



U.S. GENERAL TERMS AND CONDITIONS OF SALE OF VULCOR INSULATION INC.

1 Definitions

- 1.1 "Agreement" shall mean each agreement between Vulcor and the Buyer for the delivery of Vulcor's Products and/or Services in accordance with Sections 3.1 and 3.2.
- 1.2 "Buyer" shall mean the person purchasing Products and/or Services pursuant to an Agreement.
- 1.3 "Buyer Designed Product" shall mean each Product made by Vulcor in accordance with the Buyer's Design Requirements.
- 1.4 "Buyer's Design Requirements" shall mean the designs, drawings, parameters or specifications for Products provided by the Buyer to Vulcor and to which Vulcor has agreed in writing.
- 1.5 "Deliverables" shall mean the items produced by Vulcor and supplied to the Buyer as part of the Services (other than the Products).
- 1.6 "Delivery Location" shall mean the location agreed between the Parties from time to time in writing to which Products are or are to be delivered.
- 1.7 "Due Date" shall have the meaning given to such term in Section 6.2.
- 1.8 "Error" shall mean the substantive failure of the Products to comply with functional or technical specifications mutually agreed by the Parties.
- 1.9 "IPR" shall have the meaning given to such term in Section 10.1.
- 1.10 "Party or Parties" shall mean Vulcor and Buyer, individually or collectively.
- 1.11 "Price" shall mean the price for each of the Products and Services, as detailed in the Purchase Order, as such price may be increased from time to time in accordance with Section 5.4.
- 1.12 "Products" shall mean the Buyer Designed Products and the Standard Products.
- 1.13 "Purchase Order" shall mean the Buyer's order for the Products and/or Services.
- 1.14 "Services" shall mean the services (if any) described in the Purchase Order.
- 1.15 "Service Specification" shall mean the description or specification of the Services, as agreed between the Parties from time to time in writing.
- 1.16 "Standard Products" shall mean any "off the shelf" products which are generally sold by Vulcor to any of its Buyers.
- 1.17 "Standard Specification" shall mean Vulcor's specification for a Standard Product.
- 1.18 "Terms" shall mean these General Terms and Conditions of Vulcor.
- 1.19 "Vulcor" shall mean Vulcor Insulation Inc. and/or any of its subsidiaries supplying Products and/or Services pursuant to an Agreement.
- 1.20 "Vulcor's Materials" shall have the meaning given to such term in Section 10.2.
- 1.21 "Warranty Period" shall mean (a) in relation to Buyer Designed Products, the period of thirty (30) days from the date on which they are delivered to Buyer or (b) in relation to the Standard Products, Vulcor's standard warranty period in relation to such Product or, in the absence of a standard warranty period, the period of thirty (30) days from the date on which they are delivered to Buyer.

2 Applicability

- 2.1 All shipments, services, sales and quotations between Vulcor and Buyer are subject to these Terms. They are, therefore, also valid for any Agreement or other agreements between Vulcor and Buyer, and any subsequent amendment to any agreement or the Agreement.



- 2.2 Dissenting or additional terms or conditions of business that may be proposed from time to time by Buyer are not binding upon Vulcor, unless they are expressly confirmed by Vulcor in writing. The mere acceptance of a Purchase Order containing such dissenting or additional terms and conditions shall not bind Vulcor to the same, and Vulcor expressly rejects all of Buyer's general terms and conditions of business that are opposed to or in addition to these Terms.
- 2.3 Agreements, supplements or understandings made by phone or orally that deviate from these Terms are not binding, unless they have been confirmed in writing by the party to be bound.
- 2.4 Vulcor reserves the right to amend these Terms at any time. New or amended general terms and conditions shall be applicable upon thirty (30) days' notice to Buyer.
- 2.5 In case of inconsistencies between the terms of an Agreement and those contained in these Terms, those in the Agreement shall control.

3 Offers and Acceptance

- 3.1 All quotations are not binding upon Vulcor and shall not constitute an offer by Vulcor, are always revocable and, if not revoked earlier, are only valid for thirty (30) days from their date of issue, unless otherwise agreed by the Parties in writing.
- 3.2 Buyer will submit to Vulcor one or more Purchase Orders constituting an offer by Buyer to purchase the Products and/or Services in accordance with these Terms.
- 3.3 Each Purchase Order may include other terms and conditions that are consistent with these Terms or that are necessary to place the Purchase Order, such as billing and shipping information, target delivery dates, the delivery location, quantities, and the Price or charges for the Products. Buyer will place Purchase Orders by email, telephone, fax, or mail, and will promptly follow orders placed by telephone with a written Purchase Order.
- 3.4 Each Purchase Order shall be subject to the acceptance by Vulcor in its sole discretion. Vulcor will indicate its acceptance of Purchase Orders or alterations to Purchase Orders by providing to Buyer a written acceptance of such Purchase Orders (whether by mail, email, or other means).
- 3.5 In the absence of any written acknowledgement or written acceptance of the Purchase Order, shipment of Products ordered shall be deemed acceptance of such Purchase Order.
- 3.6 Buyer hereby understands and accepts that all samples, drawings, models, figures, dimensions, weights or any other specifications for the Products and Services are estimates only, although Vulcor will use its best efforts to ensure their accuracy.

4 Alterations and Cancellations

- 4.1 Prior to shipment of the Products ordered by Buyer, Vulcor will accept an alteration to a Purchase Order that: (i) changes a location for delivery; (ii) modifies the quantity or type of Products to be delivered; or (iii) corrects typographical or clerical errors. Buyer may cancel a Purchase Order without charge or penalty if Buyer provides Vulcor with a written notice of such cancellation at least ninety (90) days prior to the scheduled or anticipated date of shipment of the products specified in such Purchase Order.
Except as otherwise provided in this Section 4.2, a Purchase Order once placed with and accepted by Vulcor cannot be cancelled or amended, including any amendment that changes drawings and specifications as to any Products and/or Services covered by the Purchase Order except with Vulcor's written consent and upon terms that reflect any



changes in price or time for performance and that will indemnify Vulcor for all losses incurred by Vulcor associated with the Buyer's amendment or cancellation, including but not limited to the costs already incurred by Vulcor in the performance of its contractual duties and any profits that Vulcor would have received had the contract been completed.

5 Price and Taxes

- 5.1 Unless otherwise agreed or provided herein, the Prices shall be based on the price list established by Vulcor from time to time ("**Suggested Price List**"). Vulcor reserves the right to change the Suggested Price List in its sole discretion from time to time.
- 5.2 All Prices reflected in any Purchase Order accepted by Vulcor or quoted by Vulcor shall be on a net basis DAP (Incoterms 2020) Vulcor's loading (warehouse) dock.
- 5.3 Unless otherwise specified on the Purchase Order, all packaging and cartage charges special containers, packaging, crating, palletizing, applicable taxes and duties, freight, insurance or other incidental expenditures and taxes payable in the country of manufacture (other than taxes imposed on Vulcor's income) shall be paid by Buyer and are deemed excluded from the Price. If Vulcor is required by applicable law or regulation to pay or collect any such tax or taxes on account of this transaction on the material or equipment or services covered hereby, then such amount of tax shall be paid by the Buyer in addition to the prices provided for herein.
- 5.4 Vulcor may, by giving written notice to Buyer at any time before delivery, increase the Price of the Products or the Services to reflect any increase in the costs of them that are due to:
 - Fluctuations in the prices of raw materials, components, heat and power, wages or any other element contributing to the cost of manufacturing and/or delivering the Products, or performing the Services;
 - Any request by the Buyer to change the delivery dates, the quantities or types of Products or Services ordered, the Service Specification or the Buyer's Design Requirements;
 - Any delay caused by any instructions of the Buyer, or failure of the Buyer to give Vulcor adequate or accurate information or instructions;
 - Any failure by the Buyer to comply with its obligations under the Agreement or any delay in the performance of such obligations.
- 5.5 All Prices are in U.S. Dollars or in another currency if stated by Vulcor in writing. Buyer shall bear any exchange rate risk, unless otherwise agreed in writing.

6 Payment

- 6.1 Time is of the essence with respect to all of Buyer's payment obligations hereunder.
- 6.2 With regards to Products, Vulcor shall be entitled to invoice the Buyer on or at any time after the Products have been shipped for delivery. Notification beforehand is not required. With regards to Services, Vulcor shall be entitled to invoice the Buyer on a monthly basis in arrears.
- 6.3 Buyer agrees to pay, without the right to set-off any amount, all invoiced amounts due and payable within thirty (30) days of the invoice date (the "**Due Date**"), unless stated otherwise in the Agreement or on the invoice. However, all amounts will be due immediately, in case Buyer terminates or suspends all or a substantial portion of its business activities, becomes insolvent, admits its inability to pay its debts, or in case of the voluntary or involuntary filing of a petition for or adjudication of bankruptcy of Buyer under any federal, state or municipal bankruptcy or insolvency act, the appointment of a receiver, trustee, custodian, or



liquidator, or any act or action constituting a general assignment by Buyer of its properties and/or interest for the benefit of creditors.

- 6.4 Disputes of invoices must be submitted in writing to Vulcor, explaining in detail why the invoice is disputed, within ten (10) days of the date of the invoice. If no dispute has been received within this time period, the invoice will be deemed accepted by Buyer.
- 6.5 No products shall be shipped to Buyer if Buyer has an outstanding invoice over ten (10) days past due. All amounts on invoices that are overdue shall bear interest from the Due Date until the payment is received by Vulcor at a rate of interest equal to the lesser of 1.5% per month or the maximum rate permitted by applicable law.
- 6.6 Payments made by Buyer shall always be used first to meet all the interest and costs owed and subsequently for the settlement of claims under the Agreement which have remained outstanding for the longest period of time, even when Buyer specifies that the payment relates to another claim.
- 6.7 Buyer shall not be entitled to refuse to discharge or to suspend the discharge of its payment obligations on account of alleged disturbance of, defect or Error in the Products and/or Services or on any other account whatsoever.
- 6.8 All payments shall be remitted to Vulcor's account communicated to Buyer from time to time. Vulcor shall have the right to change such account from time to time upon a written notice to Buyer.
- 6.9 Vulcor reserves the right to change any credit terms offered to Buyer at any time, when in Vulcor's opinion, Buyer's financial condition or previous payment record so warrants. Vulcor has the right to demand that Buyer immediately furnish security in a form to be determined by Vulcor, including an Article 9 UCC security right, and/or make an advance payment. If Buyer fails to furnish the desired security, Vulcor has the right without prejudice to its other rights, to immediately suspend the further execution of the Agreement, and that which Buyer owes to Vulcor for whatever reason will become immediately due and payable.
- 6.10 In case of late or non-payment by Buyer, Vulcor will be allowed to remove Products from Buyer's premises at Buyer's cost and expense, without incurring any liability.
- 6.11 Buyer shall be liable for amounts which Vulcor incurs to collect payment, including without limitation, collection agency fees, reasonable attorneys' fees and arbitration or court costs.

7 Lead Times and Risk of Loss

- 7.1 Vulcor will use commercially reasonable efforts to meet specified delivery or performance dates. However, all terms and dates are estimates only and are not binding, unless a written agreement to the contrary is made. Delays in delivery or performance do not entitle Buyer to cancel any order, refuse any items or claim damages.
- 7.2 Vulcor will notify Buyer of product shortages and will use commercially reasonable efforts to fill the open Purchase Orders. Vulcor may, on notice to Buyer and with Buyer's consent, make partial shipments of Buyer's orders, which Vulcor may invoice separately, and which shipments Buyer will pay for when due. Delay in delivery of any installment will not relieve Buyer of its obligation to accept the remaining deliveries, unless Buyer cancels such shipments as set forth in Section 4.1 hereof.
- 7.3 Vulcor will use commercially reasonable efforts to fill all Purchase Orders placed by Buyer but does not guarantee it will have sufficient Products to fill all orders in a timely manner. Parties agree that Vulcor is not liable for its failure to timely fill all Purchase Orders and for delays in shipment.



7.4 Vulcor may ship and invoice for overages as follows:

Number of pieces or sets specified on Purchase Order	Allowable Overage Extra Pieces or Sets
1 to 10	1 Shape If in sets, 1 complete set
11 to 100	10%
101 to 250	7%
251 to 750	5%
751 to 1,500	4%
1,501 to 5,000	3%
5,001 to 10,000	2%
Over 10,000	1%

- 7.5 Since Vulcor's shipments are made in "single trip" non-returnable containers, Vulcor makes no allowances for the return of any container.
- 7.6 Mold charges do not convey title to or right of possession of molds. Vulcor will maintain in molds, provided there is no change in Buyer's Design Requirements or specifications, but reserves the right to discard them if no orders are received within a period of three (3) years.
- 7.7 Title to and all risks of loss and liability for damages shall pass to Buyer upon delivery by Vulcor to a common carrier at the DAP point (i.e., Vulcor's warehouse docking). Buyer shall be responsible for all insurance and transportation charges from the DAP point. Vulcor will from time to time and as the Buyer's agent, make all necessary shipping arrangements, and unless the Buyer specifies otherwise in writing, purchase full value insurance for the items while in transit. Unless instructed by Buyer on shipping method, placement of values and carrier, Vulcor will use its own discretion thereon.
- 7.8 Vulcor will invoice Buyer and Buyer agrees to reimburse Vulcor for all charges incurred on behalf of Buyer, including insurance, transportation costs and any packaging costs that may result from Buyer specifying a particular mode of transportation. If Vulcor delivers the Products to Buyer from the DAP point using Vulcor's trucks and/or drivers, Vulcor does so only as a courtesy and accommodation to Buyer and the terms of sale remain DAP Vulcor's loading dock.
- 7.9 Buyer shall insure the Products for their full value during transit from the DAP point, with such insurance to contain a provision waiving all rights of subrogation against Vulcor and its employees, agents, and representatives with respect to losses payable under such policy. Buyer hereby waives and releases Vulcor and its employees, agents, and representatives of and from any and all rights of recovery, claim, action or cause of action for any loss or damage that may occur to the products during transit regardless of cause or origin, including the negligence of Vulcor or its employees, agents, or representatives, and Buyer acknowledges that the foregoing waiver and release is intended to result in any such loss or damage being borne by the insurance carrier of Buyer, or by Buyer if Buyer fails to obtain and maintain the insurance required hereunder.
- 7.10 Buyer may request Vulcor to drop ship the Products directly to the buyers of Buyer. In such event Buyer shall bear all credit risks associated therewith. Buyer (or its buyer in the case of a drop shipment by Vulcor to such Buyer) shall inspect the Products upon receipt. Failure of Buyer (or its buyer in the case of a drop shipment by Vulcor to such buyer) to inspect the



Products and/or failure to notify Vulcor in writing of any noncompliance, shortage or other reason for its rejection of any of such Products within such period as set forth in Section 8.3 hereof and the specific grounds for rejection shall constitute irrevocable acceptance of such Products. Vulcor accepts no responsibility for breakage, damage or losses occurring after delivery by Vulcor to the carrier. All claims in such regard should be made directly to the carrier.

- 7.11 Vulcor shall not be required to accept Products for return. If Buyer desires to return any Products, it shall seek the prior written approval of Vulcor for such return. All products accepted for return must be in a re-saleable condition when delivered to Vulcor and must be returned to Vulcor within thirty (30) days of the delivery of the Products by Vulcor to Buyer or to the buyers of Buyer in the case of a drop shipment set forth in Section 7.10 hereof. Returned Products are subject to a 20% restocking fee. Buyer shall bear all freight costs and other charges for the return of the products. Upon the receipt of the returned Products, Vulcor shall credit the account of the Buyer (subject to the restocking fee), and such credits shall be applied towards outstanding invoices or future purchases if no invoices are then outstanding.

8 Warranty

- 8.1 Vulcor warrants that all Products sold hereunder shall be free from defects in material and workmanship and shall conform to Vulcor's applicable specifications at the time of their delivery to the DAP point . during which time it will use its best efforts to repair any Errors as may be found during Duch period. However, any such problems encountered in the use of the Products as arise out of user errors or inexpert use on the part of the Buyer, or out of any other causes that are not attributable to Vulcor, shall be for Buyer's risk and account.
- 8.2 Determination of the suitability of the products for the uses and applications contemplated by Buyer shall be the sole responsibility of Buyer. Buyer assumes all risks and liabilities for the results obtained by the use of the products, whether used alone or in combination with other material. Vulcor makes no warranty or guaranty with respect to the results to be obtained by the use of the products. Any warranty claims must be made within the Warranty Period, and any warranty claims not made during the Warranty Period shall be deemed waived by Buyer.
- 8.3 All materials shall be furnished subject to Vulcor's standard manufacturing variations and practices. Buyer may provide written notice of acceptance of the Products to Vulcor. However, in the absence of Buyer's written acceptance, acceptance shall be deemed to occur thirty (30) days after delivery of the Products to Buyer or buyers of Buyer in the case of a dropped shipment to such buyers by Vulcor (the "**Inspection Period**"). If Buyer does not notify Vulcor of any defects or non-conformities within the Inspection Period, the Products shall be deemed accepted by Buyer, and Buyer shall be deemed to have waived any claim relating to defects or non-conformities in the Products that would have been apparent upon a reasonable inspection of the Products.
- 8.4 If any Products covered by the Purchase Order are determined by Buyer during the Inspection Period to be defective or otherwise not in conformity with the requirements of the Purchase Order, Buyer will promptly notify Vulcor of such defects or non-conformities and either return the Products to Vulcor or dispose of the Products at Vulcor's request, direction and expense. Any warranty claim must be substantiated by clear pictures and explanation of the experienced defect, pointing out the expected cause. In such event, Vulcor shall, at its



option, either (i) refund the full purchase price of the non-conforming or defective Products; or (ii) replace the non-conforming or defective products with conforming products without defects. The foregoing shall be the sole and exclusive remedy of Buyer for nonconforming products. In no event is Buyer entitled to retain payments due to Vulcor, except upon the written consent of Vulcor.

- 8.5 The warranty hereunder does not cover faults or damages arising from:
- normal wear and tear;
 - faulty, careless, or improper treatment;
 - improper storage or unloading;
 - improper maintenance;
 - unauthorized use or misuse of Products;
 - unauthorized modifications, installation, repairs, or other work on Products, including installation of replacement parts, without prior written approval of Vulcor or its distributors;
 - unauthorized use of the Products with any other products or raw materials not supplied by Vulcor;
 - failure by Buyer to comply with Vulcor's instructions, guidelines and manuals;
 - failure caused by parts supplied by or on behalf of Buyer, or parts specifically requested by Buyer;
 - any deviation from Buyer's Design Requirements to ensure that the relevant Buyer Designed Products comply with applicable statutory or regulatory standards;
 - improper, defective, or extreme environmental circumstances;
 - willful damage or negligence of any person other than Vulcor or its subcontractors.
- 8.6 Vulcor warrants that the Services shall be performed with reasonable care and skill and in accordance with applicable law and shall comply with the relevant Services Specification in all material respects.
- 8.7 Vulcor shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirements, or which do not materially affect the nature or quality of the Services, and Vulcor shall notify the Buyer in any such event within ten (10) business days.
- 8.8 In the event of any defect in the Services, Buyer shall be entitled to require Vulcor by written notice, to promptly correct such defects.
- 8.9 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VULCOR, ITS LICENSORS, THIRD PARTY SUPPLIERS, AND AFFILIATES HEREBY DISCLAIM ALL WARRANTIES, CONDITIONS, CLAIMS OR REPRESENTATIONS WITH RESPECT TO VULCOR PRODUCTS AND SERVICES WHETHER EXPRESS, IMPLIED OR STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, QUALITY, NON-INFRINGEMENT, COMPATIBILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM VULCOR OR ELSEWHERE WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THESE TERMS.

9 Buyer's Cooperation

- 9.1 Buyer understands that the development of Products and/or the delivery of Services shall be done by Vulcor based on details, information, specifications and requirements supplied by



Buyer, and that Vulcor shall rely thereon, and Buyer warrants the accuracy, completeness and reliability of the information and documentation, even if it originates with or is acquired from third parties.

- 9.2 Buyer shall obtain and maintain all necessary licenses, permissions and consents which may be required for Buyer's purchase, transportation and use of the Products and as may be required for Vulcor to provide the Services (except where and to the extent that the Parties agree in writing that this is Vulcor's responsibility).
- 9.3 Buyer shall keep and maintain all materials, equipment, documents and other property of Vulcor at the Buyer's premises in safe custody and in good condition and not dispose of or use the same other than in accordance with Vulcor's written instructions or authorization.
- 9.4 Buyer shall notify Vulcor in writing immediately on becoming aware of any Products or Deliverables being supplied into any country or territory in breach of any export or trade laws, or sanctions imposed by any one or more countries against such country or territory.
- 9.5 If Vulcor's performance of any of its obligations is prevented or delayed by any act or omission by Buyer or failure by Buyer to perform any relevant obligation, Vulcor shall without limiting its other rights or remedies:
 - have the right to suspend performance of the Agreement until Buyer remedies such default, and to rely on such default to relieve it from the performance of any of its obligations which are affected by such default;
 - not be liable for any costs or losses sustained or incurred by Buyer arising directly or indirectly from Vulcor's resulting failure or delay to perform any of its obligations; and
 - have the right to require Buyer to reimburse Vulcor on written demand for any costs or losses sustained or incurred by Vulcor arising directly or indirectly from Buyer's default.

10 Intellectual Property Ownership and Right of Use

- 10.1 IPR means knowhow, information relating to inventions, secret processes and manufacturing techniques, patents, patent applications, utility models, copyright and related rights, trademarks, trade names and domain names, rights in get-up, unfair competition rights, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in Confidential Information and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.
- 10.2 Vulcor's Materials means any of the following materials which are used by Vulcor to produce the Products or perform the Services: any plans, drawings and specifications prepared by Vulcor; any details in respect of any material or the mix of materials used; any mixing, molding, curing, drying, cutting method used; and any other process, apparatus, standards or measuring technique.
- 10.3 Except for IPRs owned by Buyer and forming the Buyer's Confidential Information (including but not limited to any Buyer's Design Requirements), all IPRs which subsist in the Products, Vulcor's Materials or the Deliverables, shall be the exclusive property of Vulcor and may only be used by the Buyer in connection with its use for internal purposes of the Products, the Services and the Deliverables.
- 10.4 Buyer grants to Vulcor a non-exclusive, worldwide, perpetual, non-terminable, irrevocable, royalty-free license to use reproduce, modify and develop all IPRs which subsist in the



Buyer's Design Requirements or any other Confidential Information of the Buyer disclosed to Vulcor for the purposes of manufacturing and supplying the Products and providing the Services.

- 10.5 Unless supplied by the Buyer or unless otherwise agreed in writing, any patterns, jigs and tools which are used by Vulcor to manufacture the Products shall be the property of Vulcor notwithstanding any charge made by Vulcor for their manufacture. Where Vulcor, at the Buyer's request, uses the Buyer's patterns, jigs or tools, any required maintenance or replacements shall be paid for by the Buyer. If for two (2) consecutive years no Purchase Order is received from the Buyer for products to be manufactured from a tool, either supplied by the Buyer or for which the Buyer has paid full cost to Vulcor, Vulcor shall be entitled to make such use of the said tool as Vulcor decides and Vulcor shall be entitled to dispose of said tool without incurring any liability to the Buyer.
- 10.6 Unless otherwise agreed in writing, Buyer may not make repairs or modifications to the Products and/or Services, nor allow or enable any third parties to do so. Buyer may not, nor may enable and/or allow third parties to copy, translate, or reverse engineer any Products and/or Services.
- 10.7 Buyer shall not be permitted to affix any other trademark to the Products and/or Services, or to remove any copyright, trademark or other proprietary rights notices on same, or to use the relevant mark in any other way, or to register it in Buyer's own name, and specifically Buyer shall not be permitted to register any patent involving, based upon, or for any of the Products and/or Services.

11 Confidentiality

- 11.1 Confidential Information means (i) the existence and terms of any agreement between the Parties and (ii) any non-public, confidential or proprietary information relating to a disclosing Party, whether or not technical in nature, including any that is designated by the disclosing Party as Confidential Information at the time of its disclosure, either by a written or visual confidentiality designation, or otherwise if such information would, under the circumstances, appear to a reasonable person to be confidential or proprietary. Notwithstanding the foregoing, Confidential Information does not include information, technical data or know-how which: (i) is in the public domain at the time of disclosure or becomes available thereafter to the public without restriction, and in either case not as a result of the act or omission of the receiving Party; (ii) is rightfully obtained by the receiving Party from a third party without restriction as to disclosure; (iii) is lawfully in the possession of the receiving Party at the time of disclosure by the disclosing Party and not otherwise subject to restriction on disclosure; (iv) is approved for disclosure by prior written authorization of the disclosing Party; or (v) is developed independently and separately by either Party without use of the disclosing Party's Confidential Information.
- 11.2 Each Party may disclose the other Party's Confidential Information to its employees, officers, agents, consultants or sub-contractors who need to know such information for the purposes of carrying out the Party's obligations under the Agreement, provided that the disclosing Party: (i) takes all reasonable steps to ensure that such persons comply with the confidentiality obligations contained in this Article 11 as though they were a Party to the Agreement; (ii) shall be responsible for such compliance with the confidentiality obligations set out in this Section; and (iii) has a signed non-disclosure agreement when disclosing information to a sub-contractor.



- 11.3 Immediately following the receipt of a written request to this effect by the disclosing Party the receiving Party will return any and all Confidential Information received from the disclosing Party or destroy such Confidential Information, if the disclosing Party so requests.

12 Limitation of Liability

- 12.1 BUYER IS SOLELY RESPONSIBLE AND LIABLE FOR ALL ACTIVITIES WITH VULCOR'S PRODUCTS AND/OR SERVICES. VULCOR DISCLAIMS ANY AND ALL RESPONSIBILITY OR LIABILITY IN RELATION TO THE ACTS AND OMISSIONS OF BUYER REGARDING VULCOR'S PRODUCTS AND/OR SERVICES. NEITHER VULCOR NOR ITS OFFICERS OR EMPLOYEES OR AFFILIATES MAY BE HELD LIABLE WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER FORM OF LIABILITY FOR ANY CLAIM, DAMAGE, OR LOSS, (AND BUYER HEREBY WAIVES ANY AND ALL SUCH CLAIMS OR CAUSES OF ACTION), ARISING OR RELATING TO ALL SUCH ACTS AND OMISSIONS, UNLESS THOSE ARE THE RESULT OF GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD OF VULCOR.
- 12.2 IN NO EVENT SHALL THE LIABILITY OF VULCOR, ITS AFFILIATES OR ITS LICENSORS TO BUYER, HOWEVER CAUSED AND WHETHER BASED IN CONTRACT, IN TORT OR ANY OTHER FORM OF LIABILITY, EXCEED THE PRICE OF THE PRODUCTS WITH RESPECT TO WHICH VULCOR'S LIABILITY IS CLAIMED, AND IN NO EVENT WILL VULCOR BE LIABLE TO BUYER FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE, WHETHER BASED IN CONTRACT, IN TORT OR OTHERWISE, THAT ARISE IN CONNECTION WITH THE PRODUCTS AND/OR SERVICES, OR IN CONNECTION WITH EITHER VULCOR'S FAILURE TO DELIVER OR ITS LATE DELIVERY OF THE PRODUCTS (INCLUDING, BUT NOT LIMITED TO, LOSS OF USE OF THE PRODUCTS AND LOSS OF PROFITS).
- 12.3 THE LIMITATIONS ON VULCOR'S LIABILITY ABOVE SHALL APPLY WHETHER OR NOT VULCOR, ITS EMPLOYEES, LICENSORS OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES ARISING.

13 Indemnification

- 13.1 EXCEPT IN CASES OF GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD BY VULCOR, BUYER AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS VULCOR, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL LIABILITY, LOSS, DAMAGE, COSTS AND EXPENSES INCLUDING, BUT NOT LIMITED TO, COSTS AND EXPENSES OF LITIGATION AND REASONABLE ATTORNEYS' FEES, THAT VULCOR HEREAFTER MAY INCUR OR THAT VULCOR MAY REIMBURSE TO A THIRD PARTY AS THE RESULT OF ANY CLAIM, ACTION OR RIGHT OF ACTION, AT LAW OR IN EQUITY, ARISING OUT OF (A) BUYER'S NON-COMPLIANCE OR BREACH OF THESE TERMS AND ANY REPRESENTATION OR WARRANTY CONTAINED HEREIN; (B) ANY INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY LICENSE, PATENT, COPYRIGHT OR ANY OTHER INTELLECTUAL PROPERTY RIGHT; OR (C) ANY INJURY (INCLUDING DEATH) TO ANY PERSON OR DAMAGE TO ANY PROPERTY OCCURRING AS A RESULT OF, OR CAUSED IN WHOLE OR IN PART BY, ACTS OR OMISSIONS OF BUYER OR ITS AGENTS, OFFICERS, DIRECTORS, EMPLOYEES, ANY SUBCONTRACTOR OR ITS EMPLOYEES, OR ANY PERSON, FIRM OR CORPORATION EMPLOYED OR ENGAGED BY BUYER.
- 13.2 TO THE EXTENT THAT THE PRODUCTS ARE MANUFACTURED IN ACCORDANCE WITH ANY BUYER'S DESIGN REQUIREMENTS, BUYER AGREES TO INDEMNIFY, DEFEND AND HOLD



VULCOR, ITS PRESENT AND FUTURE OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS AND ITS AFFILIATES HARMLESS FROM AND AGAINST ALL LIABILITIES, DEMANDS, CLAIMS, COSTS, EXPENSES, JUDGMENTS, AWARDS, SANCTIONS, FINES, SETTLEMENTS, DAMAGES AND LOSSES SUFFERED OR INCURRED BY VULCOR IN CONNECTION WITH ANY CLAIM MADE AGAINST VULCOR ARISING OUT OF, RELATED TO, OR IN CONNECTION WITH, IN WHOLE OR IN PART, THE DESIGN, MANUFACTURE, SALE, RE-SALE OR USE OF SUCH PRODUCTS BY ANY PERSON.

14 Duration, Termination and Suspension of Performance

- 14.1 Buyer cannot terminate the Agreement for convenience, except as agreed upon in writing by Parties.
- 14.2 Each Party may terminate the Agreement with immediate effect by giving written notice to the other Party if the other Party has committed a breach of its obligations under the Agreement and fails to remedy that breach within thirty (30) days of receipt of notice in writing of the breach.
- 14.3 If Buyer fails to make payment of any amount due on the Due Date or Buyer otherwise fails to perform its obligations under the Agreement or these Terms, or if Vulcor reasonably expects that Buyer will not fulfill its obligations, Vulcor may in its sole and absolute discretion suspend performance under its Agreement with Buyer and/or terminate the Agreement (in whole or part), with immediate effect, without being liable for any damages to Buyer.
- 14.4 Upon the expiration, cancellation or termination of these Terms for any reason, Vulcor shall have the option (but not the duty) exercisable by written notice, to purchase from Buyer within thirty (30) days after the effective date of such expiration, cancellation or termination, all of the Products in Buyer's inventory that remain unsold by Buyer on the effective date of such expiration, cancellation or termination, at the same price at which such products were purchased by Buyer from Vulcor, provided that such Products are in good and saleable condition. Buyer will ship such inventory to Vulcor as Vulcor reasonably directs, freight prepaid.
- 14.5 Notwithstanding the above and without any obligation to return any payment or prepaid expenses, Vulcor may terminate its relationship with Buyer, or may terminate or suspend Vulcor's delivery of Products and/or Services at any time by giving written notice to Buyer: (i) if Buyer is in breach of these Terms and/or the Agreement; (ii) if Vulcor reasonably suspects that Buyer is using the Products and/or Services to breach the law or infringe third party rights; (iii) for a force majeure event that continues for more than ninety (90) days upon notice; (iv) if Buyer fails to pay any amounts due to Vulcor; (v) if required due to change in laws/regulation by a regulator or authority with a lawful mandate; (vi) in respect to a particular Product, upon thirty (30) days notice if Vulcor decides to cease offering that Product; (vii) the bankruptcy of the Buyer has been applied for; (viii) an attachment is levied on the goods of Buyer; (ix) Buyer is liquidated or discontinued; and/or (x) Buyer is in violation of any applicable laws or regulations.
- 14.6 Upon suspension and/or termination, all invoiced sums will become immediately due and payable. In the event of suspension of performance by Vulcor, Vulcor may at its sole discretion resell any Products ordered by Buyer, at a public or private sale without notice to Buyer and without affecting Vulcor's rights to hold the Buyer liable for any loss or damage caused by the breach of contract by Buyer, including expenses paid or irrevocably committed to by Vulcor, and loss of profits.



- 14.7 Upon termination, each Party shall return to the other Party all equipment, materials and property belonging to the other Party (including without limitation Vulcor's Materials) that the other Party had supplied to it in connection with this Agreement or which contain the other Party's Confidential Information.
- 14.8 Upon termination, each Party shall erase all the other Party's Confidential Information from its computer systems (to the extent reasonably practicable).

15 Force Majeure

Vulcor shall not be liable to Buyer or be deemed to be in breach of the Agreement by reason of any delay in performance of its obligations in relation to the Agreement if the delay or failure is caused by any event beyond Vulcor's reasonable control, which by its nature could not have been foreseen by Vulcor or, if it could have been foreseen, was unavoidable, including without limitation, the following force majeure events: an act of God, war, insurrection, civil commotion, strike, flood, fire, earthquake, other potential disaster(s) or catastrophe(s), such as epidemics and pandemics, including Covid19 related causes, or explosion, domestic violence, terrorism, lockout, embargo, lack of water, materials, power, or telephone transmissions specified or reasonably necessary in connection with these Terms, hurricanes, unavoidable casualties, and any other occurrence, event, or condition beyond the reasonable control of Vulcor. Vulcor shall promptly notify Buyer of such force majeure event and will take all reasonable steps to overcome the delay or stoppage. Such circumstances entitle Vulcor to postpone delivery by the period of their duration plus a reasonable starting up time or to cancel any Purchase Order or part thereof not yet fulfilled. In the case of a restriction lasting longer than three (3) months, Buyer shall have the right to terminate all or any unshipped part of the Purchase Order not yet filled. Such right of cancellation shall be Buyer's exclusive remedy.

16 Assignment

Buyer may not assign these Terms without the express prior written consent of Vulcor. These Terms shall be binding upon and shall inure to the benefit of Vulcor and its successors and assigns, and shall be binding upon and inure to the benefit of Buyer and its permitted assignees.

17 Entire Agreement

Except as otherwise expressly provided in a written document signed by Vulcor and Buyer, these Terms contain the complete and final agreement between Buyer and Vulcor with respect to the subject matter herein contained and supersede all prior agreements and communications between Vulcor and Buyer, whether oral or written.

18 No Implied Waivers

No modification, limitation, waiver or discharge of these terms or conditions shall bind Vulcor unless in writing and signed by an authorized officer, agent, or employee of Vulcor. No waiver or failure of Vulcor to insist, in one or more instances, on performance by Buyer in strict compliance with any provision of these Terms hereof on any one occasion shall be deemed to be a waiver of the same or of any other right granted hereunder with respect to any succeeding breach of the same or other



provision hereof.

19 Notices

Any notice required or permitted to be given by either Party to the other Party under these Terms, shall be in writing addressed to that other Party at its registered office address or principal place of business and shall be sent by recorded delivery, commercial courier or fax.

20 Severability

In case any terms or conditions contained herein should be or become invalid or unenforceable under applicable law, such terms and conditions shall be deemed to be severable from the remainder of these Terms and shall not cause the invalidity or unenforceability of the remainder of these Terms.

21 Compliance with Law

Buyer and Vulcor shall comply with all applicable local, state and federal laws, order, rules and regulations. Buyer represents and warrants Vulcor that it is, and shall continue to be, in compliance with all applicable export controls of the United States government. Buyer shall also comply with all of Vulcor policies communicated to Buyer by Vulcor.

22 No Beneficiaries

Any agreement between the Parties is for the sole benefit of the Parties thereto and, except as otherwise contemplated therein, nothing therein expressed or implied shall give or be construed to give any person, other than the Parties thereto, any legal or equitable rights thereunder.

23 No Partnership

Nothing contained in any agreement between the Parties shall be read or construed so as to constitute the relationship of principal and agent or of partnership between the Parties. Neither of the Parties may pledge or purport to pledge the credit of the other Party or make or purport to make any representations, warranties, or undertakings for the other Party.

24 Injunctive Relief

Buyer acknowledges that Vulcor shall suffer irreparable injury in case of breach of the obligations under Articles 10 and 11. Accordingly, in the event of such breach, Buyer acknowledges that Vulcor will be entitled to injunctive relief in any state or federal court of competent jurisdiction within the State of New York. Buyer further submits to the personal jurisdiction of such courts for the purposes of any such action.

25 Governing Law

These Terms and any agreement resulting from the acceptance of a Purchase Order shall be construed pursuant to the laws of the state of New York without giving effect to its conflicts of laws provisions. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply.



26 Arbitration and Submission to Jurisdiction

Unless stated otherwise in writing, any and all disputes and claims relating to any provision hereof or relating to or arising out of the parties' relationship or creation or termination thereof (including, without limitation, any claims that any provision of these Terms, any specification, standard or operating procedure or any other obligation of Vulcor or of Buyer is illegal or otherwise unenforceable or voidable under law, ordinance or ruling) shall be resolved by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association ("AAA"). The arbitration will be conducted at the offices of the AAA in New York, NY before an independent and impartial arbitrator. Each party consents and submits to the personal jurisdiction and venue of the state or local trial courts located in Atlanta, Georgia and also to the personal jurisdiction and venue of the United States District Court for the Northern District of Georgia for purposes of enforcing this provision. All awards of the arbitration shall be binding and non-appealable except as otherwise provided in the United States Arbitration Act (9 U.S.C., § 1, et seq.). Judgment upon the award of the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall take place at a time noticed by the AAA regardless of whether one of the parties fails or refuses to participate. The foregoing provision shall not preclude either party from bringing an action in any court of competent jurisdiction for injunctive or other provisional relief as necessary or appropriate. The arbitrator may award attorneys' fees and costs in connection with the arbitration proceeding in addition to any other relief that may be granted. ANY CAUSE OF ACTION AGAINST VULCOR, REGARDLESS OF WHETHER IN CONTRACT, TORT OR OTHERWISE, MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

Met opmerkingen [WG1]: Same question here: is there a reason to choose Atlanta, Georgia?