

# Purchase Order 4501799894

Document date 07/23/2019

**Supplier:**

HI-SPEED INDUSTRIAL SERVICE  
MOCK INC. DBA HI-SPEED IND SVC  
PO Box 2959  
39207-2959 MILLINGTON  
USA

Your supplier number with us: 19468

**Please deliver to:**

Nyrstar Clarksville Smelter  
1800 Zinc Plant Road  
37040 CLARKSVILLE Tennessee  
USA

**Incoterms:** EXW SHIPPING POINT

**Payment terms:** Payment Due 30 days from Document date

**Currency:** USD

**Main Contact:**

Melissa Pazulski  
Tel: 931-552-4200 Ext. 418  
Fax: 931-221-3238  
Email: Melissa.Pazulski@nyrstar.com  
Salesperson:  
Jeff Pitman

**Please invoice to:**

Nyrstar Clarksville, Inc.  
1800 Zinc Plant Road  
CLARKSVILLE TN, 37040-7092  
E-Invoice: Clarksville.AP@nyrstar.com  
**Your Person responsible** Jeff Pitman

\*\*\*FIXED PRICE AGREEMENT VALID UNTIL 12/31/2019\*\*\*

Item	Material	Order qty.	Unit	Price per unit	Tax ind.	Net value
<b>Release order from agreement 4600008098 item 00320</b>						
10	347057	1	EA	1,448.66	A/P Sales Tax, exempt	1,448.66
MOTOR:AC,40HP,1750RPM,480V,FR 324T						
CAST IRON,TEFC,HEAVY DUTY ONLY						
<b>Vendor Mat. No.:</b> NP0404						
<b>Delivery date:</b> 07/26/2019						
*****						
<b>Total net value</b>						1,448.66

Nyrstar Clarksville Inc., 1800 Zinc Plant Road, Clarksville Tennessee, 37040-7092 Main Phone Number:(931)552-4200

# General Purchasing Conditions ("GPC") for Supply of Goods and/or Service



## 1 Scope of Application

1.1 These General Purchasing Conditions ("GPC") shall apply to the purchase of any goods ("Goods") offered or provided by the supplier ("Supplier") and/or any services performed by the Supplier ("Services"). They apply to all requests made by Nyrstar for quotations or offers, to any offers made by Supplier and are an integral part of any order placed by Nyrstar with Supplier ("Purchase Order") and/or agreement between Nyrstar and Supplier ("Contract"). For the purpose of these GPC, Nyrstar means (i) any company directly or indirectly controlled by Nyrstar NV, including its successors in title, assigns and/or transferees as the case may be and/or (ii) any subsidiary acting on behalf of companies as defined in (i) above and as referred to in the Purchase Order or Contract. No terms and conditions other than the GPC, the provisions of the Purchase Order and/or Contract and any and all documents incorporated therein by reference shall be binding upon Nyrstar unless expressly accepted in writing in the form of a Purchase Order or change of Purchase Order issued by Nyrstar or Contract entered into by Nyrstar. No terms and conditions contained in order confirmations, prior offers or any other document issued by Supplier shall be binding on Nyrstar, even if they have not been expressly rejected.

1.2 If individual terms of the GPC cannot be applied for any reason whatsoever, all other terms and conditions will remain unaffected.

1.3 Special provisions of a Purchase Order or Contract, specific terms agreed in writing with Supplier, and any and all documents incorporated therein which may be in contradiction with GPC, shall prevail over the corresponding GPC provisions.

## 2 Price and payment

### 2.1 Price

Unless otherwise agreed, the price and/or rates for the Goods and Services (the "Price"):

(a) is exclusive of VAT but inclusive of all other taxes, duties and any other costs and expenses (including but not limited to all costs of packaging, inspection, testing, certification, transportation, loading and unloading and insurance) incurred by the Supplier in supplying the Goods and delivering them to the Delivery Point and in performing the Services;

(b) is fixed and cannot be varied, it being understood that the Price may be reduced in accordance with clause 2.5 or upon mutual agreement between the parties.

### 2.2 Invoicing

Unless otherwise agreed, the Supplier shall invoice Nyrstar at the end of each month for the Goods delivered and the Services performed in that month.

### 2.3 Payment

The Supplier's invoices will be paid within sixty (60) days as from the end of the month during which the relevant invoice has been issued to Nyrstar. Payment of the Price shall not constitute evidence or an admission that the Goods or Services have been supplied in accordance with the Contract or Purchase Order.

### 2.4 Set Off

Nyrstar may set off against any amount owing to the Supplier any amount owing, or claimed by Nyrstar or its affiliates to be owing, by the Supplier to Nyrstar or its affiliates, whether under the Contract or Purchase Order or otherwise, regardless of whether matured or not, regardless of the place of payment or currency.

### 2.5 Price Variation

In the event of any general reduction in the base price of raw materials used by the Supplier in the manufacture of the Goods or in the costs of manufacture of the Goods or in the costs of performance of the Services incurred by the Supplier, Nyrstar and Supplier will discuss reduction in the agreed Price.

## 3 Delivery, Risk and Title

### 3.1 Delivery of Goods

(a) Unless otherwise agreed, the Supplier will deliver the Goods to the agreed delivery point ("Delivery Point") at his own cost and risk in accordance with the Incoterm "DDP" (ICC Incoterms - version in force on the date of the Purchase Order or the Contract as the case may be) on the agreed delivery date ("Delivery Date"). All Goods delivered to Nyrstar must be accompanied by:

(i) a delivery note detailing the Goods and quantities being delivered, Nyrstar's Purchase Order number and line item;

(ii) all relevant manufacturer's or Supplier's instructions concerning the proper and safe use of the Goods (including but not limited to operating and maintenance manuals, training manuals, drawings, technical data sheets, certificates of conformity and other supporting documentation);

(iii) any relevant materials safety data sheets (MSDS) for all chemicals and hazardous Goods supplied under the Contract or Purchase Order, which (at a minimum) explain the physical properties, hazards to personnel, fire and explosion potential, safe handling recommendations, health effects, fire fighting techniques, reactivity, and proper disposal regarding such Goods;

(iv) any other document reasonably requested by Nyrstar.

(b) Unless otherwise directed, the Goods must be unloaded at the Delivery Point at the Supplier's risk and expense, either by the Supplier or by Nyrstar at the Supplier's risk. The Supplier acknowledges that it enters Nyrstar's premises at its own risk and will ensure that its employees, agents and Suppliers are also aware that they enter Nyrstar's premises at their own risk.

(c) Partial deliveries shall not be allowed. If Goods are delivered in excess of the quantities ordered, Nyrstar shall not be bound to pay for the excess and any excess will be and will remain at the Supplier's risk and Nyrstar shall be entitled either to return the same to the Supplier at the Supplier's risk and expense or require the Supplier to collect the same from Nyrstar's plant at the Supplier's expense.

(d) Nyrstar reserves the right to verify the progress and proper performance of the Purchase Order or Contract and to conduct any quality investigations and testing it deems advisable. Supplier shall provide Nyrstar free access to Supplier's workshop at all times.

(e) Before delivery, Supplier shall inspect Goods for compliance with Purchase Order or Contract specifications, quality, weight, and physical dimensions, as well as for any damage to the Goods or their packaging. Only the weighing results done by Nyrstar scales will be valid. Nyrstar's failure to (properly) inspect the Goods or to (properly or timely) notify the Supplier of defects of non-conformities, shall not relieve the Supplier of any of its obligations under the Contract or Purchase Order (including the Supplier's warranty obligations) or under the applicable law.

### 3.2 Packaging and Transport

(a) Goods shall be packed so that they will not be damaged during transportation or handling. All items shall be properly marked according to (i) applicable rules, especially in the case of dangerous goods, if any, (ii) Nyrstar's instructions, and at a minimum marking shall set out Nyrstar's Purchase Order number, Supplier identification, item number, place of delivery, item description, weight and quantity, and all markings required for proper delivery and assembly. Sling and handling points shall be provided with the Goods. If Nyrstar so requests, Supplier shall take back all packaging material after delivery at no cost. If Supplier requires the use of Nyrstar's equipment or employees at the place of delivery, Nyrstar will require at least 24 hours notice. At no time Supplier will be allowed to use Nyrstar's equipment. Packaging materials and methods will be selected by Supplier to minimize cost of usage and to meet the following objectives: protection, safekeeping, recyclability, energy saving and destruction.

(b) Supplier shall take all measures necessary to perform proper transportation of the Goods by all appropriate means and using all appropriate equipment and accessories. Supplier shall organize transportation of the Goods to the Delivery Point in a manner designed to avoid damage to the Goods, and so as to avoid difficulties in unloading the Goods at the Delivery Point.

### 3.3 Risk and Title

Title to the Goods shall pass to Nyrstar upon delivery to the Delivery Point. Risk of loss or damage to the Goods shall pass to Nyrstar when the Goods have been unloaded at the Delivery Point.

### 3.4 Delivery Date, Date of Completion and Service Milestones

(a) Delivery Date of the Goods and/or the date of completion of the Services ("Date of Completion") are set out in the Purchase Order or Contract, or be notified otherwise by Nyrstar to the Supplier. The Supplier must furthermore comply with the deadlines for completion of specific parts of the Services (the "Service Milestones"), if any, in the Purchase Order or Contract or as otherwise notified by Nyrstar to the Supplier. Time for delivery of the Goods, time for completion of the Services and compliance with the Services Milestones shall be of the essence.

(b) Without limiting any other warranty or liability of the Supplier, whether expressed in the Purchase Order or Contract or implied by statute or generally at law, if (i) the Supplier fails to complete the Services by any relevant Date of Completion or Service Milestone or if on such Date of Completion or Service Milestone the Services do not comply with the warranties, or (ii) if the Supplier fails to deliver the Goods by any relevant Delivery Date or if upon delivery to Nyrstar the Goods do not comply with the warranties, without any further notice being required from Nyrstar, the Supplier must pay liquidated damages ("Liquidated Damages") to Nyrstar in an amount of 1% of the value of the relevant Purchase Order or Contract per started week of delay up to a maximum of 10% of the value of the relevant Purchase Order or Contract. Liquidated Damages for delays in delivery of Goods and Liquidated Damages for delays in completion of Services will apply cumulatively.

### 3.5 Review Meetings

Unless otherwise agreed, at the end of each Service Milestone or on such other frequency as reasonably required by Nyrstar, the parties will meet to review Supplier's compliance with the service levels ("Service Levels"). Without limiting any other warranty or liability of the Supplier, whether expressed in the Purchase Order or Contract or implied by statute or generally at law, if Nyrstar establishes at the occasion of any two (2) consecutive review meetings that the Supplier failed to satisfy any one or more Service Levels in all material respects, Nyrstar will be entitled to terminate the Purchase Order or Contract with immediate effect upon written notice to Supplier.

### 3.6 Variations

Nyrstar may direct the Supplier to perform a variation ("Variation") to the Goods and/or Services or performance of the Services including the nature, content and quality of the Services that are to be performed, and when, how and how frequent they are to be performed, by giving written notice of such proposed Variation. If Nyrstar requests a Variation, the Supplier shall immediately inform Nyrstar of the increase or decrease in price/cost and the effect on Delivery Date for the Goods and/or the Date of Completion of the Services and the Services Milestones to be agreed upon prior to the implementation of Nyrstar's request.

## 4 Supplier's Warranties

The Supplier undertakes and warrants that:

(a) Before proceeding to any performance of the Contract or any particular Purchase Order, the Supplier has informed Nyrstar in writing of any incompatibilities, errors or omissions in the specifications for the Goods and Services that could cause the Goods or Services not to comply with the warranties under this clause 4;

(b) the Services will be of good quality and workmanship and will be performed with the highest professional skill, care and diligence consistent with best in class industry standards by properly qualified and experienced persons in strict conformity with the terms and conditions of the Purchase Order or Contract, including, without limitation, the Service Levels;

(c) the Goods shall fully comply with the quality, description, performance specifications and other particulars stated or referred to in the Purchase Order or Contract;

(d) the Goods and Services shall be fit for the purpose for which they were made, produced or performed, for which they are ordinarily used and for any purpose which Nyrstar has disclosed to the Supplier or which Nyrstar intends to use them for and Nyrstar could reasonably expect the Goods and/or Services to be fit for;

(e) the Goods shall be free of any defects, apparent or hidden, including but not limited to defects in design, materials and workmanship, defects in the aesthetic quality or appearance, and any defects resulting in poor performance of the goods (fair wear and tear excepted);

(f) the benefit of any and all manufacturer's warranties in relation to the Goods will be assigned to Nyrstar upon delivery to Nyrstar;

(g) the sale of the Goods to Nyrstar, the performance of the Services and the use of the Goods and Services by Nyrstar will not infringe any Intellectual Property rights of third parties;

(h) it has, or will be able to, obtain at its expense all necessary consents, permits, licenses or authorities necessary in order for the Supplier to supply the Goods and to perform the Services;

(i) the Goods will become the sole, exclusive and unencumbered property of Nyrstar upon the transfer of title;

(j) in performing its obligations, it shall comply with (i) all applicable laws and regulations, (ii) Nyrstar's Policies and Procedures, and any reasonable directions given by Nyrstar, (iii) all relevant national and international standards and codes of practices in relation to the performance of the Services and in relation to the design, manufacture, packaging, labelling, transportation and delivery of the Goods, and with (iv) any certification, approval or registration concerning assurance of the quality of the Supplier's systems, procedures, processes, business practices and production (Quality Assurance Certification) which Nyrstar reasonably requires the Supplier to hold or which the Supplier held at the start of the Purchase Order or Contract; and

(k) it or, as the case may be, its authorized representatives are not, and during the life of the Agreement will not become, an official or employee of any government or of a political party. In the event Supplier or, as the case may be, its authorized representatives become an official or employee of any government or of a political party during the life of the Agreement, Supplier will disclose any such appointment immediately to Nyrstar and such appointment may result in the termination of the Agreement at Nyrstar's option.

These warranties will equally apply to any replacement, repair, substitute or remedial Goods or Services or parts provided by the Supplier. The Seller warrants due performance of the Goods as set out in clause 4 (c), (d) and (e) above for a period of 1 year after the Goods are put into service. Claims made under these warranties shall suspend the warranty period until Supplier has remedied the default and the warranty period will be extended accordingly.

## 5 Duty to Rectify

(a) Without limiting any other warranty or liability of the Supplier, whether expressed in the Purchase Order or Contract or implied by statute or generally at law, where Nyrstar reasonably believes that any or all of the Goods or Services do not meet any one or more of the requirements warranted by the Supplier or any other provision of the Purchase Order or Contract, the Supplier must, at Nyrstar's option:

(i) repair or replace the Goods and/or re-perform the Services within the time directed by Nyrstar (or, if no time is stated, within 14 days of being notified by Nyrstar) without cost to Nyrstar; or

(ii) compensate Nyrstar for the reasonable costs of repair or replacement of Goods and/or re-performance or rectification of Services by third parties engaged by Nyrstar.

(b) In addition to the above, the Supplier must compensate Nyrstar for any and all direct losses or damages incurred by Nyrstar as a result of the Supplier's failure to comply with the warranty obligations and it must pay to Nyrstar the relevant service credits (if any) ("Service Credits"). Without limiting any other warranty or liability of the Supplier, whether expressed in the Purchase Order or Contract or implied by statute or generally at law, the total aggregate amount of Service Credits and Liquidated Damages for delays in completion of Services that have become due under the Contract or Purchase Order shall be limited to ten (10) % of the value of the relevant Contract or Purchase Order.

(c) The Service Credits are not a private penalty but a reduction of the Price due to the Supplier following the decreased value of the Services supplied by Supplier. The payment of any Service Credit shall not be the sole and exclusive remedy in relation to a failure to provide the Services in accordance with the Service Levels and shall be without prejudice to any other right or remedy (including, without limitation, the right to claim full compensation of any loss or damages suffered) available to Nyrstar at law, in equity or under the Purchase Order or Contract. Except as otherwise expressly provided, the Service Credits and the other remedies available at law, in equity or under the Contract or Purchase Order shall be cumulative and in addition to, not in lieu of, any other right or available to either party at law, in equity or under the Purchase Order or Contract.

## 6 Indemnity & Liability

### 6.1 Indemnity

# General Purchasing Conditions ("GPC") for Supply of Goods and/or Service



The Supplier hereby indemnifies Nyrstar and each of its affiliates, and agrees to keep them indemnified and held harmless from and against any liability, cost, claim, expense (including attorneys' fees and expenses) or any loss or damage of any other kind whatsoever including, without limitation, any material or immaterial damage in the form of personal injury, illness or death to any person or damage to any property, but excluding indirect or consequential damages or losses (including, but not limited to, loss of profits, loss of goodwill, loss of opportunity, loss of revenue) ("**Consequential Loss**") arising from or in connection with, whether directly or indirectly:

- (a) any breach or failure to perform the Purchase Order or the Contract by the Supplier, its employees, agents or contractors;
- (b) any supply of Goods and/or Services which does not meet the requirements set out in the Purchase Order or Contract;
- (c) any infringement or alleged infringement of any Intellectual Property rights caused by any kind of use of the Goods or Services.

The Supplier acknowledges and agrees that it gives the indemnity to Nyrstar in its own right and as the agent of each of its affiliates such that Nyrstar shall be entitled to enforce the indemnity on behalf of its affiliates. The Supplier's liability to indemnify Nyrstar and each of its affiliates will be reduced proportionally to the extent that any negligent or unlawful act or omission of Nyrstar contributes to the loss or liability.

## 6.2 Limitation of Liability

Despite any other provision of the Purchase Order or Contract and to the maximum extent permitted by law, parties will not be liable to each other for any Consequential Loss howsoever arising (including in negligence, in tort or for breach of any statutory duty).

## 7 Suspension and Termination

### 7.1 Suspension by Nyrstar

- (a) Nyrstar may, without cause but acting reasonably, and at any time direct the Supplier to suspend the performance of all or any part of its obligations. The direction must specify the period of the suspension. The period of time specified may be reduced or extended by a further direction. Nyrstar may, at any time, direct the Supplier to recommence performance within 14 days of being notified by Nyrstar.
- (b) If performance is suspended for a continuous period of more than six (6) months and the cause of the suspension is not a breach of the Purchase Order or Contract by the Supplier, the Supplier may terminate the relevant Purchase Order or Contract by giving written notice to Nyrstar.
- (c) If the performance of the Supplier's obligations is suspended by Nyrstar for any reason other than a breach of the Purchase Order or Contract by the Supplier, Nyrstar must pay to the Supplier such costs and expenses as are reasonably and necessarily incurred by the Supplier as a direct consequence of the suspension and commencement (excluding those that could reasonably be avoided by the Supplier) up to a maximum equal to 1% of the relevant Purchase Order value or Contract value (as applicable) per week of suspension with a maximum of 10% of the relevant Purchase Order value or Contract value (as applicable).

### 7.2 Suspension by Supplier

The Supplier can suspend the performance of his obligations only if the following conditions are cumulatively met: (i) Nyrstar has not paid the Supplier's invoice(s) on the relevant due date, (ii) the invoice(s) in question have not been disputed in good faith by Nyrstar and (iii) Nyrstar fails to pay the invoice(s) within ten (10) days from Nyrstar's receipt of a payment reminder sent by Supplier on or after the relevant due date by fax and by registered mail.

### 7.3 Termination by Nyrstar

Nyrstar can terminate the Contract or any particular Purchase Order at any time on one (1) month prior written notice. If Nyrstar terminates the Contract or any particular Purchase Order, Nyrstar will compensate Supplier for all reasonable direct costs incurred by Supplier in performing its obligations under the Contract or under the Purchase Order in question up to the effective date of termination up to a maximum of the value of the affected Contract or Purchase Order (as applicable).

### 7.4 Termination for Default

- (a) Either party may terminate the Contract and/or one or more specific Purchase Order(s) at any time by giving the other party ("**Defaulting Party**") notice to that effect, effective on the date specified in the notice in case of a material breach by the Defaulting Party of its obligations under the Contract or under any particular Purchase Order.
- (b) The parties agree that the following will in any event be considered a material breach:
  - (i) a breach by the Supplier of his obligation to deliver the Goods on the Delivery Date;
  - (ii) Supplier's failure to meet any two (2) consecutive Service Milestones or any three (3) Service Milestones in any twelve (12) month period;
  - (iii) a breach by the Supplier of the warranties;
  - (iv) a breach by the Supplier of clause 11;
  - (v) a breach by the Supplier of clause 13;
  - (vi) a breach by the Supplier of clause 15 (a).
- (c) Either party may terminate the Contract or Purchase Order at any time by giving the Defaulting Party notice to that effect, effective on the date specified in the notice, in case of a breach by the Defaulting Party of the Contract or Purchase Order in relation to which the Defaulting Party fails to take effective remedial action within one (1) month as from receipt of notice specifying the breach and requiring its remedy.
- (d) Notwithstanding the above, the Supplier cannot terminate the Contract or any particular Purchase Order in case of a breach or an alleged breach by Nyrstar of its payment obligations, unless if the following conditions are cumulatively met: (i) Nyrstar has not paid the Supplier's invoice(s) on the relevant due date, (ii) the invoice(s) in question have not been disputed in good faith by Nyrstar and (iii) Nyrstar fails to pay the invoice(s) within ten (10) days from Nyrstar's receipt of a payment reminder sent by Supplier on or after the relevant due date by fax and by registered mail.
- (e) Either party may terminate the Contract or any particular Purchase Order at any time by giving the other party notice to that effect, effective on the date specified in the notice if the other party becomes unable to pay its debts in the ordinary course of business or enters into liquidation or becomes bankrupt or insolvent, or is placed in the control of a receiver or trustee, whether compulsorily or voluntarily, or any similar such event.

## 8 Insurance

The Supplier must take out and maintain appropriate insurance policies necessary to cover any liability under the Contract or Purchase Order. If requested by Nyrstar, the Supplier must provide details of the insurance (including, without being limited thereto, a copy of the insurance certificate) and evidence of currency. In addition, at Nyrstar's request, the Supplier will ensure that Nyrstar's interest as an additional insured is noted on the policy(ies).

## 9 Site

- (a) Nyrstar is strongly committed to the protection and improvement of safety, health and the environment. Safety in the workplace, in particular, is a priority for Nyrstar. Supplier shall deliver Services to and provide Nyrstar with Goods which fully satisfy the safety, health and environmental rules applicable.
- (b) The Supplier must, during any period of access to the Site, take all necessary care to avoid loss, damage or injury to any person or property and must at all times comply with Nyrstar's policies and procedures ("**Nyrstar's Policies and Procedures**") which are available at sites and can be obtained by simple request to Nyrstar.

## 10 Intellectual property

- (a) In these GPC, "**Intellectual Property**" means all copyright, patents and all other rights throughout the world in relation to inventions, registered and unregistered trademarks (including service marks) and registered designs, whether or not in existence at the start of the Contract or Purchase Order, and includes all original works of authorship fixed in any tangible medium of expression.
- (b) To the extent that any Intellectual Property is embodied in or relates to the Goods or Services, the Supplier grants to, or will procure for Nyrstar from the owner of that Intellectual Property a perpetual, irrevocable, royalty free, transferable, non-exclusive licence to use the Intellectual Property in relation to the Goods and Services.
- (c) Nyrstar shall own any Intellectual Property in any Goods and Services, and in any instructions, maps, diagrams and other materials relating to the Goods and Services where such Goods or Services have been created, designed, manufactured or performed specifically for Nyrstar or for use in Nyrstar's business. The Supplier hereby assigns any such Intellectual Property to Nyrstar and shall do everything in its power to ensure that such Intellectual Property vests in Nyrstar upon creation.

## 11 Anti-Corruption Undertaking

The Supplier agrees to comply with all applicable anti-corruption laws, including those in the jurisdiction where they are registered and the jurisdiction where the relevant contract will be performed (if different). Supplier's failure to comply with all applicable anti-corruption laws will be deemed to be a material breach of the Agreement entitling Nyrstar to terminate the Agreement. Nyrstar will not be liable for any claims, losses, or damages arising from or related to failure by Supplier to comply with any such laws or this anti-corruption clause or related to the termination of the Agreement under this clause and Supplier will indemnify and hold Nyrstar harmless against any such claims, losses, or damages.

## 12 Force majeure and Hardship

- (a) Neither party shall be responsible for any failure to perform any obligation under the Contract or Purchase Order if performance has become impossible due to armed conflicts, acts of terrorism, natural catastrophes or any other catastrophic events beyond control of the parties, the occurrence of which could not have been reasonably foreseen by the party seeking to rely on such occurrence (each a "**Force Majeure Event**"). The party affected shall promptly give notice to the other party setting out full particulars of the Force Majeure Event and make all reasonable endeavours to mitigate the effects of this event on that party's performance of its obligations under the Contract or a particular Purchase Order.
- (b) If by reason of a Force Majeure Event, the delay or non-performance of a party's obligations continues for more than thirty (30) consecutive days, the other party may terminate the Contract or a particular Purchase Order by written notice.
- (c) In case performance by Nyrstar of its obligations under the Contract or particular Purchase Order has become impossible or excessively more onerous (financially or otherwise) due to external economic conditions which impact the availability and price of raw materials and/or finished products of Nyrstar, Nyrstar will be entitled to request a renegotiation of the Contract or particular Purchase Order. Unless the parties agree to amend the terms of the Contract or particular Purchase Order within ten (10) days following Nyrstar's request for renegotiation, Nyrstar will be entitled to direct the Supplier to suspend the performance of all or any part of its obligation under the Contract or particular Purchase Order for the period specified in the direction, which may be reduced or extended by a further direction. Nyrstar may, at any time, direct the Supplier to recommence performance under the Contract or particular Purchase Order. If performance is thus suspended for a continuous period of more than six (6) months and the cause of the suspension is not a breach by the Supplier, the Supplier may terminate the Contract or Purchase Order by giving written notice to Nyrstar.

## 13 Confidentiality

- (a) Each party shall keep in strict confidence all technical or commercial know how, specifications, inventions, processes or other information disclosed or created by it in performing the Contract or particular Purchase Order, and any other confidential information regarding the business or products which parties may obtain from each other. The parties must use such information solely for the purposes of performing its obligations under the Contract or particular Purchase Order and must take all steps reasonably necessary to guard against unauthorised access to such information. This obligation of confidentiality will remain in effect for a period of five (5) years after the expiry or termination of the commercial relationship.
- (b) Any public announcement in connection with the Contract or particular Purchase Order must be agreed by the parties before it is made, except if required by a court of law or a regulatory body (including a relevant stock exchange), in which case the party required to make an announcement must, to the extent practicable, first consult with and take into account the reasonable requirements of the other party.

## 14 Applicable Law/Jurisdiction

- (a) The Contract and any Purchase Order issued in connection herewith shall be governed by and construed in all respects in accordance with the substantive laws of the State of Tennessee without giving effect to principles of conflicts of laws.
- (b) A party claiming that a dispute has arisen concerning the validity, interpretation, enforcement, performance or termination of the Contract or any Purchase Order(s) must notify the other party giving details of the dispute as soon as possible after it has arisen. The parties shall use their best efforts to resolve any dispute amicably. If the dispute has not been resolved within a period of thirty (30) days from the notice of the dispute, either party may initiate judicial proceedings; provided, however, that the parties hereby irrevocably submit to the exclusive jurisdiction of the state and federal courts located in Montgomery County, Tennessee in connection with all matters relating to the Contract or any Purchase Order issued in connection herewith, and waive any objection to the laying of venue in, and any claim of inconvenient forum with respect to, these courts.

## 15 Assignment - Subcontracting - Independent Contractor

- (a) The Supplier cannot delegate, assign, subcontract or transfer any of its rights or obligations under the Contract or under any Purchase Order, either in whole or in part, to any third party or any affiliate(s) without the prior written consent of Nyrstar. Nyrstar can delegate, assign, subcontract or transfer any of its rights or obligations under the Contract or under any Purchase Order, either in whole or in part, to any third party or any affiliate(s) without the Supplier's consent upon notice to Supplier. Supplier hereby agrees to co-operate in advance to any such delegation, assignment, subcontracting or transfer of rights or obligations.
- (b) The Supplier is an independent contractor. None of the provisions of the Contract or Purchase Order shall be interpreted as indicating the intent of the parties to form a company, association or joint venture. In performing the Contract or Purchase Order, the Supplier shall not be regarded as a representative, agent, attorney-in-fact or employee of Nyrstar.