

# Android Industries, LLC

## NON-PRODUCTION GENERAL TERMS AND CONDITIONS FOR GOODS AND SERVICES

### **1. Acceptance**

Seller acknowledges and agrees that these Non-Production General Terms and Conditions for goods and services are incorporated in, and a part of, this contract and each purchase order, release, requisition, work order, shipping instruction, specification and other document, whether expressed in written form, by electronic data interchange or other tangible format, relating to the goods and/or services to be provided by Seller pursuant to this contract (such documents are collectively referred to as this "Contract"). Seller acknowledges and agrees that it has read and understands these General Terms and Conditions. If Seller accepts this Contract in writing or commences any of the work or services which are the subject of this Contract, Seller will be deemed to have accepted this Contract and these General Terms and Conditions in their entirety without modification. Any additions to, changes in, modifications of, or revisions of this Contract (including these General Terms and Conditions) that Seller proposes will be deemed to be rejected by Android Industries, LLC ("Android") except to the extent that an authorized employee of Android expressly agrees to accept any such proposals in writing.

### **2. Billing / Payment**

Seller will submit itemized invoices to Android for goods and/or services for review and approval. Payment terms are net 45 days.

### **3. Warranty:**

Seller warrants/guarantees that the goods and services covered by this contract will conform to the specifications, drawings, samples, or description furnished to or by Android, and will be merchantable, of good material and workmanship and free from defect. In addition, Seller acknowledges that Seller knows of Android's intended use and warrants/guarantees that all goods covered by this contract have been selected, designed, manufactured or assembled by Seller based upon Android's stated use will be fit and sufficient for the particular purposes intended by Android.

### **4. Intellectual Property:**

The term "Intellectual Property" means inventions, patents (including, but not limited to, utility patents, method patents and design patents), trade secrets, trademarks, service marks, trade dress, industrial designs, mask works, copyrights, know-how, software, data base rights and other proprietary rights. The term "Background Intellectual Property Rights" means the Intellectual Property Rights of either Seller or Android existing prior to this Agreement, as well as any improvements thereto, excluding the Foreground Intellectual Property Rights. The term "Foreground Intellectual Property Rights" means any and all Intellectual Property Rights developed for incorporation into the good and services that are either developed by Seller alone, by Seller and Android jointly, or by Android alone as requested by Android in connection with this Agreement. Foreground Intellectual Property Rights do not include any Background Intellectual Property Rights.

Seller agrees:

- a. To defend, hold harmless, indemnify, and defend Android, its successors and customers against any claims, demands, and any actions based on infringement, misappropriation, misuse, or a cause of action based on Intellectual Property arising under, or relating to, the goods or services hereunder contracted and any related damages, costs, judgments, and expenses (including attorney's and other professional fees), including such claims where Seller has provided only part of the goods or services, Seller expressly waives any claim against Android that such infringement arose out of compliance with Android's specification.
- b. That Android or Android's subcontractor has the right to repair, reconstruct, or rebuild the specific goods delivered under this contract without payment of any royalty to Seller
- c. That parts manufactured based on Android's drawings and/or specifications may not be used for its own use or sold to third parties without Android's express written authorization.
- d. Each party will retain exclusive ownership of its Background Intellectual Property Rights. Android does not transfer to Seller any of its Background Intellectual Property Rights, and Seller may not use the same other than to produce and supply goods and services to Android hereunder. Seller agrees not to incorporate any of its Background Intellectual Property into any of the goods or services without the

February 17, 2016

express written consent of Android; but, in any event, Seller hereby grants to Android an irrevocable, perpetual, fully-paid, royalty free, non-exclusive worldwide license, with the right to grant sublicenses, to use, and fully exploit, Seller's Background Intellectual Property Rights to the extent that such are incorporated into the goods or services supplied hereunder and to appreciate the full extent of the license granted under this part (d).

e. All Foreground Intellectual Property Rights are owned by Android and not by Seller. Seller hereby confirms the same and hereby assigns, and agrees to assign, to Android all of Seller's right, title and interest in and to all Foreground Intellectual Property Rights that are developed or created in the course of performing under this Agreement. To the extent that any Foreground Intellectual Property Rights are copyrightable works or works of authorship (including, but not limited to, computer programs, technical specifications, documentation and manuals), the parties agree that they are "works made for hire" as that term is used in connection with the U.S. Copyright Act.

f. Seller will not assert or transfer to any third party a right to assert against Android or its customers any Intellectual Property that Seller has or may have that are applicable to the goods or services used or furnished under this Agreement.

g. Seller acknowledges that breach of this Section and Section 6 by it would result in irreparable harm to Android for which money damages would be an insufficient remedy, and therefore that Android will be entitled to injunctive relief to enforce the provisions this Section with the necessity of posting a bond or other surety.

#### **5. Technical Information Disclosed to Android:**

Seller agrees not to assert any claim (other than a claim for patent infringement) with respect to any technical information that Seller shall have disclosed or may hereafter disclose to Android in connection with the goods or services covered by this contract.

#### **6. Android Information Disclosed to Seller:**

Seller agrees to consider all information provided to it by Android to be confidential in nature and to hold such information in the strictest of confidence. Furthermore, Seller agrees to use this information solely for purposes of fulfilling its obligations under this contract and will not disclose it to any third parties or use it in anyway to compete with Android or any of its affiliates. Upon the written request of Android, and, in any event, upon termination of this Agreement for any reason, Seller will, at Android's option, destroy or return to Android all information in any medium. Seller will promptly notify Android in writing in the event Seller learns of any unauthorized use or disclosure of any of information and Seller will reasonably cooperate in good faith to remedy such occurrence to the extent reasonably possible.

Exceptions to this confidentiality obligation are as follows, to the extent provable by Seller:

- a. The information is or becomes publicly known or within the public domain without the breach of this Agreement by Seller,
- b. The information is disclosed to Seller by a third person that is not under an obligation of confidence to Android.
- c. Is within possession of Seller prior to its being furnished to Seller by or on behalf of Android, any of its advisors, representatives, agents, directors, employees or shareholders, provided that the source of such information was not bound by a confidentiality agreement with Android in respect thereof.

#### **7. Indemnification:**

Seller shall indemnify and hold Android harmless from and against liability, claims, demands or expenses (including attorney's and other professional fees) for damages to property of or injuries (including death) to Android, its employees or any other person arising from or in connection with Seller's performance of work or use of Android's property, except for such liability, claim or demand arising out of the sole negligence of Android. Seller agrees to provide technical service access during regular plant production hours and provide emergency phone access during non-production hours.

#### **8. Termination:**

In the event Seller is providing services, Android may terminate this agreement at any time for any reason without financial and/or legal liability to the Seller. Subject to Section 9 below, Seller will be paid for services rendered up to the time of termination.

#### **9. Remedies for Non-Conformity:**

In addition to other remedies provided by law, Android reserves the right to reject any goods or services or to revoke any previous acceptance and to cancel all or any part of a purchase order if Seller fails to deliver all or

February 17, 2016

any part of the goods or perform any of the services in accordance with the purchase order and/or these terms and conditions. Without prejudicing Android's other rights and remedies, Android may, at its option, (a) return at Seller's sole expense all deliverables which do not conform to the warranties under Section 3 above for a full refund of all sums then paid for the deliverables, (b) demand repair and/or replacement of non-conforming deliverables, whereupon Seller shall repair or replace such goods or services; or (c) terminate the relevant purchase order without waiving Android's rights to recover damages (including incidental and consequential damages) and purchase replacement goods or services from other Sellers.

**10. Remedies:**

Rights and remedies reserved to Android in this contract shall be cumulative with, and additional to, all other or further remedies provided in law or equity. Android shall notify Seller and Seller shall, if requested by Android, reimburse Android for any incidental and consequential damages caused by nonconforming goods or services, including, but not limited to, costs, expenses and losses incurred by Android (a) resulting from production interruptions, (b) conducting recall campaigns or other corrective service actions, and (c) claims for personal injury (including death) or property damage caused by such nonconforming goods or services. If requested by Android, Seller will enter into a separate agreement for administration or processing of warranty charge backs for nonconforming goods.

**11. Setoff / Recoupment:**

In addition to any right of setoff or recoupment provided by law, all amounts due to Seller shall be considered net of indebtedness of Seller and its affiliates/subsidiaries to Android and its affiliates/subsidiaries and Android shall have the right to setoff against or recoup from any amounts due to Seller and its affiliates/subsidiaries from Android and its affiliates/subsidiaries.

**12. No Advertising:**

Seller shall not, without first obtaining the written consent of Android, in any manner advertise or publish the fact that Seller has contracted to furnish Android the goods or services covered by this contract, or use any trademarks or trade names of Android in Seller's advertising or promotional materials.

**13. No Implied Waiver:**

The failure of either party at any time to require performance by the other party of any provision of this contract shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of either party of a breach of any provision of this contract constitute a waiver of any succeeding breach of the same or any other provision.

**14. Relationships and Parties:**

Seller and Android are independent contracting parties and nothing in this contract shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

**15. Governing Law Jurisdiction:**

This contract is to be construed according to the laws of the state of Michigan from which this contract is issued as shown by the address of Android, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any conflict of law provisions that would require application of another choice of law. Any action or proceedings by Android against Seller may be brought by Android in any court(s) having jurisdiction over Seller or, at Android's option, in the court(s) having jurisdiction over Android's location, in which event Seller consents to jurisdiction and service of process in accordance with applicable procedures. Any actions or proceedings by Seller against Android may be brought by Seller only in the court(s) having jurisdiction over the location of Android from which this contract is issued.

**16. Severability:**

If any term(s) of this contract is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term(s) shall be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of this contract shall remain in full force and effect.

**17. Entire Agreement:**

This contract, together with the attachments, exhibits, supplements or other terms of Android specifically referenced in this contract, constitutes the entire agreement between Seller and Android with respect to the

February 17, 2016

matters contained in this contract and supersedes all prior oral or written representations and agreements. This contract may only be modified by a contract amendment issued by Android.

#### **18. Insurance Provisions**

**All Sellers, Contractors, or Service Providers who perform any work in or on the premises of any Android Facility shall maintain insurance in accordance with the Insurance Requirements set forth in the attached Exhibit A.**

**EXHIBIT A**  
**INSURANCE REQUIREMENTS**

Before commencing any work in or on the premises of any Android facility, and as a condition precedent to any payment, Seller shall purchase and maintain insurance in conformance with the provisions contained in this **Exhibit A**. Proof of this insurance shall be provided to Android Industries, LLC ("Android") before the work commences, as set forth below. To the extent that Seller subcontracts with any other entity or individual to perform all or part of Seller's work, Seller shall require any such subcontractor to furnish evidence of equivalent insurance coverage, in all respects, terms and conditions as set forth herein, prior to the commencement of work by the Subcontractor. In no event shall the failure to timely provide this proof be deemed a waiver by Android of the insurance obligations set forth herein.

**MINIMUM LIMITS OF LIABILITY**

Seller must maintain the required insurance with a carrier rated A- or better by A. M. Best. Seller shall maintain at least the limits of liability as set forth below:

**Commercial General Liability Insurance**

- \$1,000,000 Each Occurrence Limit (Bodily Injury and Property Damage)
- \$2,000,000 General Aggregate per Project
- \$2,000,000 Products & Completed Operations Aggregate
- \$1,000,000 Personal and Advertising Injury Limit

**Business or Commercial Automobile Liability Insurance**

- \$1,000,000 combined single limit per accident

**Workers' Compensation and Employers' Liability Insurance**

- Workers' Compensation for all of full-time and part-time employees in accordance with the laws of the State of Michigan and Employers' Liability with \$1,000,000 limits

**Excess or Umbrella Liability (to overlay Employer's Liability, Automobile Liability and Commercial Liability coverages)**

- \$1,000,000 occurrence/aggregate

**ADDITIONAL INSURED STATUS AND CERTIFICATE OF INSURANCE**

With the exception of Workers' Compensation, Seller's insurance certificate(s) must name Android as an additional insured. Seller's insurance coverage must be primary and noncontributory with respect to Android. This insurance shall remain in effect as set forth below, in the "Continuation of Coverage" provision.

Seller acknowledges that it is the intent of the Parties that any insurance obtained by Android is deemed excess, non-contributory and not co-primary in relation to the coverage(s) procured by Seller or any of its consultants, officers, agents, subcontractors, employees or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable case law.

To the fullest extent permitted by applicable state law, a Waiver of Subrogation Clause shall be added to the General Liability, Automobile and Workers Compensation policies in favor of Android, and its officers, members, agents and employees, with respect to all work by Seller during the policy term.

Prior to commencement of any work subject to these Insurance Requirements, Seller shall submit a Certificate of Insurance and an Additional Insured Endorsement (in a form acceptable to Android) as required hereunder. The Certificate shall provide for thirty (30) days' notice to Android for cancellation or any change in coverage. Copies of insurance policies shall promptly be made available to Android upon request.

February 17, 2016

### **CANCELLATION, RENEWAL AND MODIFICATION**

Seller shall maintain in effect all insurance coverages required hereunder at Seller's sole expense, underwritten by insurance companies acceptable to Android, until final completion and acceptance of the entirety of Seller's work; or longer if so provided in the Contract such as with respect to completed operations coverage. In the event Seller fails to obtain or maintain any insurance coverage required under this Exhibit A, this shall be considered a material breach of the Contract, entitling Android, at its sole discretion, to purchase such equivalent coverage as desired for Android's benefit and charge the expense to Seller, or, in the alternative, exercise all remedies otherwise provided in the Contract, or as permitted by law or equity.

### **CONTINUATION OF COVERAGE**

Seller shall continue to carry Completed Operations Liability Insurance for at least three (3) years after either ninety (90) days following substantial completion of Seller's work or final payment on any individual Project, whichever is later. Seller shall furnish Android evidence of such insurance at final payment and in each successive year during which the insurance coverage must remain in effect.

### **ACKNOWLEDGMENT OF REFERRAL OF THIS PROVISION TO SELLER'S INSURANCE AGENT OR BROKER**

Seller represents that it has provided a copy of these "Insurance Requirements" to its insurance agent and/or broker, and that Seller has instructed the agent/broker to provide insurance in full compliance with the terms and conditions herein.

February 17, 2016