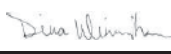



TOK AMERICA / Administration Department-DATA		1 <sup>st</sup> edition: 4/27/15 Effective Date: 4/30/15	28-DATA01.00 Page: 1
Author: 	Date: 4/27/15	Approval Signature: Administration Manager 	Approval Date: 4/27/15
<b>Title: TOK America PURCHASE ORDER TERMS AND CONDITIONS</b>			

**1. AGREEMENT:** These Purchase Order Terms and Conditions (these "Terms"), together with the other terms on the purchase order or other document to which these Terms are attached or incorporated (the "PO"), become a binding agreement (collectively, the "Agreement") of Tokyo Ohka Kogyo America, Inc. ("TOK America") and the other party identified on the PO ("Supplier"), on the sooner of (a) Supplier's delivery to TOK America of a signed acceptance copy of the PO or Supplier otherwise confirming acceptance of the PO, or (b) Supplier commencing performance of the Agreement, including shipping or providing all or any portion of the labor, work or services covered by the Agreement ("Services") or the materials, products, components, merchandise or Services deliverables covered by the Agreement ("Goods"). The Agreement also includes any specification or drawing attached to, or referenced in, the PO. Except as provided above, it is a condition of the Agreement that any provision in any acceptance or acknowledgment hereof, inconsistent with, or in addition to, the terms of the Agreement, are expressly rejected and shall have no force or effect. Supplier, by its acceptance of the Agreement, agrees that any such other provisions or any such proposed alteration of the Agreement shall not constitute any part of the agreement between the parties.

**2. PACKING AND SHIPPING:** All Goods shall, at no extra charge, be packed and packaged per instructions or specifications attached to the PO, or in the absence of any instructions or specifications, in compliance with best commercial practices. A packing list showing purchase order number, item number and description of contents must be included in each shipment. Upon request and for no additional charge, Supplier will provide a "Certificate of Analysis" for the Goods. No charges will be allowed Supplier for packing, freight, express delivery, or cartage, unless stated in the PO.

**3. DELIVERY:** Deliveries of Goods and Services are to be made to the address specified on the PO and in the quantities and on the schedule specified on the PO or on release schedules furnished against the Agreement. Unless otherwise expressly provided in the PO, terms of shipping for Goods are DDP, destination (Incoterms 2010). Title and risk of loss shall pass to TOK America at the delivery point. Partial deliveries are not allowed. TOK America may cancel the Agreement and refuse delivery of Goods or Services and return the same at Supplier's risk and expense, if Supplier defaults in the manner or time of delivery. All costs, including customer charges and penalties, incurred by TOK America due to Supplier's failure to make delivery at the time and place specified herein shall be charged to Supplier. Without affecting TOK America's rights, Supplier shall promptly notify TOK America if Supplier is unable to make any scheduled delivery and state the reasons. Supplier is responsible for cost of all return shipments for any reason returned, with title and risk of loss passing at TOK America's plant, unless otherwise specified by TOK America.

**4. INSPECTION:** All Goods are subject to inspection and testing before final acceptance by TOK America at its premises. If any inspection or test is made on Supplier's premises, Supplier shall provide TOK America's inspectors with reasonable facilities and assistance at no additional charge. Acceptance and/or inspection by TOK America shall not constitute a waiver of any defect or nonconformity. TOK America may reject and require, at its option and at no charge to TOK America, the replacement or correction of any item found to be defective.

**5. CHANGES/CANCELLATIONS:** TOK America, through its Administration Department, may, without cause, change the drawings, design specifications, quantities, delivery schedules, methods of shipment or packaging and place of inspection, acceptance and/or point of delivery of any Goods or Services, or may cancel all or any part of the undelivered portion thereof. If such changes or cancellation result in a delay or a change in expense or damage to Supplier, Supplier shall notify TOK America immediately and negotiate an equitable adjustment or payment; provided that Supplier shall proceed diligently to supply the Goods and perform the Services as so changed and not cancelled. Supplier agrees to minimize any claim for such an adjustment or payment and to substantiate any such claim with evidence satisfactory to TOK America. Reimbursement of costs shall be based upon the nature and extent of performance and materials, used or spoiled which cannot otherwise be used by Supplier. Supplier shall receive no profit on unperformed Services. No claim by Supplier for such equitable adjustment or payment shall be valid unless submitted to TOK America in writing within 30 days from the date of such notice of change or cancellation. No change or cancellation under this clause is effective unless set forth in a written amendment of the Agreement by TOK America's Administration Department. The foregoing states TOK America's sole obligations arising from any change or cancellation of the Agreement.

**6. PRICE; INVOICES:** The price for the Goods and Services shall be as stated on the PO or as otherwise agreed by the parties. Unless otherwise specified on the PO, the price includes, and Supplier is responsible for payment of, all applicable federal, state, and local taxes, as well as import and export duties and tariffs. Supplier warrants that the price will not be higher than Supplier's lowest prevailing price for the same or similar items effective at any time prior to delivery to TOK America. Unless stated otherwise on the PO, TOK America will pay invoices which strictly comply with the Agreement within 60 days from receipt thereof.

**7. WARRANTIES.** Supplier expressly warrants to TOK America and its customers that (a) the Goods are genuine, unused and not counterfeit; (b) Supplier will transfer to TOK America good and marketable title to the Goods, free of all liens or encumbrances; (c) the Goods and Services conform in all respects to the applicable drawings, specifications, samples, or other descriptions given; (d) the Goods will be (i) free from defects in materials, workmanship and design, (ii) of merchantable quality and fit for the use intended by TOK America, (iii) be manufactured following current good manufacturing practices that are at least consistent with industry standards and the practices used for any samples provided to and approved by TOK America, and (iv) not be adulterated, mislabeled, or misbranded; (e) the Services will be performed in a workmanlike manner; and (f) all Goods and Services shall comply with all applicable codes, laws, regulations, standards and ordinances. Supplier agrees that the warranties herein shall be in addition to any warranties implied by law. These warranties shall survive any inspection, delivery, acceptance and payment. When notified of non-conformity to the warranties, Supplier, at its sole expense, agrees to immediately replace or correct such non-conforming Goods or Services. TOK America may return non-conforming Goods for correction, replacement, or credit, as it may direct. If Supplier fails to replace or correct non-

conforming Goods or Services promptly, TOK America may, make such correction or effect cover at Supplier's expense, including shipping.

**8. HAZARDOUS MATERIALS:** If Goods include hazardous materials, Supplier shall provide to TOK America a Safety Data Sheet prior to delivery of the related Goods. Supplier represents and warrants that Supplier understands the nature of, and hazards associated with, the manufacture, handling and transportation of such hazardous materials, as applicable to Supplier. Supplier is fully responsible for any liability resulting from Supplier's actions in connection with providing hazardous materials to TOK America.

**9. TITLE TO DEVELOPMENTS AND MATERIALS.** As between the parties, TOK America shall at all times have title to all drawings, specifications, technical data, tools and other materials and information, and related intellectual property rights (collectively, "TOK America Materials") (a) furnished by TOK America to Supplier in connection with the Agreement, or (b) separately charged to TOK America in connection with the Agreement. Supplier hereby automatically assigns, and will ensure that its subcontractors automatically assign, to TOK America (i) all of Supplier's or any subcontractor's right, title and interest in any processes, inventions, discoveries, technologies, or materials developed in connection with any Services or the performance of the Agreement and all related intellectual property rights, but expressly excluding pre-existing or independently created items (collectively "Developments"), and (ii) all right, title and interest in any TOK America Materials purchased for TOK America under the Agreement. Supplier will execute, and will cause each subcontractor to execute, any documents reasonably necessary to effect such assignments. Supplier will notify TOK America of any Developments as soon as practicable following creation. Supplier shall use TOK America Materials only in connection with the Agreement and shall not disclose or supply such materials or Developments to any person, firm or corporation other than, in confidence and as required to perform the Agreement, to TOK America's or Supplier's employees, subcontractors, or government inspectors. Upon TOK America's request or completion of the Agreement, Supplier shall promptly deliver to TOK America all TOK America Materials and Developments.

**10. TERMINATION:** TOK America may cancel all or any part of the Agreement if (a) Supplier breaches the Agreement and such breach is deemed material by TOK America; or (b) Supplier files or has filed against it a bankruptcy proceeding, is insolvent, or has appointed an assignee for the benefit of creditors or a receiver. In such a case, Supplier shall not be entitled to any compensation, except for the reasonable value of Goods and Services delivered by Supplier and accepted by TOK America prior to cancellation, which amount shall not exceed the Agreement price. TOK America reserves all rights it may have against Supplier as a result of Supplier's breach. Sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 shall survive termination or cancellation of the Agreement. TOK America's remedies herein are cumulative and in addition to any further remedies provided at law or in equity.

**11. INDEMNIFICATION:** Supplier warrants to TOK America (a) the Goods and Services and the use thereof, either alone, or in combination with other materials, do not and will not infringe or misappropriate any third party's patent, copyright, trademark, trade secret, trade dress or other proprietary right ("IP Rights"). Supplier agrees to defend, indemnify, and hold harmless TOK America against all claims, liabilities, obligations, penalties, fines, attorney's fees, costs and causes of action of whatever nature, including economic loss, injury to or death of any person or damage to or destruction of any property, or any resulting claim, suit or proceeding brought against TOK America (a) asserting that the Goods or Services infringe or misappropriate any IP Right of any third party; or (b) as a result of the acts or omissions of Supplier or the performance or lack of performance of the Agreement or the Goods or Services, excluding only those caused by the sole negligence of TOK America.

**12. NON-PUBLICITY:** Supplier shall not make any news release, public announcement, denial or confirmation of the Agreement or its subject matter, or in any manner advertise or publish the fact that TOK America issued the PO.

**13. GOVERNING LAW; CONSENT TO JURISDICTION; ATTORNEYS FEES.** The Agreement will be governed by and construed according to the laws of the State of Oregon, without regard to choice of laws rules. The parties exclude the application of the United Nations Convention on Contracts for the International Sale of Goods. The state and federal courts with jurisdiction over Hillsboro, Oregon, will have exclusive (other than in connection with enforcement of a judgment) jurisdiction and venue over any suit filed in connection with the Agreement. The parties hereby consent to jurisdiction and venue in such courts with regard to such suits. The prevailing party in any action related to the Agreement will be entitled to recover all court costs and reasonable legal fees incurred.

**14. MISCELLANEOUS.** Time is of the essence with respect to all dates and time periods set forth or referred to in the Agreement. The Agreement is the final, complete and exclusive statement of the agreement between Supplier and TOK America with respect to the Goods and Services. Without limiting the foregoing, the Agreement does not replace any pre-existing nondisclosure agreement between the parties. However, if the terms of any such nondisclosure agreement conflict with the Agreement, then the terms of the Agreement will control. If the other terms on the PO conflict with these Terms, the terms on the PO will control. No terms, conditions, understanding, usages of the trade, courses of dealing or agreements purporting to modify, vary, explain or supplement the Agreement shall be binding unless and until made in writing and signed by Supplier and TOK America's Administration Department. The failure of either party to enforce any of its rights hereunder shall not constitute a waiver of such rights or of any other rights hereunder. TOK America reserves the right to correct clerical errors in the Agreement or any invoice. Supplier also represents and agrees that it is in compliance with Executive Order 11246 and implementing regulations, unless exempted. Supplier shall not delegate any duties, nor assign any rights or claims under the Agreement, without the prior written consent of TOK America, and any such attempted delegation or assignment without such consent shall be void. The Agreement will be deemed to be the product of both parties, so no ambiguity will be construed in favor of, or against, either party. If any of the provisions in the Agreement are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and the affected provisions will be enforced to the fullest extent possible.