

# General Terms and Conditions for the Performance of Services

## G. BOPP USA INC.

### 1. SCOPE AND VALIDITY

1.1. These General Terms and Conditions for the performance of the Services (these "Terms") govern the performance of the services (the "Services"), and all transactions incidental thereto, by [Name of Service Provider] ("Service Provider") to G. Bopp USA Inc. ("G. Bopp").

1.2. No other terms or conditions shall be of any force or effect unless otherwise specifically agreed upon by G. Bopp in a writing duly executed by an authorized officer of G. Bopp. These Terms supersede any and all prior oral quotations, communications, agreements, or understandings of the parties in respect to the Services. Any additional or different terms or conditions contained in G. Bopp's Order (as defined below), Service Provider's confirmation, or any other form or document supplied by Service Provider are hereby expressly rejected and are rendered null, void, and of no effect. These Terms may not be modified, amended, waived, superseded, or rescinded, except by written agreement signed by an authorized officer of G. Bopp. Acceptance of Services by G. Bopp does not constitute acceptance of any of Service Provider's terms and conditions and does not serve to modify or amend these Terms.

1.3. The acceptance of an Order by Service Provider or any communication or conduct of Service Provider which confirms an acceptance of the Services, in whole or in part, by Service Provider, shall be construed as Service Provider's acceptance of these Terms.

### 2. OFFERS, ORDERS AND CONFIRMATION

2.1. Unless otherwise specified by G. Bopp in writing, all offers made by Service Provider are binding to Service Provider. G. Bopp may, but is not obliged, to accept any offer from Service Provider.

2.2. G. Bopp may issue to Service Provider orders for the Services, in written form via facsimile, e-mail, US mail, or such other method as determined by G. Bopp from time to time (each, an "Order").

2.3. Service Provider shall confirm to G. Bopp the receipt of each Order issued hereunder ("Confirmed Order") within three (3) business days following Service Provider's receipt of the Order. Each Order confirmation shall set forth G. Bopp's Order number and, if and to the

extent applicable: a) a detailed description of the Services to be performed pursuant to the Confirmed Order; b) the date upon which the Services will commence and the term of such Confirmed Order; c) whether G. Bopp or G. Bopp's customer ("Buyer") will provide and ship the materials to be processed by Service Provider ("Materials") to Service Provider; d) whether Service Provider will send the work product (the "Deliverables") back to G. Bopp or to Buyer; e) the names of Service Provider Contract Manager (as defined below), f) the authorized representative(s) of G. Bopp; g) the fees to be paid to Service Provider under the Confirmed Order; h) the implementation plan, including a timetable; i) milestones and payment schedules; j) any criteria for completion of the Services; k) procedures for the testing and acceptance of the Services and Deliverables by G. Bopp; and l) any other terms and conditions agreed upon by the parties in connection with the Services to be performed pursuant to such Confirmed Order. If Service Provider fails to issue a confirmation within the time set forth in this Section 2.3 or otherwise commences performance under such Order, Service Provider will be deemed to have accepted the Order. Such Order shall be deemed a Confirmed Order for the purposes of these Terms.

2.4. G. Bopp may withdraw any Order prior to Service Provider's acceptance without liability of G. Bopp to Service Provider. Service Provider may only reject an Order if the applicable Order includes provisions that supplement, purports to change or modify, or conflict with those contained in these Terms, which Service Provider is unwilling to accept. Service Provider may not cancel any Confirmed Orders.

2.5. Specifications and other information on drawings, data sheets, pictures, plans, brochures, catalogs, or Service Provider's website shall be binding on Service Provider. G. Bopp shall have no obligation to accept the Services from Service Provider or otherwise fulfill any of its obligations set forth in a Confirmed Order if Service Provider is in breach of any of its obligations hereunder or any Confirmed Order.

2.6. G. Bopp may submit to Service Provider written requests to change the terms of a Confirmed Order (each such request, a "Change Order Request"). Service Provider shall submit to G. Bopp its good faith description of the impact of such changes on the Confirmed Order. Parties shall negotiate in good faith any changes to a

Confirmed Order based on the Change Order Request.

2.7. G. Bopp may, in its sole discretion without liability or penalty, terminate any Confirmed Order within a reasonable time after receiving Service Provider's written confirmation with or without reason, effective immediately, or otherwise as specified in such notice. If Materials have already been shipped to Service Provider and G. Bopp terminates the Confirmed Order for no reason thereafter, Service Provider shall return the Materials, at G. Bopp's cost, to the respective sender of the Materials.

2.8. In the event that G. Bopp has an urgent need for the Services, G. Bopp may request that Service Provider performs the Services on an expedited basis. If accepted by Service Provider, Service Provider agrees to deploy all resources available to meet the needs of G. Bopp, with any additional costs to be negotiated by the parties in good faith and on a case-by-case basis.

### **3. FEES**

3.1. The fee for the Services shall be as set forth in the applicable Confirmed Order.

3.2. The fee for the Services shall include transportation, insurance, packaging, Tooling (as defined below), and other materials used for the Services, use tax, or any other similar applicable federal, state or foreign taxes, excises, tariffs, duties, levies, and other charges in any jurisdiction in connection with the Services, shipping or handling of the Deliverables or any component thereof into the United States ("Taxes"), unless otherwise indicated in the Confirmed Order. All fees are firm and are not subject to increase for any reason, including changes in market conditions and program timing or length, increases in material cost, component, labor, or overhead costs, labor disruptions, or fluctuations in production volumes.

3.3. If special crates, pallets, top boards, and other materials ("Special Materials") are deemed necessary by Service Provider for the delivery of the Deliverables, Service Provider shall notify G. Bopp prior to the confirmation of G. Bopp's Order and Service Provider shall only charge G. Bopp with the additional costs to cover these Special Materials if G. Bopp accepts the additional costs in the applicable Confirmed Order. Service Provider is required to issue a

refund of the costs and cover the shipping fee if G. Bopp returns such Special Materials in good condition (as reasonably determined by G. Bopp).

3.4. Service Provider agrees that the fee for the performance of the Services will be equal to or less than the lowest fees charged to any of Service Provider's customers who are purchasing substantially the same Service, under the same or similar terms and conditions.

3.5. In the event G. Bopp is able to find another service provider who will perform the Services for a fee for Service Provider's performance of the Services hereunder that is less than the fee and on terms consistent with these Terms with Service Provider, as reasonably determined by G. Bopp, G. Bopp may submit to Service Provider written evidence of such lower fee quotation, including all applicable terms, and thereupon call on Service Provider to meet the price contained in such lower quotation. Service Provider agrees to either match within thirty (30) days of written notice to Service Provider such fees or release G. Bopp from any obligation to purchase the Services under any then-current Confirmed Order.

### **4. PAYMENT TERMS**

4.1. The fee for the Services and all other amounts due under a Confirmed Order shall be due and payable in US dollars within sixty (60) days from G. Bopp's receipt of the invoice from Service Provider. Payment of all amounts due hereunder may be made by check, wire transfer, credit card, or in any other manner deemed appropriate by G. Bopp. Service Provider shall be solely responsible for any bank fees, or other fees, incurred due to the wire transfer or any other selected payment method.

4.2. Service Provider shall issue invoices promptly upon the delivery of the Deliverables to G. Bopp.

4.3. Invoices must show the exact gross and net weights, number of items, meters, any other applicable measurements for each individual article with details of the type of packaging, and such other information as may be required by G. Bopp from time to time.

4.4. All fees due from G. Bopp to Service Provider are net of any liability of Service Provider to G. Bopp. In addition to any right of set-off, deduction, or recoupment provided or allowed

by law, G. Bopp may, without notice to Service Provider, set off against, and deduct from, any amounts due from G. Bopp to Service Provider, including for damages resulting from breaches by Service Provider of its representations, warranties, covenants, or other obligations under these Terms, the applicable Confirmed Order, or any other agreement between the parties. If any liability of Service Provider is disputed, contingent or unliquidated, payment by G. Bopp of all or any portion of the amount due may be deferred until such dispute contingency is resolved or the obligation is liquidated. In the event of Service Provider's bankruptcy, if all of the contracts between G. Bopp and Service Provider have not been promptly assumed by Service Provider, G. Bopp has the right to withhold payment to Service Provider for the Deliverables previously delivered or the Services previously performed until the risk of potential rejection and other losses is eliminated.

4.5. G. Bopp reserves the right to return and withhold payment due to any invoices or related documents that are inaccurate or incorrectly submitted to G. Bopp. The parties shall seek to resolve any invoice disputes expeditiously and in good faith. Any payment by G. Bopp of an invoice is not an acceptance of any nonconforming or defective Deliverables or Services.

4.6. G. Bopp may withhold payment pending receipt of evidence, in such form and detail as G. Bopp may reasonably direct, of the absence of any encumbrances on, or defects of, the Deliverables or Services.

## **5. OBLIGATIONS OF SERVICE PROVIDER**

5.1. Service Provider shall at all times comply with all laws applicable to these Terms and the applicable Confirmed Order and its obligations under these Terms, including but not limited to Service Provider's performance of the Services and delivery of the Deliverables. Without limiting the generality of the foregoing, Service Provider shall: (a) at its own expense, maintain all certifications, credentials, licenses, and permits necessary to conduct its business relating to the Services; and (b) not engage in any activity or transaction involving the Services, by way of shipment, use, or otherwise, that violates any law.

5.2. Each Confirmed Order constitutes Service Provider's representations and warranties that Service Provider is not insolvent, is paying all debts as they become due, is in compliance with

all loan covenants and other obligations to which it is subject, and that all financial information, if any, provided to G. Bopp concerning Service Provider is true, accurate, and fairly represent Service Provider's financial condition. Service Provider shall furnish G. Bopp with statements accurately and fairly evidencing Service Provider's financial condition as G. Bopp may, from time to time, reasonably request. Service Provider shall promptly notify G. Bopp, in writing, of any and all events that have had or may have a material adverse effect on Service Provider's business or financial condition, including any change in management, sale, lease, or exchange of a material portion of Service Provider's assets, a change in control of Service Provider, or the breach of any loan covenants or other material obligations of Service Provider to its creditors.

5.3. Service Provider hereby grants to G. Bopp, and each of its affiliates and authorized representatives, access to Service Provider's premises (including Service Provider's manufacturing operations for the production of the Deliverables) and all pertinent documents and other information, whether stored in tangible or intangible form, including any books, records, and accounts, in any way related to Service Provider's performance under these Terms and the respective Confirmed Orders (including Service Provider's processes and procedures), Deliverables, Tooling, or other property or any payment or other transaction occurring in connection with these Terms and the respective Confirmed Orders, for the purpose of auditing Service Provider's compliance thereof, including inspecting or conducting an inventory of the Deliverables, work-in-progress or raw material inventory, Tooling, or other property of G. Bopp or Buyer. G. Bopp may conduct such audit as G. Bopp deems appropriate. Service Provider agrees to cooperate fully with G. Bopp in connection with any such audit or inspection. Service Provider shall maintain, during the term of any agreement between the parties and for a period of ten (10) years after such term, complete and accurate books and records and any other financial information. Service Provider shall reimburse G. Bopp all amounts associated with errors discovered during an audit. In addition, Service Provider shall reimburse G. Bopp the amount of G. Bopp's reasonable costs and expenses incurred in conducting the audit. If requested by G. Bopp, Service Provider shall use its best efforts to permit G. Bopp, its affiliates, and their respective representatives to obtain from subcontractors or other suppliers of Service Provider

the information and permission to conduct the reviews under this Section 5.3.

5.4. Service Provider shall comply with all applicable US and non-US laws on trade, import, and export control in the performance of its obligations hereunder. Without limiting the generality of the foregoing, Service Provider agrees to comply with all US importer security filing (ISF) requirements and submit such documentation to G. Bopp. Service Provider shall provide G. Bopp within two (2) weeks from the date of the Confirmed Order or earlier as G. Bopp may deem necessary, with the necessary documents and information for the export of the Deliverables including but not limited to the following: (a) all applicable export list numbers including the Export Control Classification Number from the US Commerce Control List (ECCN); (b) the statistical customs tariff number currently used to classify the Deliverables for foreign trade statistics and the HS (harmonized system) code; and (c) the country of origin (non-preferential origin) and (d) if requested by G. Bopp, Service Provider declarations of preferential origin (for European suppliers) or preference certificates (for non-European suppliers). In the event that Service Provider manufacturers, delivers, imports, or exports the Deliverables in violation of any applicable US and non-US laws on trade, import and export control, G. Bopp reserves the right to reject, refuse acceptance, or revoke acceptance of any of the Deliverables without any liability to Service Provider.

5.5. Service Provider shall: a) subject to the prior written approval of G. Bopp, appoint: (i) a Service Provider employee to serve as a primary contact with respect to these Terms and who will have the authority to act on behalf of Service Provider in connection with matters pertaining to these Terms and the applicable Confirmed Order (the "Service Provider Contract Manager"); and (ii) Service Provider personnel, who shall be suitably skilled, experienced, and qualified to perform the Services; b) upon the written request of G. Bopp, promptly replace Service Provider Contract Manager and any other Service Provider personnel; c) obtain G. Bopp 's written approval prior to entering into agreements with or otherwise engaging any person, including all subcontractors and affiliates of Service Provider, other than Service Provider's employees, to provide any Services and Deliverables to G. Bopp (each such approved subcontractor or other third party, a "Permitted

Subcontractor"). G. Bopp 's approval shall not relieve Service Provider of its obligations under these Terms, and Service Provider shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees and for their compliance with these Terms as if they were Service Provider's own employees. Nothing contained in these Terms shall create any contractual relationship between G. Bopp and any of Service Provider's subcontractor or supplier; and d) require each Permitted Subcontractor to be bound in writing by the intellectual property assignment or license provisions of these Terms, and, upon G. Bopp 's written request, to enter into an intellectual property assignment or license agreement in a form that is reasonably satisfactory to G. Bopp.

5.6. Service Provider shall establish a quality system which shall conform to the requirements set forth by G. Bopp from time to time or, in the absence of such requirements, in accordance with the highest industry standards. Service Provider shall, on a continuous basis, identify ways to improve the quality, service, performance standards, and technology for the performance of the Services. Service Provider shall update its quality system and quality control plan as necessary to reflect the addition, deletion, or modification of controls based on the experience gained during the manufacturing process. Any such changes shall be subject to the prior written approval by G. Bopp.

5.7. Service Provider shall promptly provide written notice to G. Bopp of any of the following events or occurrences, or any facts or circumstances reasonably likely to give rise to any of the following events or occurrences: (a) any failure by Service Provider to perform any of its obligations under these Terms; (b) any delay in the performance of the Services or the delivery of the Deliverables; (c) any defects or quality problems relating to the Services or the Deliverables; (d) any change in control of Service Provider; (e) any failure by Service Provider, or its subcontractors or common carriers, to comply with the law; or (f) any change in Service Provider's authorized representatives, insurance coverage, or professional certifications.

5.8. If Service Provider fails to meet its obligations hereunder or the applicable Confirmed Order, or if G. Bopp has reason to believe that Service Provider is not able to fulfill its obligations hereunder, G. Bopp may without any liability to

Service Provider, refuse to fulfill its obligations under these Terms until Service Provider has fulfilled its obligations hereunder, or cancel the affected Confirmed Order(s) without any liability to Service Provider.

5.9. Service Provider shall ensure that its customers, employees, agents, and other representatives comply with these Terms and the respective Confirmed Order to the extent they are involved in performing the Services or delivering the Deliverables.

5.10. Service Provider acknowledges and agrees that G. Bopp may incorporate the Deliverables into its own products, and sell, market, and distribute the Deliverables to G. Bopp's Buyers, in any manner that G. Bopp may, in its sole discretion, deems appropriate.

5.11. Upon G. Bopp's request, Service Provider shall promptly provide to G. Bopp, in such form and detail as G. Bopp requests, a list of all materials incorporated in the Deliverables, the amount of such materials, and information concerning any changes in or additions to such materials. Service Provider shall only make changes to the materials used for the Products with prior written consent of G. Bopp.

## **6. DELIVERY**

6.1. For each shipment, a delivery note precisely listing G. Bopp's article number, the description of the Deliverables, the number of the Deliverables, as well as the gross and net weight must be enclosed or, if this is not possible, sent to G. Bopp by e-mail at purchasing@bopp.com.

6.2. G. Bopp may provide, at its expense, on-site inspectors/technical assistants to conduct in-process inspections/audits as well as pre-shipment inspections at Service Provider's factory for outgoing shipments of the Deliverables.

6.3. Time is of the essence for the performance of the Services and the delivery of the Deliverables by Service Provider to G. Bopp. Unless another shipping term or delivery location is agreed by the parties on a Confirmed Order, Service Provider agrees to deliver the Deliverables to G. Bopp DDP (4 Bill Horton Way, Wappingers Falls, NY 12590) Incoterms 2020 ("Delivery Location"). Service Provider shall promptly send G. Bopp a written notice if Service Provider is unable to deliver the

Deliverables on the delivery date. Such written notice shall not release Service Provider from liability for the delay.

6.4. Service Provider is required to adhere to the delivery method requested on the Confirmed Order.

6.5. If Service Provider does not comply with any of its delivery and performance obligations under Section 6, including but not limited to the failure to deliver within the agreed date, G. Bopp may, in G. Bopp's sole discretion and at Service Provider's sole cost and expense, (a) approve a revised delivery date, Delivery Location, or delivery method, (b) require expedited or premium shipment, or (c) cancel the applicable Confirmed Order and obtain similar performance of the Services from other sources. In the event G. Bopp exercises its right under this Section 6.5 (c), Service Provider shall reimburse G. Bopp the difference between the fee paid to the substitute service provider and fee that would have been payable to Service Provider. Unless otherwise expressly agreed to by the parties in a Confirmed Order, Service Provider may not make partial shipments of the Deliverables under these Terms.

## **7. PACKAGING, ASSUMPTION OF RISK, AND DELAY**

7.1. G. Bopp and shall be, the sole and exclusive owner of all right, title, and interest in and to the Deliverables, including all intellectual property rights therein. Service Provider agrees, and will cause its Service Provider personnel to agree, that with respect to any Deliverables that may qualify as "work made for hire" as defined in 17 U.S.C. §101, such Deliverables are hereby deemed a "work made for hire" for G. Bopp. To the extent that any of the Deliverables do not constitute a "work made for hire", Service Provider hereby irrevocably assigns, and shall cause Service Provider personnel to irrevocably assign to G. Bopp, in each case without additional consideration, all right, title, and interest throughout the world in and to the Deliverables, including all intellectual property rights therein. Service Provider shall cause Service Provider personnel to irrevocably waive, to the extent permitted by applicable law, any and all claims such Service Provider personnel may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of droit moral with respect to the Deliverables. Upon the request of G. Bopp, Service Provider shall, and shall cause

Service Provider personnel to, promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist G. Bopp to prosecute, register, perfect, or record its rights in or to any Deliverables.

7.2. Without limiting Section 6.5, if Service Provider fails to perform the Services or fails to deliver the Deliverables by the performance date, Service Provider shall pay to G. Bopp such amount equivalent to the value of the Material shipped to Service Provider, freight expenses and other costs incurred by G. Bopp, or \$1,000 for each week, whichever is higher, until Service Provider performs the Services or deliver the Deliverables, as applicable (the "Liquidated Damages") to G. Bopp. The parties intend that the Liquidated Damages constitute compensation, and not a penalty. The parties acknowledge and agree that G. Bopp's harm caused by the delay would be impossible or very difficult to accurately estimate on the date of the Confirmed Order, and that the Liquidated Damages are a reasonable estimate of the anticipated or actual harm that might arise from the delay. Service Provider's payment of the Liquidated Damages is Service Provider's sole liability and entire obligation and G. Bopp's exclusive remedy for any delay in the performance of the Services.

## **8. EXAMINATION, CONFORMITY TO ORDER, AND RETURNS**

8.1. In the event of Service Provider's breach of warranties with respect to the Services and the Deliverables under Section 11, G. Bopp may elect, at its sole discretion and at the sole cost of Service Provider, to require the Service Provider to (a) re-perform the defective Service; and/or (b) require Service Provider to repair or replace the Deliverables; or (c) refund the fees paid by G. Bopp for such defective Service or Deliverable; or G. Bopp may itself or through a third party (d) re-perform the defective Service or repair the defective Deliverable itself, in each case without limiting the exercise of G. Bopp of any other rights available to G. Bopp under these Terms, the applicable Confirmed Order, or pursuant to applicable law. The warranty period for the Deliverables under Section 11 shall start anew from the date of the completion of the repair or G. Bopp's receipt of the replacement of the Deliverable.

8.2. If G. Bopp exercises its option to return nonconforming Deliverables, G. Bopp may ship

from any location, at Service Provider's expense and risk of loss, the nonconforming Deliverables to any Service Provider location.

8.3. If G. Bopp or Buyer, whichever is applicable, determines that certain Deliverables shipped to the Delivery Location by Service Provider are defective, G. Bopp will have the right to destroy or retain defective Deliverables, as determined by G. Bopp or Buyer in its reasonable discretion, at Service Provider's sole cost and risk and all fees paid to Service Provider must be refunded.

8.4. In the event of a dispute between the parties on the conformity of the Services or the Deliverables with the foregoing warranties, the parties agree to resolve the dispute in good faith based on the results of the investigations and/or expert reports commissioned by the parties. The costs and expenses of such investigations and/or expert reports shall be borne by Service Provider if the investigations and expert reports show that Service Provider is in breach of any of the warranties under Section 11, any other provision of these Terms, or the applicable Confirmed Order or if the issue resulted from or is related to Service Provider's acts or omissions. In the absence of any of the circumstances under the foregoing sentence, G. Bopp shall bear the costs of the investigations and expert reports. In addition to G. Bopp's other remedies under these Terms, Service Provider agrees to reimburse G. Bopp within thirty (30) days from the date G. Bopp provides written notice to Service Provider for expenses incurred and/or damages suffered by G. Bopp as a result of the breach of the warranties under Section 11 (including without limitation expenses due to production downtime). The amounts owed to G. Bopp under this Section 8 shall be cumulative to all other remedies available under these Terms, the applicable Confirmed Order, at law, or in equity.

8.5. If G. Bopp or any governmental authority determines that certain Deliverables sold to G. Bopp by Service Provider are defective and a recall campaign is necessary, G. Bopp will have the right to implement such recall campaign and return defective Deliverables to Service Provider or destroy such Deliverables, as determined by G. Bopp in its reasonable discretion, at Service Provider's sole cost and risk. If a recall campaign is implemented, at G. Bopp's option and Service Provider's sole cost, Service Provider shall promptly replace any defective Deliverables and provide such replacement Deliverables

to G. Bopp or G. Bopp's Buyer. The foregoing will apply even if the warranty applicable to the Deliverables have expired. G. Bopp shall use its best efforts to collaborate with Service Provider in the event of a recall campaign. Service Provider will be liable for all of G. Bopp's costs associated with any recall campaign. Where applicable, Service Provider shall pay all expenses associated with determining whether a recall campaign is necessary.

## **9. CONFIDENTIALITY**

9.1. "Confidential Information" means any know-how, trade secrets, and other business or technical information of G. Bopp that is confidential or proprietary or due to its nature or under the circumstances of its disclosure Service Provider knows or has reason to know should be treated as confidential or proprietary, including but not limited to quotations, drawings, project documentation, samples and models.

9.2. Confidential Information does not include information that: (a) is or becomes generally known to the public through no fault or breach of these Terms by Service Provider; (b) is rightfully known by Service Provider at the time of disclosure without an obligation of confidentiality; (c) is independently developed by Service Provider without use of G. Bopp's Confidential Information; (d) is rightfully received by Service Provider from a third party without restriction on use or disclosure; or (e) is disclosed with G. Bopp's prior written approval.

9.3. Service Provider shall not use G. Bopp's Confidential Information except as necessary to perform the Services and will not disclose such Confidential Information to any third party except to those of its employees, agents, or representatives who have a bona fide need to know such Confidential Information to enable Service Provider to perform the Services; provided that each such employee, agent, and/or representative is/are bound by a written agreement that contains use and nondisclosure restrictions not less stringent than the terms set forth in this Section 9.3. Service Provider will employ all reasonable steps to protect G. Bopp's Confidential Information from unauthorized use or disclosure, including, but not limited to, all steps that it takes to protect its own information of like importance. The foregoing obligations will not restrict Service Provider from disclosing G. Bopp's Confidential Information: (a) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided

that Service Provider gives reasonable notice to G. Bopp to contest such order or requirement; (b) to its legal or financial advisors; and (c) as required under applicable securities regulations.

9.4. In the event of a violation or threatened violation of Service Provider's obligations under Section 9, G. Bopp shall be entitled to seek equitable relief, including in the form of a restraining order, orders for preliminary or permanent injunction, specific performance, and any other relief that may be available from any court, without the requirement to secure or post any bond or any other type of security, or show actual monetary damages in connection with such relief. These remedies shall not be deemed to be exclusive but in addition to all other remedies available under these Terms, at law, or in equity.

## **10. TOOLING**

10.1. All tooling, dies, test and assembly fixtures, gauges, jigs, patterns, casting patterns, cavities, molds, drafts, originals, negatives, printing plates, films, digital data, blister tools, punching knives, printing plates, embossing and printing rollers, samples, and documentation (including engineering specifications and test reports) used by Service Provider in connection with its performance of the Services, together with any accessions, attachments, parts, accessories, substitutions, replacements, and appurtenances thereto is owned solely by G. Bopp (collectively, "Tooling"). Service Provider may not charge an additional fee to G. Bopp for the wear and tear and maintenance of Tooling that Service Provider uses specifically for the performance of the Services and the manufacturing of the Deliverables to G. Bopp.

## **11. SERVICES AND DELIVERABLES WARRANTY**

11.1. Service Provider represents and warrants to G. Bopp that a) Service Provider shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with heightened industry standards for similar services and shall devote adequate resources to meet its obligations under these Terms; b) G. Bopp will receive good and valid title to all Deliverables, free and clear of all encumbrances and liens of any kind; c) none of the Services, Deliverables, and G. Bopp's use thereof infringe or will infringe any intellectual

property right of any third party, and there are no pending or threatened claims, litigation, or other proceedings pending against Service Provider by any third party based on an alleged violation of such intellectual property rights; and d) the Deliverables, as applicable, shall be (i) in conformity in all respects with all requirements or specifications stated in these Terms and the applicable Confirmed Order for at least a period of three (3) years after the later of the acceptance by G. Bopp and the receipt by Buyer; (ii) free from any defects in material and workmanship; (iii) conform with G. Bopp's quality standards and highest industry standards; (iv) are merchantable; (v) are fit and sufficient for the particular purpose intended by G. Bopp and Buyer.

11.2. Service Provider shall be liable for any costs, expenses, and damages incurred or suffered by G. Bopp or G. Bopp's Buyers due to Service Provider's breach of any warranties including but not limited to cost of substitution for the Deliverables and other incidental costs.

11.3. The warranties under this Section 11 (a) are in addition to all other warranties, express and implied statutory and common law, (b) extend to the Deliverables future performance, (c) survive Service Provider's delivery of the Deliverables, G. Bopp's or Buyer's receipt, inspection, acceptance, use of the Deliverables, incorporation of the Deliverables in other goods, and payment for the Deliverables, and the termination or expiration of the agreements between the parties, and (d) inures to the benefit of G. Bopp, the users of G. Bopp's or its Buyers' Deliverables, and their respective successors and assigns, and (e) may not be limited or disclaimed by Service Provider. G. Bopp's approval of Service Provider's designs, materials, processes, drawings, specifications, or similar requirements will not be construed to relieve Service Provider of any warranties.

## 12. MISCELLANEOUS

12.1. If any provision contained in these Terms or any Confirmed Order is held by final judgment of a court of competent jurisdiction to be invalid, illegal, or unenforceable, such invalid, illegal, or unenforceable provision shall be severed from the remainder of these Terms or such Confirmed Order, and the remainder of these

Terms or such Confirmed Order shall be enforced. In addition, the invalid, illegal, or unenforceable provision shall be deemed to be automatically modified, and, as so modified, to be included in these Terms, such modification being made to the minimum extent necessary to render such provision valid, legal, and enforceable.

12.2. Service Provider may not assign any of its rights or delegate any of its obligations under these Terms or any Confirmed Order without the prior written consent of G. Bopp. Any purported assignment or delegation in violation of this Section 12.2 is null and void. No assignment or delegation relieves the assigning or delegating party of any of its obligations under these Terms or any Confirmed Order. These Terms together with the applicable Confirmed Orders shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Service Provider acknowledges and agrees that G. Bopp may, in its sole discretion, assign any of its rights or delegate any of its obligations under these Terms and/or the Confirmed Orders.

12.3. G. Bopp's waiver of any breach or violation of these Terms or the provisions of any Confirmed Order by Service Provider shall not be construed as a waiver of any other present or future breach or breaches by Service Provider.

12.4. The parties hereto are independent contractors and nothing in these Terms will be construed as creating a joint venture, partnership, employment, or agency relationship between the parties.

12.5. Notices by a party regarding the exercise of rights and obligations under these Terms must be signed by authorized representatives of such party, and delivered via courier, mail, or e-mail to the other party's address indicated in the applicable Confirmed Order, provided that a notice by e-mail shall only be validly given if receipt thereof is acknowledged in writing by the recipient.

## 13. DATA PROTECTION

13.1. Any collection, processing and use of personally identifiable information provided by Service Provider to G. Bopp (if any) is governed by G. Bopp's privacy policy which can be found at <https://www.bopp.com/en/privacy-policy> as such may be amended by G. Bopp from time to time.



13.2. Service Provider hereby represents and warrants that it has adequate consent for the disclosure of personally identifiable information to G. Bopp and G. Bopp's processing and use thereof. In no event shall Service Provider provide to G. Bopp any personally identifiable information if G. Bopp's use or processing thereof may constitute a violation of the applicable data protection laws, rules or regulations.

#### **14. ENTIRE AGREEMENT; CONFLICTS.**

14.1. These Terms, including the applicable Confirmed Order, constitute the entire and exclusive agreement of the parties regarding the subject matter hereof and supersede any and all prior or contemporaneous agreements, communications, and understandings (both written and oral) regarding such subject matter. In the event of a conflict between the provisions of these Terms and the provisions of a Confirmed Order, the provisions of the Confirmed Order will govern and control. G. Bopp may amend or modify these Terms from time to time. G. Bopp may, at its sole discretion, provide Service Provider with written notice of any such changes, revisions, amendments, or modifications, provided, however that any such changes, revisions, amendments, or modifications shall become effective without any further action by any party and that they shall not apply to any Confirmed Order prior to the effective date of such changes, revisions, amendments, or modifications.

#### **15. INDEMNIFICATION**

15.1. Subject to the terms and conditions of these Terms and the Confirmed Orders, Service Provider, its affiliates, and suppliers involved in the performance of these Terms together with the applicable Confirmed Orders shall indemnify, defend, and hold harmless G. Bopp, its affiliates, and their respective representatives and/or G. Bopp's customers (each, an "Indemnified Party" and collectively, the "Indemnified Parties") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, fees, and the costs of enforcing any right to indemnification under these Terms and the applicable Confirmed Order and the cost of pursuing any insurance providers, incurred by any Indemnified Party, relating to, arising out of or resulting from any third-party claim or any direct claim by an

Indemnified Party alleging: a) a breach or non-fulfillment of any of Service Provider's representations, warranties, or covenants set forth in these Terms or the applicable Confirmed Order; b) any bodily injury, death of any person, or damage to real or tangible personal property caused by the negligent acts or omissions of Service Provider, its affiliates or any of its representatives; c) that the use, resale, integration of the Deliverables or a component thereof by G. Bopp infringes the right of a third party; d) damage to or improper handling of the Materials, (e) Service Provider's violation of applicable law, rule or regulation, (f) or disclosure of personally identifiable information to G. Bopp without adequate authorization. If any part of the Service or Deliverable is held to infringe an intellectual property right of a third party, or if an Indemnified Party is enjoined from using the Services or the Deliverables, Service Provider shall immediately, at the Indemnified Party's sole option and Service Provider's sole expense procure for the Indemnified Party the right to use the Services or the Deliverables or parts thereof free of any liability for infringement or re-perform the Services, replace or modify the Deliverables or parts thereof with replacements or modifications which are acceptable to the Indemnified Party so that the Services and the Deliverables become non-infringing.

15.2. The Indemnified Party shall promptly notify Service Provider in writing of any claim and cooperate with Service Provider at Service Provider's sole cost and expense. Service Provider shall not settle any claim without G. Bopp's prior written consent. Indemnified Party's failure to perform any obligations under this Section 15.2 shall not relieve Service Provider of its obligations under Sections 15.1 except to the extent that Service Provider can demonstrate that it has been materially prejudiced as a result of such failure. An Indemnified Party may participate in and observe the proceedings at its own cost and expense.

#### **16. INSURANCE**

16.1. During the term of the agreements between the parties and for a period of five (5) years thereafter, Service Provider shall, at its own expense, maintain and carry in full force and effect, as a minimum, insurance with adequate coverage to ensure Service Provider's performance of its obligations under these Terms and the applicable Confirmed Orders.

16.2. Without limitation to Section 16.1, Service Provider shall maintain an all-risk property insurance covering all Tooling, Materials, Deliverables, that are in Service Provider's possession or control for its full replacement value.

16.3. All insurance policies required pursuant to this Section 16 shall: a) be issued by insurance companies acceptable to G. Bopp; b) provide that such insurance carriers give G. Bopp at least 30 days' prior written notice of cancellation or non-renewal of policy coverage; provided that, prior to such cancellation, Service Provider shall have new insurance policies in place that meet the requirements of this Section 16; c) waive any right of subrogation of the insurers against G. Bopp or any of its affiliates; d) provide that such insurance be primary insurance and any similar insurance in the name of and/or for the benefit of G. Bopp shall be excess and non-contributory; and e) name G. Bopp and G. Bopp's affiliates, including, in each case, all of Service Provider's successors, permitted assigns, affiliates, permitted successors, and Permitted Subcontractors, as additional insureds.

## **17. LIMITATION OF LIABILITY**

17.1. IN NO EVENT SHALL G. BOPP, ITS AFFILIATES OR ITS REPRESENTATIVES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS OR THE APPLICABLE CONFIRMED ORDER, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT G. BOPP WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS

BASED, AND (D) NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

## **18. APPLICABLE LAW AND JURISDICTION**

18.1. These Terms and the Confirmed Orders shall be governed by the laws of the State of New York without giving effect to any choice or conflict of law provision or rule that would defer to or cause the application of the substantive laws of any jurisdiction other than the State of New York. The parties hereby expressly exclude the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods.

18.2. Any dispute, controversy, or claim arising out of or relating to these Terms and any Confirmed Order, including but not limited to the execution, performance, or termination thereof or to any issue of liability arising out of the performance of these Terms or any Confirmed Order, which the parties have not been able to settle amicably shall be submitted to the exclusive jurisdiction of the state or federal courts with jurisdiction in Dutchess County in the State of New York provided that notwithstanding the foregoing, G. Bopp shall be entitled to seek specific performance and injunctive relief in any court of competent jurisdiction. Each party hereby waives any and all claims, pleas, or defenses (including without limitation a plea for *forum non conveniens*) that would permit such party to seek the jurisdiction of any courts or arbitration tribunals other than those set forth in the preceding sentence.

18.3. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THESE TERMS OR A CONFIRMED ORDER.