

Purchase Order Terms – Canada

PURCHASE ORDER TERMS AND CONDITIONS

1. TERMS. ES OPCO Canada II LTD. d/b/a Vesperis (“Vesperis” or “Buyer”) is issuing a Purchase Order (“Order”) to the seller/vendor identified thereon (“Seller”) to purchase certain products and/or services as described thereon (“Products”). These Purchase Order Terms and Conditions (“Terms and Conditions”) are the exclusive contract between Seller and Buyer and are an essential part of the Order; there are no terms, understandings, agreements, other than those stated herein. Upon acknowledgement or acceptance of the Order or the shipment of Products or commencement of work (whichever occurs first), Seller will be deemed to have accepted these Terms and Conditions and Seller agrees to be legally bound by these Terms and Conditions, including all provisions set forth by Buyer in the Order. These Terms and Conditions may not be altered, amended, nor waived (including by course of dealings), but rather only by a writing signed by an officer of the party to be bound thereby. If any provisions of Seller’s quotation, confirmation, or other writings are different from or are otherwise in conflict with these Terms and Conditions, these Terms and Conditions shall exclusively govern and the terms contained in Seller’s quotation, confirmation, or other writings are expressly rejected by Buyer. If the Order is for procurement of ongoing Products from Seller over a period of time, these Terms and Conditions shall apply to all such Products.

2. PRICE. Seller may not increase prices under the Order after acceptance of these Terms and Conditions. Seller shall provide Buyer with pricing and terms which are not less favorable than those extended to other purchasers. If Seller reduces its price, Seller shall reduce the price to Buyer accordingly. The price on the Order is complete and no additional surcharges or taxes may be added. Seller warrants that the Products will not be subject to countervailing duties.

3. PAYMENT. Unless otherwise specified in the Order or expressly agreed in writing by the parties after the date of the Order and which writing expressly references these Terms and Conditions, payment terms for undisputed amounts are net 60 days from Buyer’s receipt of Seller’s invoice and invoicing must be consistent with the Order and may occur only after shipment of the applicable Products. Unless otherwise specified by Buyer in the Order, all prices are quoted and may only be invoiced in Canadian Dollars. Payment does not constitute acceptance by Buyer of the applicable Products or relieve Seller of any obligations. Buyer may withhold funds, without interest, to assure itself of the discharge of all Seller’s obligations or Buyer claims. Buyer may set off any amount owing from Seller to Buyer (or any of Buyer’s affiliates and subsidiaries) against any amount payable by Buyer (or any of its affiliates and subsidiaries) to Seller. The Order number must appear on each invoice submitted by Seller to Buyer. Whether or not separately stated on the applicable invoice or the Order, Seller shall, in all instances, be solely responsible for remitting to the appropriate taxing authority any taxes pertaining to the sale of the Products to Buyer.

4. SHIPMENT. Seller shall ship Product F.O.B. Delivered unless otherwise specified by Buyer in an Order. Buyer’s weights taken at delivery point govern. Seller shall package the Products per Buyer’s specifications (including without limitation as specified by Buyer in an Order) and in compliance with all

applicable laws, rules and regulations. Notwithstanding the foregoing, Seller must ensure that the Products will be protected by means of adequate packaging to withstand the transport method used in accordance with all norms and standards in force.

5. DELIVERY. Time is of the essence in completion of the Order. If delivery of Products or rendering of services is not completed by the time provided for or established in the Order, Buyer may, without waiving any of its rights and remedies, immediately terminate the Order upon notice to Seller, purchase substitute items or services elsewhere and charge Seller for any loss or damage incurred by Buyer. All Products are subject to inspection by Buyer at its discretion.

6. TITLE AND RISK OF LOSS. Title and risk of loss for Products transfers to Buyer when Products are offloaded on delivery at the location of Buyer identified in the Order, unless Products are shipped in Buyer's vehicles in which case title and risk of loss transfers to Buyer when the vehicle leaves Seller's property.

7. SDS AND LABELS. Seller shall provide Buyer with a copy of each of its current and future revised Product labels, decals and stencils ("Labels") and Safety Data Sheets ("SDSs") for each Product. Seller represents and warrants that the Labels and SDSs are (a) accurate, (b) adequate to fully advise those who come into contact with the Product of the safety requirements and hazards associated with the Product and if the Product is associated with a hazard, its Label and SDS must include directions that allow for the use of the Product in a manner that avoids the hazard, and (c) in compliance with all industry standards and applicable laws, rules and regulations. Buyer has no obligation to review the accuracy or adequacy of the Labels or SDSs.

8. WARRANTIES. Seller warrants that (a) each Product conforms to Seller's published specifications and all information on applicable Labels, literature and SDSs, (b) the Products are free from design defect, merchantable, and suitable for the purpose intended by Buyer, (c) warnings provided by Seller on Labels and SDSs accurately inform those who come into contact with the Product of the safety requirements and hazards associated with the Product and if the Product is associated with a hazard, its Label and SDS must include directions that allow for the use of the Product in a manner that avoids the hazard, (d) Seller has free and clear title to each Product delivered to Buyer, (e) each Product shall not violate any Canadian, or foreign, federal, state, national, provincial, municipal or other statute, law, regulation or ordinance, and (f) each Product does not infringe any patent, copyright, trademark, trade secret, trade name. Seller's inclusion of express warranties and representations or exclusions of warranties are not deemed to create or exclude any warranties that may be implied or expressly set forth in law or fact. Buyer's warranties are cumulative and in addition to any warranties available at law. The warranties contained herein shall run to Buyer and its customers and users of Buyer's Products or services, and shall survive inspection, acceptance and payment. Without limiting the generality of Section 10, Seller agrees that in addition to all other indemnity obligations provided by contract or law, Seller will indemnify, defend and hold Vesperis, its affiliates (including without limitation ES OpCo USA LLC) and each of their respective directors, officers, employees, representatives, agents, successors, and assigns (collectively, the "Buyer Parties") harmless from and against any claim, demand, action, loss, penalty or

liability (including defense or settlement costs and reasonable attorneys' fees) ("Claim") if the Claim is caused or alleged to be caused by Seller's breach of the foregoing warranties.

9. REMEDIES. Buyer may inspect Products prior to acceptance. Notwithstanding any inspection, Seller is responsible for any nonconformance. Buyer may return nonconforming Products to Seller for, at Buyer's option, replacement, credit, or refund at Seller's risk and expense including but not limited to, all transportation costs (both ways) and other handling costs. Seller is liable for Buyer's incidental and consequential damages. Notwithstanding anything set forth in Seller's terms (which are hereby rejected) or other documents, Buyer may avail itself of any remedy available at law or in equity.

10. INDEMNITY. Seller shall at all times indemnify, defend and hold Buyer Parties harmless from and against any Claim if the Claim is caused or alleged to be caused by (a) Seller's breach of these Terms and Condition, (b) the negligence or willful misconduct of Seller, its employees or agents, (c) any failure to provide warnings or directions for use that make the Product safe for the Product's intended uses, or (d) any Product defect existing when the Product was delivered to Buyer's specified location. Buyer shall indemnify, defend and hold Seller harmless from and against any Claim related to personal injury or property damage to third parties to the extent the Claim is caused by Buyer's sole and gross negligence or willful misconduct (it being acknowledged and agreed that Buyer's reliance upon all Labels, SDSs and the representations and warranties of Buyer shall in all instances never constitute negligence on the part of Buyer). The parties' rights and remedies are cumulative and in addition to any other rights and remedies the parties have at law or equity.

11. INSURANCE. Seller shall maintain the following insurance policies with at least the listed minimum limits through an insurer having an AM Best Rating of A-7 or better: (a) commercial general liability for bodily injury/property damage, products liability/completed operations and contractual liability \$2,000,000 per occurrence; and (b) commercial automobile liability, with an MCS-90 endorsement with limits as required by applicable law, covering all owned, hired and non-owned vehicles \$2,000,000 per occurrence. If the policies have a deductible or self-insured retention, Seller assumes all policy obligations as if the policy had first-dollar coverage. The policies will waive all rights of subrogation against Buyer. Seller will add Buyer as an additional insured on the policies in (a) and (b). If a policy is a "claims made" policy, Seller shall extend the policy to cover any claims relating to these Terms and Conditions. Seller shall provide Buyer (Attn: SDS/NAFTA Administrator, 10800 Pecan Park Blvd, Suite 300, Austin TX, 78750) with a certificate of insurance evidencing the required coverages, including endorsements that waive the right of subrogation against Buyer and add Buyer as an additional insured. The certificate and additional insured endorsement must provide Buyer with at least 30 days' notice of cancellation, non-renewal or material change. Seller shall provide Buyer with certified copies of the policies at Buyer's request. By requiring insurance as provided in this Section, Buyer does not represent that coverage and limits will be necessarily adequate to protect Buyer, its affiliates, and their customers, and such limits shall not be deemed as a limitation of Seller's liability under these Terms and Conditions. Consequently, neither the requirements of Seller to carry and maintain insurance nor Vesperis' acceptance of evidence of insurance will in any manner limit the liabilities and obligations assumed by Seller under these Terms and Conditions.

12. **FORCE MAJEURE.** Neither party is liable for nonperformance or delay in performance caused by circumstances beyond the party's control ("Force Majeure Event"). Product shortages, increases in Seller's costs, events due to Seller's negligence, or any foreseeable events are not circumstances beyond Seller's control under this provision. If there are Product shortages as a result of the Force Majeure event, Seller may reduce its supply to Buyer in a manner equitable and proportional to those reductions Seller makes to all other similarly situated distributors and major customers.

13. **FUTURE BUSINESS; CONFIDENTIALITY.** Buyer is only obligated to purchase Products from Seller under the specific Order. Buyer has no obligation to place future orders with Seller and is not obligated to continue to do business with Seller by oral agreement, course of dealing, concepts of contracts of indefinite duration or business expectancy or otherwise. All information Buyer provides to Seller that is not available to the general public, all specifications and documents prepared by Seller in connection with the Order, and all other non-public information that Seller obtains as a result of the Order constitute confidential information of Buyer. Without prior written consent by an officer of Buyer, Seller shall not (a) disclose or use Buyer's confidential information for any purpose other than performing the Order; (b) announce, publicize or discuss with third parties the subject matter of the Order; or (c) include Buyer's name or trademarks in any marketing or other information materials provided to third parties.

14. **TERMINATION.** Buyer may terminate or suspend any Order on notice to Seller. Buyer's only liability for such termination shall be payment for any properly delivered Products. Buyer may return saleable inventory on termination of this Order without incurring restocking fees. If any part, term, or provision of these Terms and Conditions is held illegal, unenforceable, or in conflict with any applicable and enforceable law, the validity of the remaining portions or provisions of these Terms and Conditions shall not be affected, and the illegal, unenforceable, or conflicting part, term, or provision shall be renegotiated in good faith with the understanding that the renegotiated provision will, to the maximum extent possible, reflect the intent of the original part, term, or provision (as applicable). The doctrine that any ambiguity contained in a contract shall be construed against the party that drafted the contract is expressly waived by each of the parties.

15. **ARBITRATION.** The parties will submit any dispute related to the Order and these Terms and Conditions to arbitration under the Commercial Arbitration Act (R.S., 1985, c.17 (2nd Supp.)). The dispute will be arbitrated in Vancouver, British Columbia by a panel of three arbitrators selected by the parties under the Commercial Arbitration Act. A party may seek interim relief from any court having jurisdiction without waiving any remedy under these Terms and Conditions and/or the Order. The arbitrator may not award punitive damages or other damages not measured by actual damages, or limit, expand or otherwise modify these Terms and Conditions and/or the Order. A party may enter a judgment on an award in any court having jurisdiction. The prevailing party is entitled to an award of reasonable attorney fees.