxic and Hazardous Material:** Notwithstanding anything to the contrary heretofore or hereafter represented by either party to the other, Vendor warrants that each and every chemical

**Purchase Order Terms and Conditions**  
Essex Furukawa North America

substance sold and delivered by Vendor under this order, at the time of such sale and delivery, is on the Inventory List published by the Environmental Protection Agency, pursuant to the Toxic Substance Control Act (PL 94-469). In accordance with OSHA regulation 29-CFR 1910, 1200, Vendor shall provide Buyer with an M.S.D.S. for all purchased chemical materials. Any Products required by this order that are deemed hazardous will be packaged, marked and shipped by the Vendor to comply with all applicable federal, state, and local regulations and will further comply with any special Buyer requirements as might be noted on the face of the order.

14. Equitable Relief: Any breach of Vendor's obligation to supply the Products or Services to Buyer would cause irreparable damage to Buyer, and Vendor agrees that for any such breach or threatened breach, in addition to such other remedies as may be available to it under this Agreement, at law or in equity, Buyer shall be entitled to injunctive relief and to enforce its rights by an action for specific performance.

15. Choice of Law: These Terms and all accepted orders and all disputes arising out of or relating to such shall be construed and governed by:

(i) The laws of the State of Georgia, United States of America without regard to its conflict of law principles for all Products or Services ordered or purchased by a Buyer entity that is incorporated under the laws of the United States or any state thereof, and Vendor irrevocably consents and submits to the exclusive jurisdiction of, and exclusive venue in, the courts of the State of Georgia with respect to such disputes;

(ii) the laws of the province of Ontario, Canada without regard to its conflict of law principles for all Products or Services ordered or purchased by a Buyer entity that is incorporated under the laws of Canada or any province thereof, and Vendor irrevocably consents and submits to the exclusive jurisdiction of, and exclusive venue in, the courts of Ontario with respect to such disputes; or

(iii) the laws of Mexico without regard to its conflict of law principles for all Products or Services ordered or purchased by a Buyer entity that is incorporated under the laws of Mexico, and Vendor irrevocably consents and submits to the exclusive jurisdiction of, and exclusive venue in, the state and federal courts sitting in Mexico City with respect to such disputes.

16. Additional Terms: Performance of this order shall not be assigned by the Vendor without the prior written consent of Buyer. The rights and remedies herein reserved to Buyer shall be cumulative and additional to any other or further rights and remedies in law or equity. Buyer shall have the right to reduce and set-off against amounts payable hereunder any indebtedness or other claim which Buyer, or its affiliated or related companies, may have against Vendor, or its affiliated or related companies, under this purchase order or any other agreement between the referenced parties. Vendor and Buyer are independent contracting parties and nothing in this agreement shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. If any term of this agreement is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of this agreement shall remain in full force and effect. Vendor confirms its express wish that these Terms and any other documents related thereto be drawn up in the English language. Le Vendeur confirme sa volonté expresse que les présents Termes ainsi que toute documentation y afferent soient rédigés en anglais.