



# **General Terms and Conditions of Sale**

---

**October 2022**

## TABLE OF CONTENTS

1.	Applicability .....	1	19.	Changes .....	6
2.	Risk of Loss .....	1	20.	Tooling; Service Parts .....	6
3.	Price .....	1	21.	Sales and Other Taxes .....	7
4.	Payment .....	1	22.	Compliance with Laws; Export .....	7
5.	Invoice Disputes .....	2	23.	Government Sales.....	7
6.	Setoff .....	2	24.	Confidential Information .....	7
7.	Non-Recurring Engineering Expenses.....	2	25.	Assignment .....	8
8.	Delivery; Packaging.....	2	26.	Miscellaneous .....	8
9.	Forecasts; Releases .....	3	26.1	Advertising .....	8
10.	Inspection; Root Cause Analysis .....	3	26.2	Electronic Communication .....	8
11.	Limited Warranty.....	3	26.3	Relationship of the Parties .....	8
12.	Remedies .....	4	26.4	Waiver .....	8
13.	Limitation of Liability .....	4	26.5	Entire Agreement; Amendments .....	8
14.	Intellectual Property Rights .....	5	26.6	Severability .....	9
15.	Indemnification.....	5	26.7	Interpretation .....	9
16.	Termination by Seller .....	5	26.8	Notices .....	9
17.	Termination by Buyer.....	6	26.9	Governing Law .....	9
18.	Force Majeure.....	6	26.10	Jury Trial.....	9
			26.12	Contract Drafting .....	9

## **1. Applicability**

These Terms and Conditions of Sale (these “Terms”) are incorporated by reference into every proposal, quotation, acknowledgement, invoice or other sales document (collectively, “Sales Documents”) issued by Exo-s Inc. or one of its affiliates or subsidiaries (“Seller”) to the buyer(s) named thereon (“Buyer”). Seller’s proposal, quotation or other offering document constitutes an offer or counteroffer by Seller to sell the goods and/or services described therein (“Goods”) to Buyer, subject in all respects to, and strictly and exclusively in accordance with, these Terms and the Sales Documents, and these Terms together with such Sales Documents are the only terms and conditions that govern or otherwise apply to any sale of Goods by Seller to Buyer. Any of the following acts by Buyer shall constitute Buyer’s acceptance of these Terms and the Sales Documents in their entirety: (a) acknowledging the quotation; (b) issuing a purchase order; (c) accepting delivery of the Goods; or (d) any other conduct which recognizes the existence of a contract for the purchase and sale of the Goods. Once accepted, the quotation and other Sales Documents, the applicable final drawings, specifications, statements of work, Non-Disclosure Agreement and assignment of tasks and responsibilities issued or approved by Seller, as each may be amended from time to time by mutual written agreement of the parties, and any other documents signed by an authorized representative of each party relating to the sale and purchase of Goods, are incorporated herein by reference and, together with these Terms, constitute the “Contract.” Neither Seller’s issuance of any Sales Document nor Seller’s manufacture, delivery or other performance of or related to any Goods shall constitute acceptance by Seller of any terms and conditions attached to or purportedly incorporated into any request for proposal or quotation, purchase order, release, scheduling agreement, authorization or other similar request, instruction or purchasing document issued by Buyer (collectively, “Purchasing Documents”), and any such terms and conditions are specifically excluded and are not incorporated into the Contract. For avoidance of doubt, Seller hereby objects to any additional or different terms and conditions proposed by Buyer in its Purchasing Documents (or otherwise) as wholly unacceptable to Seller, and such proposed additional or different terms and conditions shall not become part of the Contract (or otherwise a part of any agreement between Seller and Buyer) and shall have no effect with respect to any sales by Seller or purchases by Buyer of any Goods. Seller’s performance under any

accepted purchase order or release issued by Buyer is expressly limited to and conditioned upon Buyer’s acceptance of the terms and conditions of the Contract exclusively (including these Terms). Seller will not be bound by any provisions in Buyer’s contractual arrangements with Buyer’s direct or indirect customers (“Customers”), including any purported flow-down, flow-through or similar provisions. Notwithstanding the foregoing, Seller reserves the right at any time to reject any order, release or other Purchasing Document not issued in compliance with the Contract or that otherwise includes or purports to incorporate additional or different terms and conditions not included in the Contract.

## **2. Risk of Loss**

Unless otherwise stated on the quotation, all sales of Goods shall be Ex Works Seller’s facility listed on the quotation (Incoterms 2020). Title and the risk of loss or other damage to Goods shall pass to Buyer upon delivery of the Goods as determined by the applicable Incoterm.

## **3. Price**

Following such time period or if no time period is specified, prices are subject to change without notice and Seller shall invoice Buyer for Goods based on prices in effect at the time of shipment. Prices are not subject to decrease for any reason, including prices charged for similar goods or services sold or otherwise quoted to other customers of Seller (including Buyer’s affiliates), any productivity, quality or other periodic price reduction programs, industry, commodity or other benchmarking activities, or Buyer’s receipt of a quotation for similar goods or services at lower price. Prices do not include supplying Buyer with prototypes, development, pre-production, evaluation samples, test data or service Goods.

## **4. Payment**

Payment terms are net thirty (30) days from date of delivery unless otherwise specified on the quotation. Payment is due via electronic funds transfer with no discount for earlier payment in the currency specified in the Contract or, if none is specified, in the currency of seller’s sales location. A one and one-half percent (1.5%) monthly service charge, or the maximum permitted by applicable law, will be added for every month or part of a month that the amount due remains unpaid after its due date. Notwithstanding the foregoing, Seller may require advance payment or additional collateral from Buyer in the event: (a) Seller has reasonable doubt as to Buyer’s credit worthiness; (b) Seller determines in its sole discretion a substantial

risk of its claim to payment exists due to declining assets of Buyer; or (c) Buyer is in arrears with respect to any payment owed to Seller; and Buyer agrees to promptly provide to Seller all information reasonably requested by Seller to make such determinations. If Buyer becomes delinquent in payment, Seller shall have the immediate right, in addition to any other right it may have, without notice, to terminate the Contract or all or any part of any order or release, to recall or withhold further deliveries or performance, and declare all unpaid amounts for any Goods previously delivered immediately due and payable. Until Seller has actually received payment in full for the Goods, Buyer or any agent of Buyer: (i) will hold the Goods subject to a security interest or lien in favor of Seller allowing for the right of repossession by Seller to the extent permitted by applicable law; and (ii) will not alter, remove, destroy, or damage any identifying mark on the Goods or their packaging. Seller may take possession of the Goods under this section at any time after payment for the Goods or any other payment owed to Seller has become due, and Buyer shall cooperate with and provide Seller necessary access to facilitate such repossession.

#### **5. Invoice Disputes**

Buyer shall notify Seller in writing of any dispute with any invoice or other document in lieu of an invoice (along with substantiating documentation and a reasonably detailed description of the dispute) within ten (10) days from the date of such invoice. Buyer will be deemed to have waived all rights to dispute any invoice for which Seller does not receive timely notification of dispute and shall timely pay all undisputed amounts. The parties shall seek to resolve any invoicing disputes expeditiously and in good faith. Notwithstanding anything to the contrary, Buyer shall continue performing its obligations during any such dispute, including Buyer's obligation to timely pay all due and undisputed invoice amounts.

#### **6. Setoff**

Buyer acknowledges and agrees that it may not set off or otherwise debit against or recoup from any amounts due or to become due to Seller or its affiliates or subsidiaries, any amounts due or become due to Buyer or its affiliates or subsidiaries, unless and until Seller agrees in writing to such setoff, debit or recoupment, and shall not exercise any purported right to setoff, debit or recoupment in connection with any disputed, contingent or unliquidated claim. In the event Buyer fails to comply with the foregoing and without authorization or otherwise improperly sets off, debits or recoups from amounts due or to become due to

Seller or its affiliates or subsidiaries, Seller shall be entitled, in addition to all of its other rights hereunder or otherwise, to suspend performance of its obligations under the Contract until Buyer reverses such setoff, debit or recoupment. Further, any amounts due or to become due to Seller shall not be otherwise reduced on account of any price reduction or compromise on receivables that Buyer may agree to with its Customers, including in connection with any systems, assemblies, components, modules or other goods or services incorporating or otherwise utilizing Goods. Buyer shall pay all Seller's costs of collection, including Seller's attorneys' fees.

#### **7. Non-Recurring Engineering Expenses**

Buyer shall pay any non-recurring engineering expenses or similar one-time costs to research, design, develop or test new or enhanced goods and services ("NRE") incurred by Seller for the development of Goods as determined by Seller in its sole discretion. Unless otherwise agreed in writing, Seller shall invoice NRE payable by Buyer on the terms set forth in section 4 above. If the Contract or any order or release is terminated, in whole or in part, for any reason, Buyer shall remain liable for all unreimbursed NRE due to Seller upon such termination.

#### **8. Delivery; Packaging**

All delivery dates and quantities are estimates only and are not guaranteed. Notwithstanding the foregoing, Seller shall use reasonable efforts to meet Buyer's requested delivery dates and quantities provided that Buyer has complied with Seller's then applicable lead-time and minimum order quantity requirements. Without limiting the foregoing, Buyer acknowledges and agrees that Seller may deliver up to fifteen percent (15%) more or less than the ordered/released quantities up to five (5) business days early or late and Buyer shall accept and timely pay for any such excess or shortfall quantities or early or late deliveries. Unless Buyer specifies shipping instructions, shipment and delivery will be made by the carrier and in the manner designated by Seller. Without limiting the foregoing, Seller shall not be liable for any delays or defaults in deliveries except to the extent arising solely and directly as a result of Seller's gross negligence or willful misconduct. Goods shall be packaged and shipped as specified in the quotation or, in the absence of such specifications, Goods shall be packaged in accordance with sound commercial practice. If Seller is requested to use Buyer's returnable packaging but such packaging is unavailable or deficient (as determined by Seller in its sole discretion), Seller may use expendable packaging

and Buyer shall reimburse Seller for the costs of such expendable packaging on demand. Unless otherwise specified in the quotation, all crating, marking, labeling, corrosion protection, export or other special packaging will be an additional charge to Buyer.

#### **9. Forecasts; Releases**

Unless a longer period is required and communicated by Seller in writing, Buyer shall provide Seller no less than [eight (8) weeks] of firm orders or releases for finished Goods, no less than [eighteen (18) additional weeks] of firm authorization to purchase raw materials and components, and no less than [thirty-four (34) additional weeks] for planning volumes. In no event shall Seller be obligated to produce or deliver Goods not in accordance with this section, section 8 above or otherwise with Seller's standard capacity rates (as modified and communicated from time to time).

#### **10. Inspection; Root Cause Analysis**

The remedies afforded Buyer under section 12 below shall be exclusive for any non-conforming Goods but shall be unavailable to Buyer if Buyer inspected or reasonably should have inspected the Goods and could have discovered the non-conforming Goods upon such inspection, which failure shall be deemed an irrevocable waiver by Buyer of such or any other remedies. After identifying any non-conforming Goods and so notifying Seller as required under section 11 below, Buyer will provide Seller the results of its internal root cause analysis of the non-conformance(s) within five (5) days together with any other information requested by Seller. Buyer shall further cooperate with Seller in a joint root cause analysis led by Seller, and in developing and implementing corrective action programs or other plans to remediate potential failures that may have contributed to such non-conformance(s), which cooperation shall include providing Seller and its agents reasonable access to Buyer's personnel and operations.

#### **11. Limited Warranty**

Seller warrants to Buyer: (a) that Seller has good transferable title to the Goods delivered, free and clear of liens upon Seller's actual receipt of payment in full for such Goods; and (b) that at the time of delivery, the Goods delivered will conform in all material respects to the final material specifications issued or otherwise approved by Seller and set forth in the Contract. Seller shall not be liable for a breach of the foregoing limited warranty unless: (i) Buyer gives written notice to Seller, describing the nonconformance in reasonable detail, within sixty (60) days following delivery or, if Buyer's initial inspection of the Goods could not have

uncovered the nonconformance, within seven (7) days of Buyer's discovery of the nonconformance or when Buyer reasonably should have discovered the nonconformance, but in no event later than one (1) year following the date of delivery; (ii) Seller is given a reasonable opportunity to examine the Goods and Buyer (if requested to do so by Seller) promptly returns such Goods to Seller's place of business for examination at Buyer's cost; and (iii) Seller reasonably verifies Buyer's claim that the Goods are non-conforming in Seller's sole discretion. Notwithstanding the foregoing, prototypes, development, pre-production, evaluation samples and similar items are provided "AS IS" without warranty of any kind.

SPECIFICALLY EXCLUDED FROM ANY WARRANTY OFFERED BY SELLER UNDER THE CONTRACT ARE THE FOLLOWING, FOR WHICH SELLER SHALL HAVE NO LIABILITY WHATSOEVER:

(A) DAMAGES OR DEFECTS CAUSED BY UNAUTHORIZED OR IMPROPER INSTALLATION, ALTERATION, REPAIR, MAINTENANCE (INCLUDING FAILURE TO PERFORM APPROPRIATE MAINTENANCE), STORAGE, HANDLING, USE OR OPERATION OF THE GOODS BY BUYER OR ANY THIRD PARTY;

(B) DAMAGES CAUSED BY THE FAILURE OF THE GOODS TO COMPLY WITH APPLICABLE ENVIRONMENTAL, HEALTH, SAFETY OR OTHER LAWS, STATUTES, REGULATIONS, RULES, ORDINANCES, ORDERS, GUIDELINES, OR PERMITTING OR OTHER REQUIREMENTS;

(C) DAMAGES OR DEFECTS CAUSED BY ANY EQUIPMENT, COMPONENT, SYSTEM, OR ASSEMBLY NOT MANUFACTURED OR SOLD BY SELLER ("THIRD-PARTY COMPONENTS") AND/OR THE INTEGRATION, INCORPORATION, INTERACTION, CONNECTION, PLACEMENT, OR USE OF CONFORMING GOODS IN OR WITH ANY THIRD-PARTY COMPONENTS;

(D) DAMAGES OR DEFECTS ATTRIBUTABLE TO OR CAUSED BY: (1) MISUSE, NEGLIGENCE, ACCIDENT, ABUSE, OR VANDALISM OR ANY TRANSIT-RELATED DAMAGE, (2) ACTS OF GOD OR INSURRECTION, (3) NORMAL WEAR AND TEAR, OR (4) ANY OTHER ACTS THAT ARE BEYOND SELLER'S REASONABLE CONTROL; OR

(E) DESIGN DEFECTS TO THE EXTENT GOODS

ARE DESIGNED BY BUYER, BUYER'S AFFILIATE(S) OR ANY OTHER THIRD PARTY. CONFORMANCE OF THE GOODS TO BUYER'S WRITTEN SPECIFICATIONS IS AN ABSOLUTE DEFENSE TO ANY SELLER WARRANTY LIABILITY.

THE WARRANTIES SPECIFIED IN THIS SECTION ARE EXCLUSIVE AND ARE GIVEN AND ACCEPTED IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. NO AGREEMENT VARYING OR EXTENDING THE FOREGOING WARRANTIES, OR THE REMEDIES OR LIMITATIONS CONTAINED HEREIN, WILL BE BINDING UPON SELLER UNLESS IN WRITING AND SIGNED BY A DULY AUTHORIZED OFFICER OF SELLER EXPRESSLY REFERENCING THIS SECTION.

### **12. Remedies**

In the event that any Goods are determined nonconforming by Seller in accordance with section 11 above following Buyer's timely compliance with the notice requirements thereof, Seller's sole liability to Buyer and Buyer's sole remedy for such nonconformance (whether or not the nonconforming Goods have been installed and whether or not such Goods are the subject of a voluntary or involuntary recall, customer satisfaction or other service campaign or similar action) is limited to, at Seller's option: (a) the repair or replacement, at Seller's facility, of such nonconforming Goods; or (b) refund or credit of the price actually received by Seller as payment from Buyer for such nonconforming Goods. For avoidance of doubt, in no event shall Seller be liable to Buyer or any other party for any damages, costs or expenses arising as a result of or otherwise relating to any voluntary or involuntary recall, customer satisfaction or other service campaign or similar action. THE REMEDIES SET FORTH IN THIS SECTION SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY TO THE EXCLUSION OF ANY AND ALL OTHER REMEDIES, AND COMPRISE SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE AGREEMENT, INCLUDING, ANY BREACH OF THE

LIMITED WARRANTY SET FORTH IN SECTION 11 ABOVE.

### **13. Limitation of Liability**

In the event any remedy provided herein fails its essential purpose and monetary damages may be imposed, except to the extent arising solely and directly as a result of Seller's gross negligence or willful misconduct, Seller's liability, whether founded in contract or tort, arising as a result of or relating to (a) the Contract or any performance or breach thereof, (b) any design, manufacture, delivery, sale, repair, replacement or use of Goods, or (c) the furnishing of any service, shall not exceed, in any given calendar year, a maximum of five percent (5%) of the revenue actually received by Seller from Buyer during the immediately preceding calendar year for the Good(s) giving rise to such remedy. No legal action arising as a result of or otherwise relating to the Contract, whether alleging breach of warranty or other breach, default or tortious acts, shall be commenced against Seller more than eighteen (18) months after delivery of the Good(s) giving rise to such claim or one (1) year after claimant could reasonably have discovered the basis for such action, whichever comes first.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EXPENSES RELATING TO VOLUNTARY OR INVOLUNTARY RECALL, CUSTOMER SATISFACTION OR OTHER SERVICE CAMPAIGN OR SIMILAR ACTION, LOSS OF USE OF THE GOODS, COST OF CAPITAL, COST OF ASSEMBLY, PLANT OR LINE SHUTDOWNS, STOPPAGES OR SLOWDOWNS, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE OR CLAIMS OF BUYER'S CUSTOMERS OR OTHER THIRD PARTIES FOR DAMAGES, ARISING AS A RESULT OF OR OTHERWISE RELATING TO ANY THREATENED, ALLEGED OR ACTUAL BREACH BY SELLER, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY UPON WHICH THE CLAIM IS BASED (CONTRACT, TORT OR OTHERWISE), AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

#### **14. Intellectual Property Rights**

Buyer acknowledges and agrees that: (a) any and all of Seller's Intellectual Property Rights (defined below) are the sole and exclusive property of Seller or its licensors; (b) Buyer shall not acquire any ownership interest in any of Seller's Intellectual Property Rights under the Contract or otherwise (notwithstanding any payment by Buyer relating to NRE), or any other rights in or to Seller's Intellectual Property Rights, except for the limited license described in this section, and all right, title to, and interest in all Intellectual Property Rights and related materials (including all plans, diagrams, specifications, designs, data, drawings and models) which are developed, designed or generated by Seller prior to and/or in the performance of the Contract shall be owned solely by Seller as legal and beneficial owner; and (c) Buyer shall use Seller's Intellectual Property Rights solely for purposes of using the Goods and only in accordance with the instructions provided by Seller, if any. Buyer is hereby granted a limited, revocable, non-exclusive, non-transferrable license to use, sell and repair the Goods and as required to otherwise incorporate the Goods into Buyer's goods and services.

"Intellectual Property Rights" means all industrial and other intellectual property rights comprising or relating to: (i) patents; (ii) trademarks; (iii) copyrights, works of authorship, expressions, designs and design registrations, whether or not copyrightable; (iv) trade secrets; and (v) design rights and all industrial and other intellectual property rights, interests and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing. Seller shall conduct, at its own expense, the entire defense of any claim, suit or action alleging that the use or resale by Buyer or any subsequent purchaser or user of the Goods directly infringes any U.S. patent issued at the time of delivery of such Goods to Buyer, but only on the condition that: (A) Seller receives prompt written notice of such claim, suit or action and full opportunity and authority to assume the sole defense thereof, including settlement and appeals, all information available to Buyer, and the cooperation of Buyer in connection with such defense; (B) the Goods were made according to a specification or design furnished solely by Seller; and (C) the claim, suit, or action is brought against Buyer. Provided all of the foregoing conditions have been met, Seller shall, at its own expense, either settle such claim, suit or action, or pay all unappealable direct damages finally awarded by a court of last resort ("Seller's IP Indemnification Obligation"). If otherwise permitted use or resale of such Goods is finally enjoined, Seller shall, at Seller's

option, procure for Buyer the right to use or resell the Goods, replace the Goods with equivalent non-infringing goods, modify the Goods so they become non-infringing but substantially equivalent, or refund or credit the price actually received by Seller as payment from Buyer for such Goods (less reasonable allowances for use, damage and obsolescence).

#### **15. Indemnification**

To the fullest extent permitted by applicable law, Buyer hereby expressly agrees to indemnify, defend, and hold harmless Seller and Seller's affiliates, and its and their equity holders, officers, directors, managers, employees, agents, successors and assigns from and against any and all claims, liabilities, lawsuits, losses, costs, expenses and damages (including attorneys' and professionals' fees) of any kind or nature whatsoever, including claims for personal injury, death or property damage, whether such claims are founded in contract, tort or otherwise, including strict liability, which arise as a result of or otherwise relate to the Contract (including any breach thereof) and/or the Goods, except to the extent arising solely and directly as a result of Seller's gross negligence or willful misconduct. Seller's obligation to indemnify, defend and hold harmless Buyer, any third party or any other person from any direct or indirect claims, liabilities, lawsuits, losses, costs, expenses and damages is limited solely to Seller's IP Indemnification Obligation.

#### **16. Termination by Seller**

Seller may immediately terminate the Contract or all or any part of any order or release as a result of: (a) Buyer's breach, threatened breach or repudiation of any representation, warranty, covenant or other term of the Contract; (b) any assignment for the benefit of creditors or any institution of proceedings in bankruptcy or insolvency by or against Buyer; (c) Buyer's request for accommodation from Seller, financial or otherwise, in order to meet its obligations under the Contract; (d) Buyer entering or offering to enter into one or more transactions effecting a sale of a substantial portion of Buyer's assets or business or any merger, sale or exchange of equity interests that would result in a Change of Control (as defined below) of Buyer; or (e) financial or other condition that could, in Seller's sole discretion, endanger Buyer's ability to make required payments or otherwise perform under the Contract. In addition, Seller may terminate the Contract or all or any part of any order or release, with or without cause, upon delivery of thirty (30) days' advance written notice to Buyer. Following Seller's termination, Buyer shall reimburse Seller, upon

receipt of Seller's written demand, for all Goods completed in accordance with Buyer's order or release and for any work-in-progress, raw materials acquired for manufacture of Goods, uncaptured amortized capital expenditures for the research, development, and manufacture of Goods, any unreimbursed NRE, and Seller's costs for settling any claims or disputes with its sub-suppliers in connection with component parts, raw materials, or services related to the Goods (collectively, "Termination Costs"). Under no circumstances shall Seller have any obligation to assist Buyer in any transition of supply of the Goods (or substitutes therefor) to Buyer or any other vendor, except to the extent otherwise expressly agreed by Seller, and then, only upon Seller's actual receipt of all Termination Costs owed by Buyer to Seller together with any applicable fees for such transition support.

#### **17. Termination by Buyer**

Buyer may only terminate the Contract (together with all orders and releases) for cause upon a material breach by Seller which remains uncured thirty (30) days following Seller's receipt of written notice of such breach from Buyer (together with all necessary supporting information evidencing such breach), and then, only upon delivery of not less than fifteen (15) additional days' advance written notice to Seller. Following Buyer's termination, Buyer shall reimburse Seller for all Termination Costs. Under no circumstances shall Seller have any obligation to assist Buyer in any transition of supply of the Goods (or substitutes therefor) to Buyer or any other vendor, except to the extent otherwise expressly agreed by Seller, and then, only upon Seller's actual receipt of all Termination Costs owed by Buyer to Seller together with any applicable fees for such transition support.

#### **18. Force Majeure**

Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached the Contract for any failure or delay in fulfilling or performing its obligations when such failure or delay is in any way caused by or a result of acts or circumstances beyond the reasonable control of Seller including acts of God, flood, fire, earthquake, explosion, foreign or domestic governmental actions, regulations or orders (whether or not later determined invalid), war, invasion or hostilities (whether war is declared), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemic, disease or other public health emergency (including government-mandated quarantine and travel restrictions), lockouts, strikes or other labor disputes (whether or not relating to either party's workforce),

restraints or delays affecting carriers, inability or delay in obtaining supplies of adequate or suitable materials, directed suppliers, telecommunication breakdown, shortage of power or other utilities, supplies, infrastructure, or transportation, or other similar or dissimilar events beyond the reasonable control of Seller. For avoidance of doubt, to the extent that any such failure or delay causes Seller to reduce or suspend its production, deliveries or performance, the time for Seller's performance shall be automatically extended for so long as required for Seller to remove or otherwise overcome such failure or delay. Seller reserves the right to equitably allocate available Goods, materials and resources based on production capacity and customer needs, and Buyer shall cooperate with any such allocation.

#### **19. Changes**

Seller shall have no obligation to accept or otherwise implement any change to the Goods requested by Buyer, including changes to design, specifications, materials, packaging, testing or delivery requirements. To the extent requested changes are agreed upon by Seller, if any, the parties will negotiate in good faith appropriate adjustments to the time for performance, an equitable price adjustment for Seller's increased costs, and the amount of reimbursement by Buyer for the costs of any finished Goods or raw materials or supplies which become obsolete or any other costs or appropriate adjustments resulting from the requested changes. Buyer shall issue an updated order or release, or the parties shall otherwise memorialize such agreement in writing as an amendment to the Contract, before Seller is under any obligation to commence work on any such agreed-upon change. In addition, all costs and expenses associated with the implementation of any such requested change shall be paid by Buyer in advance unless otherwise agreed in writing by Seller. Seller reserves the right to request changes to the Goods to offer improvements as to cost, quality and/or safety, and the right to unilaterally implement changes required by applicable law or that do not materially affect quality or performance, with or without notice.

#### **20. Tooling; Service Parts**

All tooling, jigs, dies, gauges, fixtures, molds, patterns, supplies, materials, and other equipment and property used by Seller to develop, manufacture, store, transport or otherwise required to provision Goods (including any special tooling) shall remain Seller's property unless otherwise agreed in writing and fully paid by Buyer. Seller will manufacture and supply service parts for automotive Goods for a maximum



period of ten (10) years after end of current-model production as determined by Seller in its sole discretion. The parties shall agree to an adjustment in price that fully compensates Seller for all increased costs of manufacture, including as a result of decreased volume levels versus the last year of current-model production. Applicable lead-times, minimum order quantities, forecasts, and other incidental commercial requirements for service parts shall be as determined by Seller in its sole discretion from time to time. Notwithstanding the foregoing, Seller reserves the right to stop manufacturing and supplying service parts and require Buyer to make a one-time final purchase of its services requirements. Except as described herein or otherwise required by applicable law, Seller shall have no obligation to manufacture or supply service parts or any literature, materials or other information relating thereto.

### **21. Sales and Other Taxes**

Prices for Goods do not include sales, use, excise, VAT, or any other tariffs or taxes that may be imposed by any taxing authority arising as a result of or otherwise relating to the sale, performance, delivery or use of the Goods and for which Seller may be held responsible for collection or payment either on its own behalf or on behalf of Buyer (collectively, "Taxes"). The amount of any present or future Taxes is in addition to the price for the Goods and shall be paid by Buyer on demand without regard to the party assessed such Tax or where such Tax is imposed, or, in lieu thereof and as applicable, Buyer shall furnish Seller with a Tax exemption certificate acceptable to the appropriate taxing authority and Seller.

### **22. Compliance with Laws; Export**

Buyer shall fully comply with all applicable laws, including statutes, rules, regulations, conventions, orders, standards, guidelines and ordinances, and further including all applicable anti-corruption laws, as such acts may be amended from time to time. Each party acknowledges and agrees that the Goods may be subject to export controls imposed by foreign, federal, state, provincial or local government authority or quasi-government entity (collectively, "Governmental Entities"), including the U.S. government under various federal laws. Buyer is responsible for compliance with all such applicable laws, including U.S. export and international trade control laws, including the U.S. Department of Commerce's Export Administration Regulations (EAR), the U.S. Department of State's International Traffic in Arms Regulations (ITAR), and all economic and trade sanctions administered by the U.S. Department of

Treasury's Office of Foreign Assets Control (OFAC). Without limiting the foregoing, Buyer agrees that it will not export, re-export, or otherwise transfer any Goods or technical data provided in the U.S. in connection with the Contract to any country, person, entity or end-user subject to U.S. export restrictions. Without limiting any other rights or remedies available to Seller under the Contract or applicable law, Seller may refuse to enter into or perform any order or release, and may terminate any order or release if Seller determines, in its sole discretion, that entry into or performance of such order or release would violate any applicable law.

### **23. Government Sales**

If Buyer elects to resell Goods (including by incorporation into other goods or services) to any Governmental Entities, or to a prime contractor or other subcontractor selling to any such persons, Buyer does so solely at its own risk and no provisions required in any government contract or subcontract related thereto shall be a part of the Contract or otherwise imposed upon or binding upon Seller, and the Contract shall not be deemed an acceptance of any government provisions that may be included or referenced in any document issued to or by Buyer. Buyer shall be exclusively responsible for compliance with all applicable laws for such sales and agrees not to obligate Seller as a subcontractor or otherwise to such persons. Seller makes no representations, certifications or warranties whatsoever with respect to the ability of the Goods or any related pricing to satisfy any applicable acquisition or other requirements of such persons, including the Federal Acquisition Regulation, Defense Federal Acquisition Regulations, or any similar or dissimilar applicable laws.

### **24. Confidential Information**

All non-public, confidential or proprietary information of Seller ("confidential information"), including Seller's Intellectual Property Rights, specifications, samples, patterns, designs, plans, drawings, documents, data, hardware, software, material formulations and compositions, manufacturing processes and methods, business operations, customer or supplier lists, pricing, discounts or rebates, disclosed or otherwise made available by Seller or its agents to Buyer, and any representations, compilations, analysis, and summaries of the foregoing, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, or observed or otherwise learned, and whether or not marked, designated or otherwise identified as "confidential" in connection with the Contract shall be held by Buyer in strict confidence and used

solely for the purpose of doing business with Seller pursuant to the Contract, and may not be otherwise used, disclosed or copied by Buyer unless authorized in advance by Seller in writing. Buyer shall restrict access to and limit disclosure and use of Seller's confidential information to only those of Buyer's employees, directors, officers, managers, and advisors with a need to know the information to accomplish the purpose of the Contract, provided that they have been instructed and are bound in writing not to disclose the confidential information or use it for any purpose other than as permitted under the Contract; and provided further that Buyer shall at all times remain fully liable to Seller for any act or omission by such persons that would constitute a breach of the Contract if taken or not taken by Buyer. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller and promptly and securely destroy (with written certification thereof) any compositions, summaries or other embodiments thereof. Seller shall be entitled to injunctive relief for any violation of this section. The obligations of non-use and confidentiality set forth in this section do not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure as evidenced by Buyer's written records; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party as evidenced by Buyer's written records. The obligations contained in this section shall not prevent Buyer from disclosing Seller's confidential information to the extent required by applicable law or a valid order issued by a court or government agency of competent jurisdiction, determined on advice of competent counsel, provided that Buyer provides Seller prompt written notice of such requirement so as to permit Seller to seek an appropriate protective order to prevent disclosure of all or part of such confidential information and Buyer reasonably cooperates with Seller in obtaining such protective order, and provided further that Buyer will disclose only that portion of the confidential information that Buyer is legally required to disclose and will make reasonable efforts to obtain reliable assurances that confidential treatment will be accorded such confidential information. For the avoidance of doubt, Buyer's obligations under this section shall survive any expiration or termination of the Contract.

## **25. Assignment**

Buyer may not assign or delegate the Contract or any of Buyer's rights or obligations under the Contract, in part or in full, without Seller's prior written consent. Any attempted assignment or delegation by Buyer in contravention of this section shall be null and void. A

sale of a substantial portion of Buyer's assets or a material change in the direct or indirect ownership or control of Buyer (including control of more than twenty-five percent (25%) of Buyer's equity interests), any merger or consolidation directly or indirectly involving Buyer, or any other substantial change in Buyer's organization shall be deemed an assignment by Buyer ("Change of Control"). The Contract shall inure to the benefit of the parties' permitted successors and assigns.

## **26. Miscellaneous**

### **26.1 Advertising**

Buyer shall not, without first obtaining the written consent of Seller, in any manner advertise or publish the fact that Buyer has contracted to purchase from Seller Goods covered by the Contract, or use any trademarks or trade names of Seller in Buyer's advertising or promotional materials.

### **26.2 Electronic Communication**

Buyer will comply with the method of electronic communication specified by Seller, including requirements for electronic funds transfer, purchase order or release transmission, electronic signature, and communication. Buyer will also comply with any modification to Seller's specified method of electronic communication after the date of the Contract.

### **26.3 Relationship of the Parties**

Seller and Buyer are independent contractors, and nothing in the Contract makes either party the agent or legal representative of the other party for any purpose. Neither party has authority to assume or to create any obligation on behalf of the other party.

### **26.4 Waiver**

The failure of Seller to enforce any right or remedy provided in the Contract or by law on a particular occasion will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy.

### **26.5 Entire Agreement; Amendments**

The Contract constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior oral or written representations or agreements by the parties with respect to the subject matter of the Contract. No subsequent terms, conditions, understandings, or agreements purporting to modify the terms of the Contract will be binding

unless in writing and signed by both parties. The Contract (including these Terms) may only be amended or modified in writing signed by Seller; provided, however, that notwithstanding the foregoing, the parties hereby acknowledge and agree that Seller may modify these Terms from time to time by posting revisions to Seller's website at <https://exo-s.com/documentation-en> (or any successor website thereto) prior to the date when any such modification shall become effective, and such revised Terms shall apply to all purchase order revisions or releases issued on or after the effective date thereof, and Buyer further acknowledges and agrees it is responsible to review such Seller's website periodically. In the event of a conflict between these Terms and any other Sales Document made part of the Contract, the applicable Sales Document shall control.

#### 26.6 Severability

A finding that any provision of the Contract is invalid or unenforceable in any jurisdiction will not affect the validity or enforceability of any other provision of the Contract or the validity or enforceability of that provision in any other jurisdiction. In addition, if any term of the Contract is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order of rule, and the remaining provisions of this Contract shall remain in full force and effect.

#### 26.7 Interpretation

When used in these Terms, "including" means "including without limitation" and terms defined in the singular include the plural and vice versa. Headings are solely for the purpose of reference, are not part of the agreement of the parties, and shall not in any way affect the meaning or interpretation of the Contract.

#### 26.8 Notices

Any notice or other communication required or

permitted in the Contract must be in writing and will become effective on the date of actual receipt if the date of actual receipt is a business day or on the next business day if the date of actual receipt is not a business day.

#### 26.9 Governing Law

(a) The Contract shall be interpreted and enforced in accordance with the local, domestic laws of the Province of Quebec and of Canada, exclusive of the choice of law rules thereof. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Contract.

(b) Any claim or proceeding by a party shall be brought to a court located in Province of Québec, Canada. Buyer irrevocably waives and agrees not to raise any objection it might now or hereafter have to any such claim or proceeding in any such court, including any objection that the place where such court is located in an inconvenient forum or that there is any other claim or proceeding in any other place relating in whole or in part to the same subject matter.

#### 26.10 Jury Trial

Buyer and Seller acknowledge that the right to trial by jury is a constitutional one, but that it may be waived. Each of Buyer and Seller, after consulting (or having the opportunity to consult) with counsel of its choice, knowingly, voluntarily and intentionally waives any right to trial by jury in any action or other legal proceeding arising out of or relating to the contract or any other document pertaining to the contract including any purchase order or release.

#### 26.11 Contract Drafting

The parties hereto acknowledge and are satisfied that the foregoing be drawn up in the English language. *Les parties aux présentes reconnaissent et sont satisfaits que la présente entente soit rédigée en anglais.*