



General Terms and Conditions - Goods

1. DEFINITIONS AND HEADINGS

Buyer – shall mean the legal entity purchasing the Goods (i.e. DAK Americas LLC, or DAK Americas Mississippi, Inc., or DAK Americas Pearl River, Inc.).

Conditions – shall mean these Purchase Order General Terms and Conditions.

INCOTERMS 2020 – shall mean the standard trade definitions used in international sales contract as published by the International Chamber of Commerce, in effect as of January 01, 2020.

Goods – shall mean any products and/or (if applicable) services ordered by Buyer pursuant to the Order.

Order – shall mean a written Purchase Order sent by Buyer's authorized purchasing agent to Supplier and all terms and other information provided by Buyer, including, but not limited to, with these Conditions.

Supplier – shall mean the entity to whom the Order is issued.

2. CONTRACT

A. **The Order.** The Order constitutes an offer by Buyer to Supplier to purchase the Goods only on the terms and conditions stated in the Order. Buyer shall expressly notify Supplier of its objection to any different and/or additional terms proposed by Supplier, including, but not limited to, any terms and conditions contained in any order confirmations, acknowledgments, invoices, or any other format of Supplier.

B. **Order Acceptance and Order Modification.** The Order shall be deemed accepted by the Supplier upon (i) Supplier's commencement of performance on the Order, or (ii) Supplier's confirmation of the Order without written objections to the terms of the Order. The Order may be modified only by written agreement, including, but not limited to, facsimile or e-mail, signed by both parties, expressly modifying the Order.

C. **Pricing and Quantity.** Prices and quantity for the Goods shall be the prices and quantities specified on the face of the Order. Any cash discount shall be calculated from the date a properly documented invoice is received at Buyer's address as specified on the face of the Order. Prior payment to secure cash discount does not constitute acceptance by Buyer of the Goods furnished on the Order. Buyer's count or its weight shall be final and conclusive; except in case of proven error, adjustment shall be made.

3. FREIGHT TERMS, PACKAGING AND SHIPMENT

A. **Shipping Charges.** No transportation or packaging charges shall be placed on the invoice unless specifically agreed to in writing by Buyer. When transportation, packing charges, or any other extra charges have been agreed to, they shall be identified and listed as separated line items on Supplier's invoice.

B. **Packaging.** Supplier further warrants that the Goods will be carefully and properly crated, boxed, or packaged and will be free from any damage or contamination.

C. **Freight Terms.** All shipments of Goods shall be DDP (INCOTERMS 2020) Buyer's location as specified on the Order and shall be shipped via carriers selected by Buyer. If Buyer's selected carrier is not available or deemed by Supplier as unsuitable, Supplier shall request an alternate carrier selection from Buyer.

4. TITLE AND RISK OF LOSS; INSURANCE

A. **Title and Risk of Loss.** Unless otherwise specified in the Order, title and risk of loss of Goods shall pass from Supplier to Buyer upon actual delivery of and acceptance of such Goods by Buyer, notwithstanding any agreement to pay freight or transportation charge, and the risk of loss or damage in transit shall be upon Supplier.

B. **Insurance.** Supplier, at its own expense, shall carry and maintain in force at all times relevant insurance policies and coverage, with an "A" rated insurance company, which includes, but is not limited to, the following: (i) statutory Workers' Compensation, (ii) Employer's Liability, (iii) Commercial General Liability, (iv) Automobile Liability, (v) if applicable, Errors and Omissions Liability, and (vi) if applicable, Professional Liability. In all cases, the policies shall name Buyer as an Additional Insured and provide a Waiver of Subrogation in favor of Buyer. Neither failure of Supplier to comply with any or all of the insurance provisions of the Order, nor the failure to secure endorsements on policies as may be necessary to carry out the terms and provisions of the Order, shall be construed to limit or relieve Supplier from any of its obligations under the Order, including, but not limited to, this Section 4(B).

5. ORDER INSPECTION; QUALITY; AND ACCEPTANCE

A. **Order Inspection.** Buyer's Order number and lot number (if any) must be shown on each package tag, packing slip and invoice, bill of lading and weight sheets. Goods furnished on this Order shall be subject to Buyer's or Buyer's designee's inspection and approval at any reasonable time during manufacture or after delivery. Goods rejected for just cause will be held for Supplier's disposition, risk and expense.

B. **Quality.** Buyer's goal is to implement the Goods sold by Supplier directly into Buyer's manufacturing process or operations. Supplier shall give sixty (60) days' prior written notice to Buyer of any changes in raw materials, manufacturing processes, manufacturing location, or test methods for mutual assessment of the probable effect on Buyer's process or product performance.

C. **Acceptance.** Acceptance of the Goods by Buyer shall take place when all terms of the Order have been met, and Buyer has inspected and tested the Goods. No delay in inspecting, rejecting or testing the Goods shall be deemed an acceptance of them or a waiver of any of the Buyer's rights or remedies hereunder. Acceptance by Buyer shall not constitute a waiver of any claim that the Buyer may have regarding the Goods or the Order, including, but not limited to, without limitation a claim under any warranty or a claim for the failure to meet any required delivery date.

6. WARRANTY

A. **General Warranty.** Supplier expressly warrants that the Goods will be free and clear from all liens, claims and encumbrances; meet Supplier's Goods literature, all referenced or attached specifications, tolerances, limitations, drawings, samples and information; be of merchantable quality, free from defects of workmanship, material and design; be fit for such purposes as expressed in the Order; and comply with all warranties provided for by applicable law. These warranties shall run to the Buyer, its successors, assigns, customers and the user of its products.

B. **Product Warranties.** Supplier warrants that (i) all Goods described in the Order shall comply with the specifications and requirements, (ii) all Goods shall be fit for DAK's particular purpose, (iii) all Goods are new and of the most suitable grade for the purpose intended, (iv) all Goods are free of defects in design, materials and workmanship, (v) all Goods are free of any and all liens and encumbrances, (vi) all Goods have been handled properly up to the time of shipment by Supplier, and (vii) any third-party standards that Buyer and Supplier hereafter agree in writing are applicable to the Goods.

C. **Warranty Term and Survival.** Unless a longer period is provided by applicable law or otherwise specified in the Order, all Goods shall have a warranty period of one (1) year from the date of acceptance by Buyer. Such warranty shall survive delivery and completion of performance and shall not be deemed waived by reason of Buyer's acceptance of said Goods or services or by payment for them.

7. PROPRIETARY RIGHTS AND PROPRIETARY INFORMATION

A. **Proprietary Rights.** Supplier represents and warrants that the Goods specified in the Order shall not infringe any United States or foreign patent, trademark or copyright; the Supplier shall defend and hold Buyer harmless against all liabilities, losses, damages, settlements, judgments, obligations, fines, civil penalties, costs, and expenses (including without limitation reasonable attorney's fees) ("Losses") arising out of or relating to any claim of infringement or misappropriation of (i) any patent covering the Goods delivered hereunder, their making, their use by Buyer for their intended purpose, and (ii) any copyright, trademark, trade secret or other proprietary right with respect to the Goods.

B. **Confidential and Proprietary Information.** Any and all information furnished to Buyer relating to or as a result of this Order shall be considered non-confidential unless otherwise signed by Buyer in a separate written agreement. Any and all information and materials, including, but not limited to, drawings, data, art work, or otherwise, supplied by Buyer in connection with the Order, shall be confidential and held in confidence by Supplier and shall remain the property of the Buyer. Such information shall not be reproduced, used or disclosed to others by the Supplier without Buyer's prior written consent and shall be returned to Buyer upon the completion of Supplier's obligations under the Order or upon demand.

8. INDEMNIFICATION

A. **Indemnification.** The liability and remedies limitations set forth in Section 9 do not apply to, and each party shall indemnify, hold harmless and defend the other and for all Losses, to the extent caused by the negligence, willful misconduct or breach of contract of the indemnifying party and arising out of or relating to claims, suits, proceedings, causes of action and actions ("Claims") by third parties (including, but not limited to, either party's employees).

9. LIABILITY

A. **Supplier's Liabilities and Buyer's Sole Remedies.** Should any Goods fail to conform with the warranties of Section 6, Supplier's liabilities shall be as follows: Supplier shall repair or replace the non-conforming Goods promptly following Buyer's notification regarding such non-conforming Goods or, at Buyer's option, refund the purchase price. Supplier also shall reimburse Buyer for any cost incurred by Buyer to dismantle, remove, store, transport or dispose of non-conforming Goods.

B. **Limitation of Liability.** EXCEPT AS OTHERWISE PROVIDED IN THESE CONDITIONS, NEITHER PARTY SHALL BE LIABLE FOR INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, CAUSED BY, ARISING OUT OF OR RELATING TO THE GOODS AND ANY PERFORMANCE OR FAILURE TO PERFORM UNDER THESE CONDITIONS OR OTHERWISE, WHETHER OR NOT CAUSED BY OR RESULTING FROM THE NEGLIGENCE OF SUCH PARTY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The limitations and exclusions in this Section 9(B) shall not apply to damages arising out of obligations or liabilities arising out of or relating to those in Sections 6, 8 and 11(D) and I).

C. **IP and Software Indemnity.** Supplier shall defend, indemnify and hold the Buyer harmless from and against any Claims and all resulting Losses arising out of or relating to any Claim (i) that the Goods infringe any intellectual property rights of any third party, (ii) that any Goods or computerized system contains a virus, and (iii) that any Goods or computerized system fails to operate without interruption.

Without limiting Supplier's indemnity in this Section 9(C), if Buyer's use of the Goods may be enjoined or restrained, Supplier shall, at its own expense: (1) obtain for Buyer (and its customers and affiliates) the right to continue to use the Goods or (2) modify or replace the Goods so that they no longer infringe.

10. TERMINATION

A. **Termination for Convenience.** Buyer may at any time, without cause and without liability to Supplier, terminate this Order in whole or in part upon written notice to Supplier. In such event, Supplier shall be entitled to a reasonable termination fee consisting of a percentage of the Order price, which percentage shall reflect the percentage of the Order satisfactorily performed prior to termination (the "Termination Fee"). Such Termination Fee shall be Supplier's sole remedy. Following Buyer's decision to terminate this Order, and upon Buyer's written request and expense, Supplier shall preserve, protect and deliver to Buyer all of the Order's materials on hand, work in progress, and completed work, both in Supplier's own and any of Supplier's suppliers' plants.

11. MISCELLANEOUS

A. **Applicable Law.** The Order and these Conditions shall be governed by and construed in accordance with the laws of the State of North Carolina without giving effect to principles of conflict of law. The Order and these Conditions will not be governed by the U. N. Convention on Contracts for the International Sale of Goods. Any action or proceeding relating to the Order or these Conditions or their construction, validity, interpretation or enforcement shall be commenced and heard only in the state courts of North Carolina or the United States District Court of the Western District of North Carolina. Both Parties hereby consent and submit to the jurisdiction and venue of those courts.

B. **Assignment and Subcontract.** Supplier shall not assign or transfer this Agreement, in whole or in part, or any rights, obligations or interests arising under this Agreement without the prior written consent of DAK. Subject to the provisions of this Section 11(B), the Order or these Conditions shall inure to the benefit of and be binding upon the successors and assigns of each Party. Supplier shall not utilize or subcontract any work under this Agreement without the prior written consent of DAK.

C. **Audit of Supplier's Records.** To verify Supplier's compliance with Laws and this Order, Buyer may, at its sole expense, and Supplier shall permit the audit of its records including, but not limited to, all books, documents, agreements, and any other information that may have an effect on or be related to this Order. Supplier shall cooperate fully with Buyer in conducting any such audits. Buyer's right to audit shall remain in effect until two (2) years after termination, cancellation or completion of the Order.

D. **Compliance with Laws.** Buyer and Supplier shall comply fully with all applicable laws, rules, ordinances, orders, rulings and regulations of all domestic and foreign governmental authorities, branches, departments, agencies, commissions and courts having jurisdiction covering the production, sale, packaging, labeling, and delivery of the Goods or services specified in the Order (collectively, the "Laws"), in their respective performances of the contract and shall neither take nor refrain from taking any action that may result in liability for either Buyer or Supplier under applicable Laws, including, but not limited to, the U.S. Foreign Corrupt Practices Act, the OECD Anti-Bribery Convention, the Corruption of Foreign Public Official Act (S.C. 1998, c.34) of Canada, the United Kingdom Bribery Act 2010, or any other applicable anti-bribery law or treaty. In addition, Buyer expects Supplier to provide a workplace that meets the ETI Base Code, an international recognized code of labor practice www.ethicaltrade.org/resources/eti-base-code. All Laws applicable to the Order, and any contractual clauses or provisions required thereby, are hereby incorporated by reference. If the Goods must pass through U.S. Customs and Border Protection ("Customs"), Supplier guarantees that it will conform to all Customs laws, including, but not limited to, regulations as to marking and U.S. Export Control Regulations, and further guarantees the accuracy and truthfulness of all statements it may make or list on Customs invoices or forms.

E. **Force Majeure.** If either Party cannot perform any of its obligations because of any circumstances beyond a Party's reasonable control and which it could not have prevented by reasonable precautions, including acts of God, regulations of laws of any government or agency, court order, fire, explosion, flood, act of war or conflict authorized by any government, accident, labor shortage or strike, terrorist activity, equipment failure, inability to obtain fuel, materials, equipment, power or transportation, epidemic, pandemics, quarantine restrictions, government shut-down, unusually severe weather, or any other similar or dissimilar event (a "Force Majeure Event"), then the non-performing Party will: (1) promptly notify the other Party, (2) take reasonable steps as soon as possible to resume performance as soon as possible; and (3) not be considered in breach during the duration of the Force Majeure Event. In the event a Force Majeure Event continues to prevent either Buyer or Supplier from performing its obligations, other than effectuating payment for fees due, for a period of more than fifteen (15) consecutive days, the other party shall have the right to terminate these Conditions or the Order without penalty. If Supplier is unable to supply the total demands under the Order due to a Force Majeure Event, Supplier shall allocate its available supply to Buyer before allocation available supply among all other purchasers.

F. **Headings; Construction.** All headings of the Sections of the Order and these Conditions are inserted for convenience only and shall not affect any construction or interpretations of the Order or these Conditions. Whenever the words "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation". The language used in the Order and these Conditions shall be deemed to be the language chosen by both Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party. In the event an ambiguity or question of intent or interpretation arises, the Order and these Conditions shall be construed as if drafted jointly by both Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of the Agreement or these Conditions.

G. **Independent Contractor.** It is understood that employees, methods, facilities and equipment of Supplier shall at all times be under its exclusive direction and control. Supplier's relationship to DAK shall be that of an independent contractor. Nothing in the Order shall be construed to constitute Supplier, or any of its employees, as an agent, associate, joint venture or partner of DAK. Neither Supplier, nor any of the persons furnishing materials or performing work or services which are required by this Order, are employees of DAK within the meaning of or the application of any Laws, including any federal or state unemployment insurance law, other social security, or any workers' compensation, industrial accident law, or other industrial or labor law. At its own expense, Supplier shall comply with such Laws, and assume all obligations imposed by any one or more of such Laws with respect to the Order.

H. **Nondiscrimination.** Supplier warrants that it complies with all applicable Laws covering the production, sale and delivery of the Goods and any other goods or services specified in this Order, including, but not limited to, the Equal opportunity clause of the Obligations of Contractors and Subcontractors part of the Code of Federal Regulations ("CFR") prescribed in 41 CFR 60-1.4; the Coverage and Waivers clause of the Affirmative Action and Nondiscrimination Obligations of Federal Contractors and Subcontractors Regarding Individuals with Disabilities part of the CFR prescribed in 41 CFR 60-741.4; the Small Business Subcontracting Program of the Small Business Programs part of the CFR prescribed in 48 CFR 19.701 through 19.708; Executive Order 12138 and regulations thereunder regarding subcontracts to women-owned business concerns; the Affirmative action programs clause of the Obligations of Contractors and Subcontractors part of the CFR prescribed in 41 CFR 60-1.40; annually filing Standard Form 100, the Equal Employment Opportunity Employer Information Report (EEO-1) prescribed in 41 CFR 60-1.7; the Segregated facilities clause of the Obligations of Contractors and Subcontractors part of the CFR prescribed in 41 CFR 60-1.8; and the Fair Labor Standards Act of 1938, as amended, prescribed in Chapter 8 of the United States Code.

I. **Publicity.** Supplier shall not release any photograph, drawing, data, or article relative to the manufacturer, sale, or installation of any Goods furnished hereunder, where Buyer or Buyer's location is named or shown, without first receiving Buyer's written consent.

J. **Reservation of Right.** The rights and remedies of both Parties provided in the Order and these Conditions are in addition to any other rights and remedies provided by Law or under the Order. The election of a remedy shall not be a waiver of any other remedies afforded under the Order, these Conditions or by Law, and such election is without prejudice and shall not operate to waive any other remedies which a Party shall have available to it, nor shall such waiver operate to waive such Party's rights to any remedies due to a future breach, whether of a like or different character.

K. **Severability; Waiver.** In the event that any Section of the Order or these Conditions shall be found to be void, illegal or unenforceable by a court of competent jurisdiction, such findings shall not be construed to render any other section of the Order or these Conditions either void or unenforceable, and all other sections shall remain in full force and effect unless the section(s) which is/are invalid or unenforceable shall substantially affect the rights or obligations of either Party. None of the provisions of the Order or these Conditions shall be deemed to have been waived by any act or acquiescence on the part of either Party, its agents, or employees, but only by an instrument in writing signed by an authorized officer of each Party. Waiver of any Section(s) of the Order or these Conditions shall not constitute a waiver of any other Section(s) of the same Section(s) in any other Order, Conditions or other occasion.

L. **Survival.** All sections intended to survive the expiration or termination of the Order and these Conditions shall survive, including Sections 6, 7, 8, 9, 10, and 11.

M. **Time is of the Essence.** The time of delivery specified in the Order is of the essence to the Order.

N. **Drawback.** Should any drawback be claimed and upon Buyer's request, Supplier agrees to furnish a completed Certificate of Delivery or Certificate of Manufacture and Delivery and retain substantiating documentation pursuant to 19 U.S.C. Section 1313.

O. **Entire Agreement.** The Order, together with these Conditions, as well as any other terms Buyer may, at any time, provide to Supplier, contain the entire agreement of the Parties relating to the Goods and supersede all previous and contemporaneous agreements, understandings, usage of trade, and courses of dealing, whether written or oral. In the event of any conflict between these Conditions and any other agreement between the Parties for the provision of Goods (an "Agreement"), the terms of the applicable Agreement will control.