



Kleiss Gears, Inc. - General Terms and Conditions of Sale (May 2020 Edition)

The following terms and conditions are incorporated by reference into the Contract (as defined below).

1. DEFINITIONS

1.1 In these Conditions:

"Background IPR" means the VICTREX Intellectual Property Rights or the Buyer Intellectual Property Rights (as relevant);
"Buyer" refers to the individual firm or company to whom a quotation for the sale of Products and/or Services is addressed or whose purchase order for the purchase of Products and/or Services is accepted by VICTREX;

"Buyer IPR" means all Intellectual Property Rights belonging to the Buyer or which is licensed to the Buyer (to the extent that the Buyer is freely able to sub-license such rights without breaching the terms of the relevant license) at the date of the order, as well as all Intellectual Property Rights that the Buyer may generate during the term of a Contract other than Generated IPR;

"Conditions" means these standard terms and conditions of sale;

"Contract" means the particular individual contract for the supply of Products and/or Services by VICTREX to the Buyer created by the issuance by VICTREX to the Buyer of the Sales Order Acknowledgement pursuant to Condition 3.2 below;

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

"Group Company" means in relation to a party, that party, each and any subsidiary, affiliate or parent from time to time and each and any affiliate or subsidiary from time to time of a parent of that party;

"Improvement" means any Generated IPR which is a development, adaptation and/or derivative work of, or improvement, modification and/or enhancement to, any Background IPR of a party;

"Incoterms" means Incoterms 2010 as published by International Chamber of Commerce or such other edition in force at the date when the Contract is made;

"Intellectual Property Rights or IPR" means any patents, utility models, rights to inventions, copyright and related rights, moral rights, rights in get-up, goodwill and the right to sue for passing off or unfair competition, 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;

"Polymer" means polyaryletherketone (PAEK) materials including, without limitation, polyetheretherketone (PEEK) materials, and non-PAEK materials in forms including, but not limited to, granules, powders, pellets, fibres, tapes and films, in each case filled or unfilled;

"Polymer Components" means components or products made from or incorporating Polymer (to include prototypes);

"Polymer Generated IPR" means any Generated IPR which relates to: (a) any methods and/or equipment used in the manufacture of Polymer Components;

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

"Products" means goods (to include prototypes) as specified in a Sales Order Acknowledgement;

"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;

"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;

"Special Conditions" means such additional terms agreed from time to time in writing between VICTREX and the Buyer;

"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. a Wisconsin corporation with a place of business at 390 Industrial Avenue, Grantsburg, WI 54840, USA;

"VICTREX IPR" means all Intellectual Property Rights belonging to VICTREX or its Group Company or which is licensed to VICTREX or its Group Company (to the extent that it is freely able to sub-license such rights without breaching the terms of the relevant license) as at the date if the Contract, as well as all Intellectual Property



Rights that VICTREX or its Group Company may generate during the term of the Contract other than Generated IPR.

- 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.

2. APPLICATION

- 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 writing between 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 VICTREX's quotation is not to be taken as an offer and no Contract shall take effect unless and until a Sales Order Acknowledgement has been issued by VICTREX to the Buyer.
- 2.3 VICTREX is prepared to receive the Buyer's order by telephone or by e-mail but will have no responsibility whatsoever for any error or omission in the transmission of the Buyer's order.
- 2.4 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 forthwith after the receipt of the same where the Products and any Services are not properly stated in the Sales Order Acknowledgement.

- 2.5 The Contract shall be based solely on these Conditions and any Special Conditions.
- 2.6 The Buyer expressly agrees that these Conditions and any Special 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 writing. 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 orders and VICTREX shall provide written confirmation of the applicable lead time.
- 3.2 VICTREX shall, as soon as reasonably practicable after receipt of an order, notify Buyer of whether it accepts such order and the anticipated delivery date for that order by issuing a Sales Order Acknowledgement. Each order that is so accepted shall constitute a separate binding Contract.
- 3.3 By written notice to VICTREX, Buyer may from time to time, suggest changes to Specifications of the

Products and/or Services. VICTREX and the Buyer will promptly discuss and agree reasonably and in good faith, any pricing adjustments (up or down). If VICTREX agrees, in its discretion, to implement such changes, the agreement between the parties with respect to such changes will be made in accordance with Condition 27 below.

4. DELIVERY

- 4.1 Time for delivery of the Products and/or the completion of the Services as stated by VICTREX in a Sales Order Acknowledgement is stated as accurately as reasonably 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 VICTREX to specific liquidated damages for late deliveries. Except where otherwise agreed in the Sales Order Acknowledgement, VICTREX shall deliver Products ex works.
- 4.2 The Buyer shall have no right to cancel the Contract for failure of VICTREX to meet any delivery or completion time stated in the Sales Order Acknowledgement.
- 4.3 VICTREX may accept subsequent changes in delivery dates, purchase prices and quantities of Products and/or Services requested by the Buyer in a revised order issued by Buyer without having been deemed to have added to or modified these Conditions.
- 4.4 All Products delivered to Buyer shall be delivered EXW (Incoterms) to the Buyer's named delivery point (or such other delivery point as may be



specified in the Sales Order Acknowledgement).

- 4.5 Upon receipt of each delivery of Products sold hereunder, the Buyer shall examine such Products for any damage, defects or shortage. VICTREX will have no liability unless the Buyer notifies VICTREX within 3 days of receipt of the Products and confirms by notification in writing within 7 days of receipt of the Products, following which the provisions of Condition 10.2 shall apply. If the Buyer fails to give either such notice of rejection, the Buyer shall be deemed to have accepted the delivery in full.
- 4.6 Failure by the Buyer to take delivery of any one or more instalments of Products delivered in accordance with the Contract shall entitle VICTREX to terminate the Contract either in whole or part.
- 4.7 VICTREX shall be entitled to deliver the Products by instalments. Each instalment shall be treated as if it constituted a separate and distinct contract between VICTREX and the Buyer.

5. PRICE

- 5.1 Save as otherwise agreed in writing by VICTREX, or as indicated in the Sales Order Acknowledgement or any Special Conditions, the prices of the Products and/or Services:
- (i) will be those prevailing at the time of delivery;
 - (ii) are stated as a price per unit;
 - (iii) shall exclude all costs associated with expedited delivery, including, but not limited to, costs relating to

freight, transportation, insurance, delivery and unloading; and

- (iv) are exclusive of any sales, excise or other taxes, which VICTREX shall add at the appropriate prevailing rate.
- 5.2 Tooling prices are good faith estimates until both Buyer and VICTREX have agreed upon and finalized part design. The Tooling price includes any cavity cutting unless stated otherwise in the relevant VICTREX quote or Sales Order Acknowledgement. VICTREX takes full responsibility for all cutting needed to achieve proper gear shrinkage. Any needed additional cuttings may delay final delivery. Fifty percent (50%) of purchase price is due and owing ten (10) days from date of invoice. The remaining fifty percent (50%) is due and owing thirty (30) days from completion of the tooling. Tooling is considered complete when the first shot is molded.
- 5.3 Purchase orders for production of parts. Part prices are good faith estimates until VICTREX confirms the manufacturing process through sampling and production part approval. Purchase price is due and owing thirty (30) days from the invoice date. Time is of the essence.
- 5.4 If Buyer fails to follow the payment schedule(s) above or if VICTREX anticipates Buyer may be unable to perform hereunder, VICTREX may terminate this contract, defer, discontinue or suspend shipments, or demand adequate assurance of Buyer's performances.

6. RETENTION OF TITLE

- 6.1 Risk of damage or loss of the Products shall pass to the Buyer at the time of delivery.
- 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 until 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.
- 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 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.
- 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 forthwith become due and payable, without prejudice to any other right or remedy of VICTREX.

6.7 Notwithstanding any other provision of this Condition 6:

- (i) the Buyer shall be entitled to use (or where authorized by VICTREX in writing in advance, resell) the Products in the ordinary course of business, provided that this right shall automatically cease should the Buyer become subject to any of the events listed in Condition 11.1(b); and
- (ii) VICTREX may elect for title to the Products to pass to the Buyer at any time following delivery to the Buyer.

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 any 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 Buyer shall pay each invoice in full in accordance with the payment terms as set out on the invoice. Time shall be of the essence for payment of invoices by the Buyer.

8.2 Buyer shall pay each invoice in full in accordance with the payment terms as set out on the invoice. Time shall be of the essence for the Buyer's payment of invoices.

8.3 Notwithstanding the provisions of Conditions 8.1 and 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.

8.4 Interest is payable on overdue amounts of invoices at the rate of 3% over Barclays Bank plc base rate from time to time, 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.

8.5 VICTREX may suspend the supply of Products and/or Services to the Buyer where any payment is overdue from the Buyer to VICTREX under any Contract or any contract between VICTREX (or any Group Company of VICTREX) and a Group Company of the Buyer, until all such amounts have been paid.

8.6 All sums payable in respect of an order 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/or Services 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 VICTREX's acceptance of any order and



therefore, any Contract made under these Conditions, that:

- (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 fulfilment 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 sales of the Products are subject to the Incoterm (if any) stated in the Sales Order Acknowledgement. In the event of any conflict between the provisions of Incoterms and these Conditions,

then the Sales Acknowledgement Order shall prevail.

- 9.5 It is hereby agreed between the parties that the United Nations Convention on Contracts for the International Sales of Products shall not apply to any Contract pursuant to these Conditions.
- 9.6 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of Products into the country of destination and for the payment of any duties on them.

10. WARRANTY AND LIABILITY

- 10.1 VICTREX warrants that the Products will, when delivered, comply with the Specifications.
- 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 4.5. 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 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 THAT MAY SUBSIST IN THE PRODUCTS OR IN ANY APPLICATION OR USE THEREOF; OR**

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

10.4 VICTREX has not and will not participate in the design, manufacture, sale or distribution of any of the Buyer's products.

10.5 **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:**

- (l) **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.**

10.6 **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 TWO TIMES THE TOTAL OF THE CHARGES PAYABLE BY THE BUYER UNDER THE CONTRACT.**

10.7 **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 THAT MAY SUBSIST IN THE PRODUCTS OR IN ANY USE OR APPLICATION THEREOF,**

ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.

10.8 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 to the extent that under Delaware law, liability for it cannot be excluded, restricted or limited in the context of these Conditions.

10.9 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 any lienholder or other encumbrancer takes possession of or a receiver, administrative receiver or similar officer is appointed over any of the property or assets of the other party or if the other party makes any assignment for the benefit of creditors or other voluntary arrangement with its creditors or files a

petition for bankruptcy or is the subject of an involuntary petition for bankruptcy or goes into liquidation (except for the purpose of reorganization not involving insolvency where the resulting entity agrees to be bound by or assumes the obligations imposed on the other party) or becomes insolvent or bankrupt or anything analogous to any of these events under the law of any jurisdiction occurs in relation to the other party or if the other party ceases or threatens to cease to carry on business or if the financial position of the other party deteriorates to such an extent that in the reasonable opinion of the performing party the capability of the other party adequately to fulfil its obligations under the Contract has been placed in jeopardy.

11.2 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 representatives 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 IPR (including, but not limited to, patents, trademarks, service marks, rights in designs, copyrights, database rights (whether or not any of these is registered and including applications for registration of the foregoing) and all rights and forms of protection of a similar nature or which have equivalent or similar effect to any of the foregoing which may subsist anywhere in the world) in or to the Products which vest in VICTREX shall remain vested in VICTREX. The Buyer acknowledges that these Conditions or any Contract do not operate to vest in the Buyer any right, title or interest in or to any such rights. The Buyer shall not at any time assert any rights in the goodwill attaching to any of VICTREX's trademarks or other intellectual property, and all such rights shall vest in and ensure exclusively for the benefit of VICTREX. If the Buyer challenges the validity of VICTREX's rights in or to, or the validity of any of VICTREX's trademarks (or any applications or registrations thereof) or any other intellectual property of VICTREX, then VICTREX shall be entitled to terminate the Contract immediately. Subject to Condition 14, Buyer party shall give VICTREX disclosure of all Background IPR owned or licensed by it which is reasonably necessary to perform the Services and/or supply the Product under the Contract.
- 12.3 All Background IPR is and shall remain the exclusive property of the party owning it (or, where applicable, the third party from whom its right to use the Background IPR has derived).
- 12.4 All Background IPR shall only be used for the purpose of the Contract and neither party shall make use of other party's Background IPR for any activity irrelevant to the Contract.
- 12.5 The parties agree that Generated IPR that is created in connection with the supply of Products and/or Services by VICTREX to Buyer under a Contract shall be owned as follows:
- (i) all Polymer Generated IPR and/or Improvements to VICTREX Background IPR shall belong solely to VICTREX ("**VICTREX Generated IPR**"); and
 - (ii) all Generated IPR which is not VICTREX Generated IPR shall belong solely to Buyer ("**Buyer Generated IPR**").
- 12.6 If during the term of this Agreement either party (or its authorized sub-contractors) develop or create (whether jointly with the other party or not) any Generated IPR, it shall immediately disclose any such Generated 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 Generated IPR (including by way of present assignment of future rights) to the extent necessary in order to give full effect to Condition 12.5.
- 12.7 Buyer represents and warrants that it has title to any material, Specifications or design it may provide to VICTREX and that VICTREX's possession and reliance on the same in connection with the manufacture, sale or use of the Products shall not constitute infringement of any patent, trade secret or other third party interest.
- 12.8 The Buyer shall not cause or allow to be analysed and/or reverse engineered any Products provided by VICTREX or its Group Company, to determine the chemical composition, formulation or measure the properties of such Products, unless with the prior written consent of VICTREX, which may be given or withheld in the sole and absolute discretion of VICTREX.
- 13. TOOLING**
- All tooling and other tangible manufacturing assets of VICTREX used to fulfil Buyer's order shall remain the property of VICTREX and no right or interest of any kind whatsoever in any of the foregoing shall be construed or interpreted as having been granted or otherwise conveyed to Buyer, either expressly, or by implication, estoppel or otherwise. Any tooling sold to



Buyer will be limited to that which is separately quoted by VICTREX, 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.

14. CONFIDENTIALITY

- 14.1 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. The obligations of confidentiality shall survive the termination or expiration of the Contract.
- 14.2 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 Group Companies 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 and 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 this 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 this 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 control (including, without limitation, strikes, lockouts and other industrial disputes, accidents, act of God, war, riot, civil commotion, malicious damage, compliance with a law or

governmental order, rule, regulation or direction, reductions in or unavailability of power at manufacturing plant, breakdown of plant or machinery, or shortage or unavailability of raw materials from normal sources or routes of supply 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.

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 Group Companies and that any loss suffered by VICTREX or any of VICTREX's Group Companies 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

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. The parties declare that it is their intention that this Agreement shall be regarded as made under the laws of the State of Wisconsin and that the laws of that State shall be applied in interpreting its provisions in all cases where legal interpretation is required. 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 Delaware 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.

21. 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.

22. LIMITATION OF LEGAL PROCEEDINGS.

All arbitrations under the Contract shall be bilateral and conducted on an individual basis. Neither party shall attempt to initiate an arbitration on behalf of a class; neither party shall attempt to certify an arbitration as a class proceeding, and an arbitrator shall have no authority to award class-wide relief. The Buyer acknowledges and agrees that this Condition specifically prohibits the Buyer from commencing arbitration proceedings as a representative of others or joining in any arbitration proceedings brought by any other person.

23. INJUNCTIVE RELIEF.

Each party shall be permitted to institute proceedings in a federal or state court of competent jurisdiction to seek temporary or preliminary injunctive relief (i) to enforce the other party's confidentiality obligations under this Agreement as well as obligations relating to anti-bribery and export sales or (ii) to enforce Condition 22 in any dispute relating to this Agreement pending the resolution of that dispute through Arbitration.

24. INDEMNITY

The Buyer agrees to indemnify, hold harmless, and defend VICTREX, any Group Company of VICTREX, and each of its or their respective officers, directors, agents, employees, representatives, successors, and assigns (collectively, "Indemnified Parties") from and against any and all claims, demands, damages, fines,



penalties, losses, causes of action, liabilities, and judgments (collectively, "Claims") of every kind (including all expenses of litigation, court costs, and reasonable attorney's fees), for damage to any property or injury to or death of any person (including, but not limited to, employees of the Buyer) resulting from, arising out of, or in any way connected with the acts or omissions to act, of the Buyer, its officers, agents, employees, representatives, and contractors (collectively, the "Buyer Parties"), including to the extent any such Claims are based in part upon the joint or concurrent negligence or strict liability of Indemnified Parties, or whether any such Claims are by way of tort or contract or otherwise. The Buyer will not be required to indemnify Indemnified Parties for any Claims determined by final judgment of a court to have been caused by the willful misconduct or gross negligence of Indemnified Parties. The Buyer shall also indemnify, hold harmless, and defend Indemnified Parties from and against any and all Claims resulting from, arising out of, or in any way connected with, any breach of the Agreement by any of the Buyer Parties, including breaches of any representation or warranty made hereunder, or the failure of any of the Buyer Parties to comply with any third party requirements or with any laws including, but not limited to, fines, penalties, and monetary sanctions imposed by any governmental entity, or political subdivision or agency

thereof, associated with any such failure

25. 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 sent to the address of the receiving party stated in the Contract (or to such other address as any party may designate for itself by notice to the other parties given pursuant hereto) and sent by one of the following methods: (a) mailed by certified or registered mail, with postage prepaid by sender, or shipped by express courier service, with charges prepaid by sender and receipted for, by or on behalf of the intended recipient or (b) delivered by hand and receipted for, by or on behalf of the intended recipient, or (c) mailed by US mail, first class, postage prepaid and, in such case, delivery shall be presumed to have been made three days after such mailing by US mail, first class and postage prepaid, or by telecopier (with evidence of receipt) to the below number (or to such other number as any party may designate for itself by notice to the other parties given pursuant hereto) and with copy of the same being sent via overnight delivery to the below address, or (e) by

electronic mail (with evidence of receipt) to the email address (or to such other email address as any party may designate for itself by notice to the other parties given pursuant hereto) and with copy of the same being sent via overnight delivery to the applicable address set forth in the Contract.

26. 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.

27. ENTIRE AGREEMENT AND AMENDMENT.

This Contract constitutes the entire agreement between VICTREX and the Buyer with respect to the matters contained herein and supersedes all prior or contemporaneous oral or written agreements, representations or communications. No modifications, amendments or supplements to the Contract shall be effective for any



purpose unless agreed in writing and signed by VICTREX.

28. 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.

29. 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.