



**Kleiss Gears, Inc. doing business as "Victrex" - General Terms and Conditions of Sale (May 2024 Edition). The following terms and conditions are incorporated by reference into the Contract (as defined below).**

## 1. DEFINITIONS

1.1 In these Conditions:

**"Affiliate"** means, with respect to any party, any person or entity that is directly or indirectly Controlling, Controlled by or under common Control with such party, where "Control" and derivative terms mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities, by contract or otherwise.

**"Background IPR"** means all Intellectual Property Rights belonging to a Party or which are licensed to a Party (to the extent that Party is permitted to sub-license such rights without breaching the terms of the relevant license) at the date of an Order, as well as all Intellectual Property Rights that a Party may generate during the term of a Contract other than Foreground IPR;

**"Buyer"** refers to the entity to whom a quotation for the sale of Products and/or Services is addressed and/or who accepted VICTREX's offer of sale through issuance of a purchase order to VICTREX;

**"Conditions"** means these General Terms and Conditions of Sale;

**"Contract"** has the meaning set out in Condition 2.2.

**"DFM"** means design for manufacture;

**"Foreground IPR"** means all Intellectual Property Rights resulting from or created out of the work carried out under a Contract;

**"Improvement"** means improvement, modification and/or enhancement to Background IPR of a party resulting from or created out of the work carried out under a Contract;

**"Incoterms"** means Incoterms 2020 as published by International Chamber of Commerce or such other edition in force at the date when the Contract is formed;

**"Intellectual Property Rights or IPR"** means any patents, trade secrets, utility models, rights to inventions, copyright and related rights, moral rights, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world including, but not limited to, all products, goods, designs, technology, know-how, trade secrets, processes and other tangible or intangible elements practicing, containing or embodying such intellectual property as above-described;

**"Manufacturing and DFM Foreground IPR"** means any Foreground IPR which relates to: (a) any methods and/or equipment used in the manufacture of Products including design of any

tooling; and/or (b) any ideas, know how, inventions, processes, techniques, materials changes and/or individual design features created, devised or developed to create Products and which are capable of being used to adapt or translate any reference products made from metal or other materials into Products;

**"Minimum Order Quantity"** means the minimum order quantity set out in the Sales Order Acknowledgement.

**"Order"** has the meaning set out in Condition 3.1.

**"Products"** means goods (including prototypes) as specified in a quotation from VICTREX, as may be modified by a Sales Order Acknowledgement or other writing signed by an authorized agent of VICTREX;

**"Release"** has the meaning set out in Condition 3.1.

**"Sales Order Acknowledgement"** means the document entitled Sales Order Acknowledgement generated by VICTREX and sent by mail, courier, fax or e-mail by VICTREX to the Buyer confirming the Buyer's acceptance of VICTREX's quotation and the final details of the Contract;

**"Services"** means any services to be provided by VICTREX as specified in a Sales Order Acknowledgment and as ancillary services in respect of the supply of the Products by VICTREX;

**"Specifications"** means the drawings, specifications, notes, documents, technical details, testing and/or acceptance criteria, and other information describing the Products and/or Services as agreed in writing by VICTREX;



“VICTREX” means KLEISS GEARS, INC. D.B.A. “VICTREX” a Wisconsin corporation with a place of business at 390 Industrial Avenue, Grantsburg, WI 54840, USA.

- 1.2 The headings are for convenience only and shall not affect the interpretation of this document.
- 1.3 All references to prices, Products and Services contained in these Conditions shall be taken to mean the prices, Products and Services detailed in VICTREX’s Sales Order Acknowledgement, or other writing signed by VICTREX.

## 2. APPLICATION/CONTRACT FORMATION

- 2.1 These Conditions shall govern and be incorporated in every Contract made by or on behalf of VICTREX with the Buyer and unless otherwise expressly agreed in a signed writing by an authorized agent of VICTREX and the Buyer, shall prevail over any terms and conditions contained or referred to in any documentation submitted by the Buyer or in correspondence or elsewhere or implied by trade custom, practice or course of dealing.
- 2.2 A written quotation issued by VICTREX is an offer to sell. Unless otherwise stated therein, prices and delivery schedules in quotations are valid for 90 days from date of issue and subject to modification by VICTREX thereafter. A contract shall be formed, and Buyer shall be deemed to have accepted the provisions of these Conditions, by any of the following:

- (a) signing and returning to VICTREX a copy of any quotation within the time provided therein;
- (b) sending to VICTREX a written acknowledgment or acceptance of the quotation within the time provided therein;
- (c) placing an Order or giving instructions to VICTREX respecting manufacture, assembly, or delivery of the Products (including instructions to build and hold) following receipt of or access to any quotation or these Conditions;
- (d) failing to cancel a pending purchase order (which is not deemed to be an acceptance of an offer by VICTREX) within ten days after receiving these Conditions for the first time;
- (e) accepting delivery of all or any part of the Products;
- (f) paying for all or any part of the Products or Services; or
- (g) indicating in some other manner Buyer’s acceptance of an offer.

All sales by VICTREX consist only of the following (in descending order of priority): VICTREX’s quotations, these Conditions, any terms in other documents which are referred to herein or are attached hereto or in a document provided, signed, or issued by VICTREX which reference the transaction, and transaction specific commercial terms in Buyer’s purchase order (excluding, Buyer’s standard terms and conditions of purchase and/or other terms inconsistent with VICTREX’s quotation and these Conditions) which VICTREX acknowledged through a Sales Order

Acknowledgement, all of which constitute the “Contract”.

- 2.3 VICTREX shall be entitled to rely in all respects and in all circumstances on the contents of the Sales Order Acknowledgement as stating the quantity and grade of the Products and any Services to be supplied. Accordingly, it shall be the Buyer’s sole responsibility to check the Sales Order Acknowledgement and to notify VICTREX within five (5) days after the receipt of the same where the Products and any Services are not properly stated in the Sales Order Acknowledgement.
- 2.4 The Buyer expressly agrees that these Conditions shall take precedence over any contractual provisions offered by the Buyer. VICTREX shall not be bound by and does not agree to any contractual provisions offered by the Buyer save to the extent, if any, that VICTREX expressly agrees to the same in a signed writing by an authorized agent of VICTREX. The Buyer agrees that no actions taken by VICTREX shall be interpreted as VICTREX’s acceptance of any contractual provisions offered by the Buyer.

## 3. ORDERS

- 3.1 Unless otherwise agreed in writing between the parties, the Buyer shall place written purchase orders accepting VICTREX’S quotations (an “Order”). VICTREX shall confirm the quantity and grade of Products and applicable lead times and delivery dates by issuing a Sales Order Acknowledgment. Where accepted in the Sales Order Acknowledgement, each Order may be taken by the Buyer in pre-agreed releases citing to an Order (a “Release”),



subject to the Minimum Order Quantity per Order and per Release.

3.2 Lead times quoted by VICTREX are estimates only and the anticipated delivery date will be confirmed in the Sales Order Acknowledgement. Each Order or Release is its own separate and distinct installment contract, subject to the Conditions of the Contract.

3.3 By written notice to VICTREX, the Buyer may from time to time, request changes to an Order including to the Specifications or delivery details. VICTREX need not perform such changes if this would, in VICTREX's sole discretion, substantially affect VICTREX's performance. VICTREX shall within a reasonable time advise Buyer of the feasibility of such change and the expected impact on cost or delivery timing. Thereafter, the Buyer and VICTREX shall negotiate in good faith, to attempt to reach agreement on any costs and/or adjustment to price or delivery timing. All changes shall be at the Buyer's cost. All Services to effectuate a change shall be compensated at VICTREX's rates in effect at the time of such change(s). If VICTREX proceeds with a change before agreement is reached on cost, pricing or delivery, and the parties are unable to reach final agreement, the price of Products and time for delivery shall be equitably adjusted, in VICTREX's sole discretion based on cost and profit changes, including those related to volume amortization, net present value of sales, and planned margins, to account for the impact of the change. If VICTREX agrees, in its sole discretion, to implement changes, the agreement

between the parties with respect to such changes shall not be effective until it is confirmed in a writing signed by an authorized agent of both Parties.

#### **4. DELIVERY**

4.1 Time for delivery of the Products and/or the completion of the Services as stated by VICTREX in a quotation, Sales Order Acknowledgement, or otherwise is stated as accurately as reasonably and commercially practicable but is not guaranteed. VICTREX will not be liable for any delays in delivery for whatever reason unless the parties have expressly agreed in writing signed by an authorized agent of VICTREX to specific liquidated damages for late deliveries. Except where otherwise expressly quoted or agreed, VICTREX shall deliver Products Ex Works (EXW) (Incoterms). Buyer shall not be entitled to change the stated delivery date unless VICTREX is notified within three (3) working days of issuance of the Sales Order Acknowledgement.

4.2 The Buyer shall have no right to cancel the Contract for failure of VICTREX to meet any delivery or completion time.

4.3 Upon receipt of each delivery of Products sold hereunder, the Buyer shall examine such Products for any damage, defects, or shortage. VICTREX shall have no liability unless the Buyer notifies VICTREX in writing within seven (7) days of receipt of the Products, following which the provisions of Condition 10.2 shall apply. If the Buyer fails to give such notice, the Buyer shall be deemed to have accepted the Products delivered.

4.4 Failure by the Buyer to take delivery of any one or more installments of

Products delivered in accordance with the Contract shall entitle VICTREX to terminate the Contract either in whole or in part.

4.5 VICTREX shall be entitled to deliver the Products in quantities +/- 10% of the quantity confirmed on the Sales Order Acknowledgement or by installments that in aggregate are +/- 10% of the quantity confirmed on the Sales Order Acknowledgement. Each installment shall be treated as if it constituted a separate and distinct contract between VICTREX and the Buyer.

#### **5. PRICE**

5.1 Except as otherwise agreed in writing by VICTREX, the prices of the Products and/or Services:

- (i) will be those prevailing at the time of delivery;
- (ii) are Ex Works (EXW) (Incoterms) VICTREX's production location and exclude all costs associated with delivery, including, but not limited to, costs relating to freight, transportation, insurance, delivery and unloading and customs duties or tariffs;
- (iii) exclude any and all sales, excise or other taxes and duties, which VICTREX shall add at the appropriate prevailing rate for payment by the Buyer.

5.2 Prices quoted by VICTREX are subject to adjustment upon fifteen (15) days written notice by VICTREX to Buyer. Even where VICTREX has agreed to fixed pricing, Buyer and VICTREX shall negotiate good faith adjustments whenever VICTREX's costs change from the costs at the time of quoting or prior



price adjustment, including changes to the costs of raw materials or components, currency fluctuations, VICTREX's labor costs, and/or due to variances from volumes projected by the Buyer. If agreement cannot be reached, prices shall be equitably adjusted.

5.3 Productivity and other scheduled or agreed price reductions shall not apply to any year in which deliveries during the prior year are less than estimated or forecasted quantities by 10% or more, determined on a per part basis.

5.4 Tooling prices are quoted based on the details provided by the Buyer and assume industry standard molding tolerances apply. If the Buyer requires changes or standard molding tolerances do not apply, VICTREX will issue a new quotation. On receipt of the Buyer's purchase order relating to tooling, fifty percent (50%) of purchase price will be invoiced, with payment due ten (10) days from date of invoice, unless otherwise agreed in writing by VICTREX. For Buyers with approved credit, the remaining fifty percent (50%) is due thirty (30) days from completion of the tooling and invoicing. Tooling is considered complete when the first shot is molded, unless otherwise agreed in writing by VICTREX.

## 6. RETENTION OF TITLE

6.1 Risk of damage or loss of the Products shall pass to the Buyer at the time of delivery in accordance with Incoterms.

6.2 Notwithstanding delivery and passing of the risk of loss, the Products will remain the property of VICTREX until VICTREX receives payment in full (in cash or cleared funds) for the Products and any

other goods or Services that VICTREX has supplied to the Buyer in respect of which payment has become due, in which case title to the Products shall pass at the time of payment of all such sums.

6.3 From delivery and until such time as title to the Products passes to the Buyer, the Buyer shall insure the Products for full value. The Buyer shall hold the proceeds of any claim on the insurance policy in trust for VICTREX and shall immediately account to VICTREX for any proceeds, and shall not be relieved of the full cost of such Products, notwithstanding the amount received from any claim on Products.

6.4 Until such time as the title to the Products passes to the Buyer, the Buyer shall hold the Products as VICTREX's trustee and shall keep the Products separate from those of the Buyer and third parties and properly stored, protected and insured and identified as VICTREX property, but shall be entitled to use (or where authorized by VICTREX in writing signed by an authorized agent in advance, resell) the Products in the ordinary course of its business in which case all proceeds from such resale or use shall be held by the Buyer in trust for the benefit of VICTREX until title to the Products passes to the Buyer.

6.5 Until such time as the title to the Products passes to the Buyer (and provided the Products are still in separate, identifiable existence and have not been resold), VICTREX shall be entitled at any time to require the Buyer to deliver up the Products to VICTREX, and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer

if the Products are stored and repossess the Products all to the fullest extent permitted by law, and where the Products are stored at the premises of a third party, the Buyer shall procure a right for VICTREX to enter such third party's premises to repossess the Products.

6.6 The Buyer shall not be entitled to pledge, grant a security interest in, or charge by way of security for any indebtedness any of the Products which remain the property of VICTREX, and if the Buyer does so, all monies owing by the Buyer to VICTREX shall become immediately due and payable, without prejudice to any other right or remedy of VICTREX.

## 7. SERVICES

7.1 The provisions of this Condition 7 shall only apply if VICTREX is providing Services to the Buyer.

7.2 In providing Services, VICTREX shall:

- (i) provide Services with reasonable care and skill;
- (ii) use reasonable efforts to meet any performance dates agreed between the parties; but all such dates shall be estimates only, and time shall not be of the essence for performance of the Services; and
- (iii) have the right to make any changes to the Services that are necessary to comply with any applicable law or safety requirement or that do not materially and adversely affect the nature or quality of the Services.

## 8. PAYMENT

8.1 Payment terms shall be detailed in the Sales Order Acknowledgement. Where



- the Sales Order Acknowledgement is silent on payment terms, for buyer's with approved credit, Buyer shall pay each invoice in full within thirty (30) days of the invoice date, except for tooling where payment terms are defined in Condition 5.4 above. Time shall be of the essence for Buyer's payment of invoices.
- 8.2 VICTREX reserves the right (in VICTREX's absolute discretion) to require payment in full for the Products and/or Services on or before delivery or otherwise to change any credit terms given to the Buyer from time to time.
- 8.3 A service charge at the maximum permissible legal rate will be added to all past due accounts. Where no legal maximum is stated, the rate will be one and one-half percent (1.5%) per month, to run from the due date for payment until receipt by VICTREX of the full amount (including any accrued interest), whether before or after judgment. Buyer also shall reimburse VICTREX for all costs of collection, including reasonable attorney fees, of amounts not paid when due. VICTREX may allocate payments from Buyer among outstanding invoices in VICTREX's discretion.
- 8.4 If Buyer fails to make payments when due or if VICTREX becomes reasonably insecure regarding Buyer's performance of any duty under the Contract, VICTREX may terminate the Contract, defer, discontinue, or suspend delivery, suspend credit and demand Cash On Delivery (COD) terms, and/or demand adequate assurance of Buyer's performances.
- 8.5 All sums payable in respect of an Order (or Release) shall be payable in full by the Buyer without deduction of any kind, whether by way of set-off, counterclaim or otherwise howsoever. The Buyer shall not be entitled to set-off an amount owing or alleged to be owing to it by VICTREX against amounts owing by it to VICTREX.
- 9. EXPORT SALES**
- 9.1 The Buyer acknowledges that the export of Products and any associated technology, including intellectual property as further described in Condition 12, may be subject to export control regulations in certain applicable jurisdictions (as such regulations may be amended from time to time).
- 9.2 Buyer agrees that as a condition of every Contract:
- (i) the Products and/or Services and any associated technology will not be used:
    - a. for purposes associated with any chemical, biological, nuclear weapons or missiles capable of delivering such weapons, or in support of any terrorist activity; or
    - b. in breach of any applicable laws, trade sanctions or trade embargoes, including, without limitation, in violation of license requirements 1 C998 under the Bureau of Industry and Security Export Administration Regulations; and
  - (ii) the Products and any associated technology will not be resold if it is known or suspected that they are intended to be used for such purposes.
- 9.3 In the event that VICTREX is not able to obtain any requisite governmental license, consent or permit or other authorization in fulfillment of any order or Contract, VICTREX shall not be liable to the Buyer or any third party in respect of any bond or guarantee or for any loss, damage or other resultant financial penalty.
- 9.4 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of Products into the country of destination. All export and import permits and licenses including licences of intellectual property and the payment of all duties, custom fees, and/or tariffs shall be the responsibility of the Buyer.
- 10. WARRANTY AND LIABILITY**
- 10.1 VICTREX warrants that the Products will, materially comply with the Specifications at the time of delivery.
- 10.2 VICTREX is not liable for any defect in the Products unless the Buyer has given notice to VICTREX within the time periods provided in Condition 4.3. If the Buyer notifies VICTREX of a defect in the Products within the specified time periods, VICTREX's only obligation is, at its option, to either replace or repair any quantity of the Products that are damaged or defective; or refund to the Buyer the amount paid by the Buyer for the quantity of the Products that are the subject of the claim, together with the applicable transportation costs.
- 10.3 It is Buyer's sole responsibility to be sure that all performance, measurement, durability, appearance and other characteristics relating to the Products and their use as desired by Buyer are included in writing in the Specification.



VICTREX shall rely entirely on Specifications provided by Buyer and is under no obligation to verify such information or take any action to obtain explanatory or supplemental information from Buyer or third parties. No claim for defective Products will be honored by VICTREX if such claim is the result of incomplete or inadequate Specifications supplied by Buyer. Notwithstanding the above, Products shall not be considered defective if they materially fulfill the Buyer's performance requirements and/or specifications and/or conform with known or visible properties of approved samples. Buyer's approval of VICTREX's designs, drawings, and/or production part approval process (PPAP) submissions establishes conformance. Any representations by VICTREX as to performance and other matters, except as incorporated into the written Specifications, were for illustrative purposes only and do not constitute a warranty. Notwithstanding anything to the contrary, VICTREX provides no warranty as to prototype Products or as to Products used by Buyer in any program or application other than the specific program identified in VICTREX's quotation for the Products. VICTREX does not warrant the Products will comply with the requirements of any safety or environmental code or regulation of any federal, state, municipality or other jurisdiction. VICTREX does not warrant that the Products will operate with any accessories or within any system not sold under the Contract.

10.4 VICTREX shall not be liable for any costs related to a recall, service campaign or similar action without its prior written consent (and in any event only where it is determined to be at least 51% at fault for the root cause of the issue) and any such liability may not exceed the limitation of liability stated in this Contract. Buyer and VICTREX shall reasonably cooperate with each other and exchange information in a good faith, mutual attempt to determine root cause. VICTREX's liability may never exceed the amount of its proportionate fault for any issue or the limitation of liability, and in any case is limited, in its discretion, to the replacement or repair of any quantity of the Products that are damaged or defective; or the refund to the Buyer of the amount paid by the Buyer for the quantity of the Products that are the subject of the claim. VICTREX shall not be liable for any cost to Buyer for the repair or replacement of Products in any case, including the warranty, recall, or other costs of Buyer.

10.5 **OTHER THAN AS SET FORTH IN SECTION 10.1, VICTREX MAKES NO REPRESENTATIONS AND GIVES NO WARRANTIES OR UNDERTAKINGS, EXPRESS OR IMPLIED, IN FACT OR IN LAW:**

(i) **AS TO QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FOR THE SUITABILITY OR OTHERWISE OF THE PRODUCTS FOR USE IN THE MANUFACTURE OF PRODUCTS BY THE BUYER OR ANY OTHER APPLICATION;**

(ii) **AS TO THE OWNERSHIP, VALIDITY OR SUBSISTENCE OF ANY INTELLECTUAL PROPERTY RIGHTS THAT MAY SUBSIST IN THE PRODUCTS OR THE SERVICES OR IN ANY APPLICATION OR USE THEREOF;**

(iii) **IN RELATION TO ALLEGED OR ACTUAL INFRINGEMENT OF ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF THE BUYER'S OR THE BUYER'S CUSTOMERS' OR AGENTS' USE OF THE PRODUCTS OR SERVICES; OR**

(iv) **FOR THE BENEFIT OF THE BUYER OR THE BUYER'S CUSTOMERS OR AGENTS; AND ALL OF THE FOREGOING ARE DISCLAIMED BY VICTREX.**

10.6 **VICTREX IS NOT LIABLE TO THE BUYER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR RESTITUTION, OR FOR BREACH OF STATUTORY DUTY OR MISREPRESENTATION, OR OTHERWISE FOR:**

(i) **ANY DEFECT IN THE PRODUCTS OR SERVICES CAUSED BY FAIR WEAR AND TEAR, ABNORMAL OR UNSUITABLE CONDITIONS OF STORAGE OR USE AFTER DELIVERY, OR AN ACT, OMISSION OR DEFAULT OF THE BUYER OR A THIRD PARTY; OR**



- (II) **LOSS OF REVENUES, LOSS OF CONTRACTS OR LOSS OF PROFITS, WHETHER DIRECT, INDIRECT OR CONSEQUENTIAL LOSS, NOR FOR ANY INDIRECT OR CONSEQUENTIAL LOSS AND WHETHER ARISING FROM NEGLIGENCE, BREACH OF CONTRACT OR OTHERWISE.**
- 10.7 **THE ENTIRE LIABILITY OF VICTREX UNDER OR IN CONNECTION WITH THE CONTRACT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR RESTITUTION, OR FOR BREACH OF STATUTORY DUTY OR MISREPRESENTATION, OR OTHERWISE, IS LIMITED TO AN AMOUNT EQUAL TO THE TOTAL OF THE CHARGES PAYABLE BY THE BUYER UNDER THE CONTRACT.**
- 10.8 **EXCEPT AS SET OUT IN THESE CONDITIONS, ALL CONDITIONS, WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED BY:**
- (I) **STATUTE;**
- (II) **COMMON LAW; OR**
- (III) **OTHERWISE, IN RELATION TO:**
- (a) **THE PRODUCTS; OR**
- (b) **ANY INTELLECTUAL PROPERTY OR INTELLECTUAL PROPERTY RIGHTS THAT MAY SUBSIST IN THE PRODUCTS OR IN ANY USE OR APPLICATION THEREOF, ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.**
- 10.9 Nothing in these Conditions shall exclude or limit a party's liability for fraud, for death or personal injury caused by its negligence, or for any other matter, if and only to the extent that under applicable law, liability for it cannot be excluded, restricted or limited in the context of these Conditions. For any liability arising under this Condition 10.9, liability costs shall be shared proportionally based on percentage of fault.
- 10.10 The invalidity, illegality or unenforceability of any part of these Conditions does not affect or impair the continuation in force of the remainder of these Conditions.
- 11. TERMINATION**
- 11.1 Either party shall be entitled to terminate the Contract by giving written notice to the other if:
- a. the other party commits a material breach of any of the terms and conditions of the Contract and in the case of a material breach capable of cure, fails to cure within thirty (30) days of written notice being received specifying the material breach and requiring its cure; and/or
- b. if a party becomes insolvent.
- 11.2 VICTREX shall not be liable for any damages for breach of any provision of the Agreement with which it has substantially complied.
- 11.3 Upon any termination, the Buyer shall pay VICTREX as follows:
- (1) the Contract price for all Products which have been completed prior to termination, including all Products subject to firm orders in accordance with these Conditions;
- (2) the pro rata Contract price for goods in all Products in the work-in-process stage;
- (3) the cost Ex Works VICTREX's plant of materials, components, and supplies acquired in reasonable reliance on the Buyer's Releases and/or forecasts;
- (4) reasonable cancellation charges, if any, paid to third parties by VICTREX on account of commitments made in connection with the terminated Contract;
- (5) the full remaining balance of any amounts that were amortized into piece price (tooling, engineering, capital) which were not paid in full through purchase of Products prior to termination; and
- (6) reasonable lost profits on the terminated portion of the Contract (collectively, "Cancellation Charges").
- 11.4 The termination or expiration of the Contract, however arising, will be without prejudice to the rights and remedies of VICTREX accrued prior to termination or expiration. The Conditions that expressly or impliedly have effect after termination or expiration will continue to be enforceable notwithstanding termination or expiration of the Contract.
- 12. INTELLECTUAL PROPERTY**
- 12.1 This Condition will apply except where the parties have entered into a separate written agreement signed by their



respective authorized agents prior to or contemporaneous with the effective date of the Contract with respect to the parties' IPR that expressly prevails over these Conditions.

- 12.2 All Background IPR of VICTREX belongs or is licensed to VICTREX. The Buyer acknowledges that it acquires no rights, title or interest in the Background IPR and it hereby assigns to VICTREX all goodwill attaching to any of VICTREX's registered or unregistered trade marks. If the Buyer challenges in any way VICTREX's Background IPR or VICTREX's entitlement to them, VICTREX can terminate the Contract immediately. The Buyer shall disclose to VICTREX all of its Background IPR which is reasonably necessary for VICTREX to perform the Services and/or supply the Product under the Contract.
- 12.3 All Background IPR shall only be used for the purpose of the Contract and neither party shall make use of the other party's Background IPR for any activity outside of its obligations to fulfill the Contract.
- 12.4 The parties agree that Foreground IPR shall be owned as follows:
- (i) all Manufacturing and DFM Foreground IPR and/or Improvements to VICTREX Background IPR shall belong solely to VICTREX ("**VICTREX Foreground IPR**"); and
  - (ii) all Foreground IPR which is not VICTREX Foreground IPR shall belong solely to Buyer ("**Buyer Foreground IPR**").
- 12.5 If during the term of this Contract either party (or its authorized sub-contractors) develop or create (whether with or without others and whether jointly with

the other party or not) any Foreground IPR which is owned by the other Party pursuant to this Contract, it shall immediately disclose any such Foreground IPR to the other party. Each party shall ensure that its part of the work under the Contract shall only be undertaken by persons who are either employed by that party under a contract for services or who are consultants under a consultancy contract with that party which (in each case) provides for the assignment by such persons of all IPR created by them during the course of their duties owed to that party under such contract. Each party hereby assigns to the other party all right, title and interest in and to any Foreground IPR (including by way of present assignment of future rights) to the extent necessary in order to give full effect to Condition 12.4.

- 12.6 The Buyer represents and warrants that it has the right to provide any material, Specifications or design it may provide to VICTREX and that VICTREX's possession, use and reliance on the same in connection with the manufacture, sale or use of the Products or performance of the Services shall not constitute infringement of any Intellectual Property Rights of any third party.
- 12.7 The Buyer shall not cause or allow to be analyzed and/or reverse engineered any Products provided by VICTREX or its Affiliates, or VICTREX's or its Affiliate's IPR, to determine the chemical composition, formulation or IPR, unless with the prior written consent of VICTREX, signed by an authorized agent of VICTREX, which may be given or

withheld in the sole and absolute discretion of VICTREX.

- 12.8 Unless otherwise agreed in a signed writing, VICTREX grants to Buyer no license to use VICTREX's Background IPR and Foreground IPR, including, but not limited to, no rights to manufacture, copy, sublicense, disclose, disassemble, decompile, reverse engineer, or otherwise modify the Intellectual Property. Any proposals, prints, brochures, drawings, or other information or know-how furnished to the Buyer by VICTREX or observed by the Buyer during any plant visit are for confidential use by the Buyer, shall remain the property of VICTREX, and shall not be disclosed to a third party or used to the detriment of VICTREX's competitive position or for any other purpose except as provided for herein.

### 13. TOOLING

Unless otherwise agreed, all tangible manufacturing assets of VICTREX used to fulfil the Buyer's order other than articles of tooling furnished to VICTREX by the Buyer or articles of tooling purchased by the Buyer from VICTREX shall remain the property of VICTREX and no right or interest of any kind whatsoever in any such assets shall be construed or interpreted as having been granted or otherwise conveyed to the Buyer, either expressly, or by implication, estoppel or otherwise. Any tooling purchased by the Buyer will be limited to that which is separately quoted by VICTREX and paid for by the Buyer pursuant to Conditions 5.4 above, which quote expressly states that price indicated therein by VICTREX is "for





purchase" or "for sale" of the tooling described therein rather than as an additional charge to defray, whether in whole or in part, VICTREX's tooling costs, ("Purchased Tooling"). Buyer may also transfer existing tooling to VICTREX for VICTREX to use in making Products for Buyer ("Transferred Tooling"). Purchased Tooling and Transferred Tooling (collectively, "Buyer's Tooling") will be maintained in good condition for the Buyer's use, during a normal life expectancy, but not to exceed twelve (12) months after last usage. The Buyer shall be responsible for the cost of refurbishing or replacing any Buyer's Tooling which has exceeded its reasonable, useful life based on volumes estimated at time of tooling quotation or when recommissioned after storage periods exceeding twelve (12) months. VICTREX shall maintain a possessory lien and Buyer grants to VICTREX a security interest on all Buyer's Tooling to secure reimbursement of all amounts paid or expended by VICTREX in acquiring, repairing, maintaining, and/or storing Buyer's Tooling and also to secure payment to VICTREX for all Products made by VICTREX with Buyer's Tooling. Buyer hereby gives VICTREX permission to file a UCC-1 financing statement or other document evidencing its lien rights, although the absence of any such filing shall not be deemed to defeat the lien rights granted hereby.

#### 14. CONFIDENTIALITY

14.1 This Condition will apply except where the parties have entered into a separate written agreement signed by their respective authorized agents prior to or

contemporaneous with the effective date of the Contract with respect to confidentiality that expressly prevails over these Conditions.

14.2 Each party agrees that all information received from the other party under the Contract, including the nature of the Products, and/or Services to be provided by VICTREX and the existence of any Contract, shall be maintained in confidence and not disclosed to others, except as such disclosure may be required by applicable law or court order, and the receiving party agrees not to use such information for any purpose, other than the fulfilment of a Contract, without the prior written consent of the other party, signed by an authorized agent of the party. The obligations of confidentiality shall survive the termination or expiration of the Contract for ten (10) years from the termination or expiration of the Contract.

14.3 Each party shall use commercially reasonable care to protect the confidentiality of information received from the other party but in all events no lesser standard of care to protect the confidentiality of information received from the other party than it uses to protect its own confidential information, and shall limit disclosure of such information to those of its personnel and consultants and those of VICTREX's Affiliates who have an actual need to know and have a written obligation to protect the confidentiality of such information.

#### 15. ANTI-BRIBERY

15.1 Each party shall comply with all applicable laws, statutes, regulations and

codes relating to anti-bribery and anti-corruption in any jurisdiction applicable to the parties or the supply of the Products and/or Services ("**Applicable Bribery Law**"). No party shall place the other in breach of any Applicable Bribery Law.

15.2 Each party shall maintain in place throughout the term of a Contract its own adequate policies and procedures to ensure compliance by it and its personnel with the Applicable Bribery Law, and will enforce those policies and procedures as necessary to avoid any breach by it or its personnel of Applicable Bribery Law. Each party shall promptly answer reasonable enquiries from the other party relating to those policies and procedures.

15.3 The Buyer shall promptly report to VICTREX any request or demand for any undue financial or other advantage of any kind received by the Buyer in connection with the performance of a Contract.

15.4 Breach of this Condition 15 shall be deemed a material breach and not capable of cure.

#### 16. FORCE MAJEURE

If VICTREX is prevented, hindered or delayed from or in supplying Products by an event or circumstance beyond its reasonable control (including, without limitation, strikes, lockouts and other industrial disputes, accidents, act of God, war, riot, civil commotion, malicious damage, pandemic, epidemic, compliance with a law or governmental order, rule, regulation or direction, reductions in or unavailability of power at manufacturing plant, implementation



of tariffs or duties, breakdown of plant or machinery, or shortage or unavailability of raw materials from normal sources or routes of supply, or port stoppages or other transportation delays, or delay by the Buyer in the performance of any of its obligations under the Contract (each of the foregoing being a "Force Majeure Event") VICTREX may, at its option and without any liability for any loss or damage suffered by the Buyer:

- (a) suspend deliveries while the Force Majeure Event (or its effects) continues (or continue); or
- (b) terminate any Contract so affected with immediate effect by written notice to the Buyer.

Any increased costs incurred to mitigate the impact of a force majeure event, such as to obtain raw materials or components from alternate sources, or by using alternate shipping methods (including air), shall be borne by the Buyer. Whenever VICTREX's supply of the Products, materials or means of production or source of supply is insufficient to meet the estimated delivery schedule or in the event of any occurrence mentioned above, VICTREX, in its sole discretion, may allocate its supply to its own use, to the Buyer, and to other customers.

## 17. REMEDIES AND WAIVERS

No delay or omission by either party in exercising any right, power or remedy provided by law or under these Conditions shall:

- (a) affect that right, power or remedy; or
- (b) operate as a waiver of it.

The single or partial exercise of any right, power or remedy provided by law or under these Conditions shall not preclude any other or further exercise of it or the exercise of any other right, power or remedy. The rights, powers and remedies provided in these Conditions are cumulative and not exclusive of any rights, powers and remedies provided by law.

## 18. RIGHTS OF THIRD PARTIES

- 18.1 The Buyer agrees that the controls, benefits, rights and licenses granted to VICTREX under the Contract are also granted to each of VICTREX's Affiliates and that any loss suffered by VICTREX or any of VICTREX's Affiliates as a result of any action or omission under the Contract shall be deemed to be a loss of VICTREX and recoverable from the Buyer under the Contract (subject to the agreed exclusions and limits on liability).
- 18.2 Other than as set out in Condition 18.1 above, a person who is not a party to the Contract will have no right under the Contract to enforce any of its terms.

## 19. NO PARTNERSHIP

Nothing in these Conditions and no action taken by the parties pursuant to these Conditions and any Contract made under them shall constitute a partnership, association, joint venture or other co-operative entity between the parties.

## 20. GOVERNING LAW

- 20.1 These Conditions and any Contract made under them are governed by, and

shall be construed in accordance with, the laws of the State of Wisconsin, without regard to principles of conflict of laws. Each of the parties irrevocably and unconditionally agrees (a) to be subject to the jurisdiction of the courts of the State of Wisconsin and of the federal courts sitting in the State of Wisconsin, and (b) (1) to the extent such party is not otherwise subject to service of process in the State of Wisconsin, to appoint and maintain an agent in the State of Wisconsin as such party's agent for acceptance of legal process, and (2) that service of process may also be made on such party by prepaid certified mail with a proof of mailing receipt validated by the United States Postal Service constituting evidence of valid service, and that service made pursuant to (b) (1) or (2) above shall have the same legal force and effect as if served upon such party personally within the State of Wisconsin. For purposes of implementing the parties' agreement to appoint and maintain an agent for service of process in the State of Wisconsin, each party that does not otherwise have a registered agent in the State of Wisconsin appoints the Wisconsin Secretary of State as such agent.

- 20.2 The United Nations Convention on Contracts for the International Sales of Products shall not apply to any Contract pursuant to these Conditions.

## 21. DATA PROTECTION

- 21.1 Both parties shall comply with the requirements of all applicable data protection legislation ("Data Protection Legislation"). The parties acknowledge



that in the event personal data is disclosed in relation to the Contract, they shall in good faith agree the appropriate data protection obligations to enable compliance with applicable Data Protection Legislation.

## **22. WAIVER OF JURY TRIAL**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES AGREE TO WAIVE, AND DO WAIVE, TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO UNDER OR IN CONNECTION WITH THE CONTRACT.

## **23. NO HUMAN IMPLANTATION**

The Buyer will not use, or cause to be used, any Products for any application intended for (i) human implantation, (ii) permanent oral and/or dental contact or (iii) blood or tissue contact for 24 hours or more. VICTREX may immediately terminate the Contract or suspend further shipments of Products to the Buyer, in the event that the Buyer has breached this Condition or if VICTREX reasonably believes that the Buyer intends to or has breached this Condition.

## **24. NOTICES**

All notices, requests, demands, claims and other communications hereunder shall be in writing (except as may otherwise be specifically provided herein to the contrary). Any such written communication shall be deemed to have been duly given (except as may otherwise be specifically provided herein to the contrary), and shall be deemed sufficient to preserve the rights of the sending party, if (a) sent by mail

to the address of the receiving party stated in an Order or Sales Order Acknowledgement (or to such other address as any party may designate for itself by notice to the other parties given pursuant hereto) by certified or registered mail, with postage prepaid by sender, or shipped by express courier service, with charges prepaid by sender or (b) delivered by hand and receipted for, by or on behalf of the intended recipient, or (c) by electronic mail to the email address of the receiving party stated in an Order or Sales Order Acknowledgement (or to such other email address as any party may designate for itself by notice to the other parties given pursuant hereto). Notices shall be deemed received, (a) on the third business day after posting if sent by mail; (b) on delivery if delivered by hand; and (c) on the first business day after sending if sent by email.

## **25. PARTIES BOUND**

The Contract and all rights, duties, obligations, and undertakings shall be binding upon and shall inure to the benefit of the parties and their respective officers, directors, representatives, agents, employees, affiliates, successors, and permitted assigns, personal and legal representatives and heirs; provided, however, that Buyer shall not assign or otherwise transfer any of such rights, duties, obligations or undertakings or any portion thereof to any third party without the prior written consent of VICTREX, which consent may be granted or withheld in VICTREX's sole and absolute discretion.

## **26. ENTIRE AGREEMENT AND AMENDMENT**

This Contract constitutes the entire agreement between VICTREX and the Buyer with respect to the matters contained herein and subject to Condition 14.1 supersedes all prior or contemporaneous oral or written agreements, representations or communications. No modifications, amendments or supplements to a Contract shall be effective for any purpose unless agreed in writing and signed by an authorized agent of VICTREX.

## **27. SEVERABILITY**

In the event that any portion of the Contract shall, for any reason, be held invalid or unenforceable, it is agreed that the same shall not affect any other portion of the Contract, but that the remaining covenants and restrictions or portions thereof shall remain in full force and effect, and that if the invalidity or unenforceability is due to the unreasonableness of the covenants and restrictions, the covenants and restrictions shall nevertheless be effective as may be determined to be reasonable by a court of competent jurisdiction.