

**NEW BRIGHT INDUSTRIAL CO., LTD.**  
**Master Agreement on General and Special**  
**Terms and Conditions of Purchase**

**General Terms and Conditions**

**1. Terms and Conditions Applicable**

**1.1 Scope & Coverage** - (a) This Master Agreement sets forth the terms and conditions that will apply in addition to those contained in the New Bright purchase order placed with the Seller for purchase of the goods to the exclusion of all other terms and conditions which the Seller may purport to impose under any quotation, offer, Seller's terms and conditions of sale, delivery note, contract, agreement, document or other instrument, unless otherwise agreed to or designated by New Bright in writing. (b) This Master Agreement may, however, be superseded or supplemented at any time by any subsequent New Bright Master Agreement or other New Bright purchase order / contract / agreement / instrument. If there is any inconsistency between this Master Agreement and such purchase order / contract / agreement / instrument of New Bright, the latter shall prevail. (c) Subject to §1.1(a), (b) above and §22.2 below, any other terms, conditions or provisions contained in any other contract, agreement, document or instrument which are inconsistent with or in addition to this Master Agreement shall be ineffective, of no force or effect unless unequivocally confirmed by New Bright in writing.

**1.2 No Purchase Obligations** - This Master Agreement by itself does not oblige New Bright to enter into any purchase contract or agreement or place any order with the Seller.

**1.3 Acceptance of Terms** - This Master Agreement shall become operative upon signing or acceptance by the Seller of the New Bright purchase order, or be deemed accepted by the Seller's conduct via dispatch or delivery of the goods or performance by the Seller in fulfillment of any order, contract or agreement placed by New Bright, which shall be deemed conclusive evidence of the Seller's unconditional acceptance of all the terms and conditions contained in this Master Agreement.

**1.4 Duration of Agreement** - Once this Master Agreement becomes operative, it shall remain effective between the parties until conclusion of the relevant New Bright purchase order(s) or otherwise terminated by either party by giving to the other not less than one (1) month written notice, whichever shall be the earlier PROVIDED THAT this Master Agreement may not be terminated by the Seller (unless both parties agree in writing) whenever any existing New Bright purchase order(s) remain(s) outstanding or to be performed.

**2. The Goods**

**2.1 Goods Complying Standards** - The Seller shall ensure that all goods manufactured and/or supplied shall be produced, tested, stored, packed and delivered in accordance with industry standard, government legislation, rules and regulations, and conform to all other specifications and requirements as may be designated by New Bright and set out in this Master Agreement and/or New Bright purchase order(s).

**2.2 Sample Submission, etc.** - Before the Seller proceeds to mass production of the goods, pre-production sample, finish and packaging shall be first submitted to, tested and approved by New Bright. Trial production run on a smaller scale shall also be conducted at the Seller's own expense whenever reasonably requested by New Bright.

**2.3 Exclusive Supply** - Without prejudice to clause 14 hereof, where any goods are custom-made or specifically modified for New Bright, the Seller shall only make an exclusive supply of those custom-made or specifically modified goods to New Bright, without making available of the same goods to any other buyers, without the express written approval of New Bright.

**2.4 Alteration of Specifications** - New Bright may at any time alter any specifications or modify product requirements upon giving notice to that effect. The Seller is obliged to accept any such alteration/modification upon receiving such notice and no price adjustment may be made without New Bright's prior written approval.

**2.5 Defective Goods** - Any goods found at any time to be defective, sub-standard, not conforming to specification, requirement or sample, description or not of merchantable quality will be rejected at New Bright's discretion and in addition to any remedies New Bright may have against the Seller. New Bright may debit or withhold the price accordingly and claim for damages or require replacement with good quality and conforming goods, without prejudice to any other rights and remedies reserved in this Master Agreement, New Bright purchase order(s) and/or afforded by law. In case of any dispute as to whether or not goods were found to be defective, substandard, not conforming to specification, requirement or sample or description or not of merchantable quality, the opinion of New Bright shall be final and conclusive.

**3. Packing, Packaging & Shipment**

**3.1 Testing of Goods** - All the goods shall be properly tested and inspected by the Seller in accordance with industry practice and/or New Bright's specifications / requirements before delivery or shipment. New Bright shall not be treated to have accepted the goods unless and until it has confirmed in writing to that effect.

**3.2 Packing of Goods** - All the goods shall be properly, sufficiently and safely packed, being suitable for and capable of enduring the kind of voyage, transportation and handling involved, with the goods properly secured and preserved during transit and on arrival, being able to withstand transportation risks and hazards and resistant to moisture, corrosion, shock, impact, abrasion and free from contamination.

**3.3 Packaging & Labeling** - All the goods shall be properly packaged, marked and labeled in accordance with New Bright's specifications / requirements and in full compliance with all applicable laws, rules and regulations.

**3.4 Certificates & Documents** - Shipment/Delivery of the goods shall be accompanied by all relevant certificates and

documentation as may be prescribed by New Bright and/or in accordance with industry practice, and whenever applicable shall include (but not limited to) production of (i) certificate of origin, (ii) certificate of quality and quantity / ex-factory inspection report/certificate, (iii) invoice, (iv) shipping documents (for sea carriage - e.g. bill of lading, packing list) / (for air carriage - air waybills), (v) delivery note/release order, (vi) export/import licence/permit, (vii) policy of insurance, (viii) statement of no wood packing material/pallets or certificate of treatment of wood packing material/pallets, (ix) document(s) for customs clearance.

**3.5 Shipment** - (a) Time specified for shipment/delivery of the goods shall be of the essence of all New Bright purchase unless otherwise varied or waived by New Bright in writing. (b) Proper shipment advice shall be given by the Seller to New Bright including but not limited to (i) the date when the vessel sets sail for the destination, (ii) the expected date of arrival at its destination, (iii) name of vessel, (iv) description of the nature, value and quantity of the goods loaded on board. (c) Unless otherwise specified in New Bright purchase order(s), international sea carriage of the goods will normally be on CIF terms subject to the latest version of INCOTERMS of the International Chamber of Commerce.

#### **4. Delivery**

**4.1 No Early Delivery** - Save with the express written permission of New Bright, the Seller shall not deliver the goods well in advance before any designated time for making delivery causing New Bright to incur unnecessary storage charges or other expenses for early/advance delivery, otherwise the Seller shall bear and pay all related incidental charges/expenses or New Bright is entitled to refuse acceptance of the goods until the designated time for making delivery.

**4.2 Late/Non-Delivery** - (a) Should the Seller anticipate or foresee any delay or difficulty in making delivery of the goods, prompt written notice shall be given to New Bright. Failure to give prompt notice shall entitle New Bright to a late charge at a rate of 0.2% per day of the full contract value of the goods up to a maximum of 10% of the full contract value, in addition to any other rights and damages that New Bright may be entitled. (b) Any late delivery or non-delivery shall entitle New Bright to damages and right to cancel the purchase order(s) in question without owing any liability to the Seller, and without prejudice to all and any other rights and remedies afforded to New Bright whether under this Master Agreement, relevant purchase order(s) and/or by law. (c) For late delivery, New Bright shall be perfectly entitled to refuse to take delivery of the goods despite their subsequent arrival after the scheduled delivery date(s).

**4.3 Delivery by Installments, etc.** - (a) Unless otherwise agreed by New Bright in writing, New Bright shall not be obliged to accept delivery by installments or partial delivery. (b) If New Bright accepts delivery by installments or partial delivery, late delivery of any one installment or any part of the goods shall, without prejudice to any other rights and remedies available to New Bright, entitle New Bright to immediately terminate the whole or any unfulfilled part of the applicable contract/agreement/order and to refuse to take delivery of the remaining installments or the remainder of the goods. (c) Acceptance by New Bright of any late installment delivery or late partial delivery does not relieve the Seller from the obligation to make punctual delivery of the remaining installments or the remainder of the goods in accordance with New Bright's instructions or the applicable contract / agreement / order.

#### **5. Representations & Warranties**

**5.1** The Seller represents and warrants to New Bright that all goods supplied shall-

(a) Merchantable Quality, Fitness, etc. - (i) be of merchantable quality, (ii) be fit for intended purpose, (iii) be free from defects in design, workmanship and/or materials, (iv) be free from adulteration/contamination, (v) be delivered in good and undamaged condition, (vi) correspond with sample and description, (vii) conform to all drawings, specifications, materials requirements, instructions by and other requirements of New Bright, (viii) not be misbranded, falsely labeled/described or falsely advertised / invoiced;

(b) Compliance with Laws, etc. - comply with all applicable laws, rules, regulations, codes, and industry practice in relation to the manufacture, supply, testing, packing, packaging, labeling, export, import, transport, handling, trade description, storage, health and safety, and other relevant aspects of the goods;

(c) No Infringement of Rights - not infringe the rights of any third party including but not limited to copyright, trademark, trade name, trade dress, patent, industrial design, confidential information, trade secret, intellectual property or proprietary rights nor commit any breach of contract/trust;

(d) No Adverse Title - not be subject to any adverse charge/title or lien, and the Seller shall have a full, complete and clean unencumbered title in the goods to pass to New Bright.

**5.2 Accurate Statements/Information** - The Seller represents and warrants to New Bright that all statements, information and particulars made or furnished to New Bright are true, accurate and complete to its best knowledge and genuine belief without any element of misstatement, mis-description, misrepresentation or fraud.

**5.3 Void Disclaimer, etc.** - Any purported limitation, restriction, disclaimer or exclusion of any representations, warranties, rights, remedies or liabilities on the part of the Seller to the detriment of New Bright shall be null, void and ineffective without written consent of New Bright.

#### **6. Price & Payment**

**6.1 Competitive Price Guarantee, etc.** - (a) The Seller warrants, represents and guarantees that the price and the terms offered to New Bright are the best competitive price and the most favorable terms available at the time when the order(s) is/are placed with the Seller. (b) If it shall be discovered at a later stage that goods of the same kind or nature and of comparable quantity are sold by the Seller at a lower price or on more favorable terms to other buyers or third parties, New Bright shall be entitled to recover from the Seller its loss and damage occasioned by a breach of the Seller's warranty, representation and/or guarantee. (c) If New Bright has not yet made payment for the goods, New Bright shall be entitled to pay at such discovered lower price in full accord and satisfaction of its payment obligation under the relevant order(s); and if price has already been paid, the Seller shall on demand refund the excess in price/over-payment to New Bright, otherwise New Bright shall be entitled to charge the Seller interest at the then prevailing prime rate quoted by the Hongkong and Shanghai Banking Corporation Limited from the date when payment was first made by New Bright to the

Seller until repayment by the Seller in full. Any recovery cost and expense in this regard shall also be borne by the Seller.

**6.2 No Assignment** - Subject to the consent of New Bright, (a) the Seller shall not assign or factor its account without giving prior written notice to New Bright; (b) any assignment / factoring confers no other rights on the assignee or factor apart from the right to payment validly owed by New Bright to the Seller.

**6.3 What Payment Covers** - Unless otherwise specified in the New Bright purchase order(s), payment includes packaging / packing costs, delivery / transportation costs, handling charges, testing / inspection fees, training costs (if applicable) and such other incidental and customary charges to be borne by the Seller.

**6.4 Deduction & Set-Off** - New Bright may deduct out of or set off against any amount payable to the Seller all present and future indebtedness owing by the Seller to New Bright under any order, contract or agreement as well as any loss or damage or any claim which New Bright may have against the Seller in respect of any purchase order or contract or agreement.

**6.5 Mode of Payment** - (a) Where payment is to be made on delivery of the goods, price for the goods will be paid 30 days after (i) delivery, or (ii) receipt of the Seller's invoice, or (iii) receipt of the monthly statement, whichever is the later. (b) Where payment is to be made on letters of credit, payment will be effected upon presentation of the relevant documentation and fulfillment of all pre-requisite terms and conditions.

**6.6 Value Added Tax ("VAT")** - Where the Seller is an entity whose domicile or place of business is in the People's Republic of China ("PRC"), the Seller shall on or before delivery of the goods produce to New Bright the relevant invoice which includes PRC VAT in the price levied.

## **7. Audit/Inspection**

**7.1 Factory Audit** - (a) New Bright shall be entitled at any time and upon prior appointment to audit and inspect the Seller's production facilities, undertakings, warehouses, office premises, samples, documents, records, materials and goods to evaluate the Seller's production capacity, efficiency, quality control, flow process, production management and other relevant matters as New Bright may deem fit for the purpose of ensuring compliance by the Seller of any applicable legislation, standard, code, requirement, instruction, and/or specification in relation to the goods. (b) The Seller shall fully cooperate with New Bright and/or the appointed auditor/inspector in every such audit/inspection. (c) Any such audit/inspection shall not absolve the Seller from continuing to observe at all times of all the terms and conditions, standards, production and product requirements and applicable legislation nor imply acceptance of the goods by New Bright.

**7.2 Quality Assurance** - (a) The Seller shall run and maintain adequate quality assurance program to ensure quality, safety, durability, consistency, reliability and conformity of the goods, and shall also comply the quality system requirements (if any) as may be stipulated in New Bright purchase order or rider thereto. (b) The Seller shall on request make available samples, testing and control records to New Bright for evaluation, audit/inspection purpose. (c) New Bright shall be entitled to require submission by and at the Seller's own cost all relevant test reports in respect of the ordered goods to be conducted by approved independent accredited laboratories / agencies.

**7.3 No Waiver** - New Bright shall not be obliged to inspect the goods and/or evaluate any quality assurance program of the Seller. Any such failure or omission on the part of New Bright shall not be deemed a waiver of any rights of New Bright whether under this Master Agreement, any relevant New Bright purchase order(s), contract, agreement or other instruments, nor shall there be any deemed acceptance of the goods.

## **8. Risks & Title**

**8.1 Risks** - (a) Unless otherwise stated in the relevant New Bright purchase order, all risks of damage to or loss of the goods shall be borne by the Seller until the goods have been safely delivered to New Bright or any designated person / company at the designated location as specified in the relevant New Bright purchase order. (b) New Bright will not, however, accept the risk in any goods delivered in excess of the quantity ordered.

**8.2 Title** - (a) Unless otherwise stated in the relevant New Bright purchase order, title in the goods shall pass to New Bright at the time when the goods are delivered to New Bright (or its associated company) irrespective whether or not the price has been paid in full. (b) Where goods of the Seller are incorporated into New Bright products, title in the goods shall deem to have been passed to New Bright on incorporation if title has not previously been so passed.

## **9. Acceptance of Goods**

**9.1 Receipt Note, etc.** - Any receipt note issued by or delivery note/order acknowledged/taken by New Bright for any goods delivered shall not be deemed acceptance of the condition, nature or quality of the goods.

**9.2 No Deemed Acceptance** - New Bright shall not be taken to have accepted all or any part of the goods before those goods have been actually inspected and/or tested by New Bright and are found to be in conformity to the specifications and such other requirements as may be specified in the relevant New Bright purchase order, contract or agreement. No delay on the part of New Bright to inspect or test the goods will be deemed acceptance of those goods.

**9.3 Defects Subsequently Discovered** - Despite that the goods may have been accepted (or deemed to be accepted) by New Bright, should any goods be found not to be in conformity to the Seller's warranties, representations, descriptions or not in fulfillment of the relevant New Bright purchase order or are otherwise found to be defective or inferior in quality, New Bright shall be entitled to reject/return the goods without prejudice to any rights or remedies New Bright may have against the Seller.

## **10. Insurance**

**10.1 Product Liability**- Unless otherwise specified by New Bright, the Seller shall at its own cost and expense effect and maintain adequate product liability insurance to cover the Seller's liability / obligation as a manufacturer / supplier against property damage and bodily injury (including death) caused/occasioned by the goods and to indemnify New Bright against all and any possible actions, claims or demands from third parties on using such goods.

**10.2 Voyage insurance cover** - Unless otherwise specified in New Bright purchase order, the Seller shall effect and maintain adequate insurance cover for all risks against loss of or damage to the goods during voyage (including both sea and inland transport) and in transit before their safe arrival at the destination.

## **11. Indemnification by the Seller**

**11.1 Full Indemnity** - The Seller shall defend and hold harmless and fully indemnify New Bright, its associates, affiliates, employees, directors, officers, agents and representatives and keep them fully indemnified from and against all and any actions, claims, demands or proceedings for all and any loss (whether direct or indirect, physical or economic) or damage (whether physical, monetary or goodwill), costs, and/or expenses resulting from or incidental to-

- (a) the Seller's performance of any New Bright purchase order, contract or agreement;
- (b) any use or application of the goods by New Bright, its customers or end-users on incorporation into New Bright's products, when the whole or any part of the goods turned out to be defective or of inferior quality or otherwise not meeting any warranties, representations, descriptions, requirements or specifications;
- (c) any latent or patent defects in the goods, whether before and after acceptance by New Bright;
- (d) any accidents, bodily injuries, death or damage to property arising out of or in connection with any use, handling or application of any defective, inferior or non-conforming goods;
- (e) any infringement of patent, copyright, trademark, industrial design, or other intellectual property or proprietary rights, or any breach of confidence in connection with the use, handling or application of the goods, or any related materials, documents, samples or instruments;
- (f) any violation of laws, rules, regulations, codes, industry standards, or safety and health requirements in relation to the goods;
- (g) any breach of warranties, representations or descriptions prescribed in this Master Agreement, any relevant New Bright purchase order, contract or agreement.

## **12. No Assignment/Sub-contracting Out**

**12.1 Personal Obligations** - (a) The Seller shall not assign or sub-contract out all or any part of purchase order, contract or agreement, or any process or stage of manufacture, or any benefits or obligations of the Seller without the prior written consent of New Bright. (b) New Bright shall be at liberty to impose such terms and conditions for giving any such consent or to withhold consent without assigning any reason or owing any liability to the Seller.

## **13. Confidentiality**

**13.1 No Information Disclosed** - The Seller shall at all times keep in strict confidence all and any information, data, records, files, reports, drawings, specifications, samples and materials as furnished by New Bright to the Seller without disclosing the same or any of them to any person or party without the prior written consent of New Bright.

**13.2 Trade Secrets, etc.** - The Seller shall at all times not divulge or disclose to anyone or party any information relating to New Bright, its business, customers, trade secrets, know-how, business / confidential / proprietary / technical information, including but not limited to the terms in any New Bright purchase order, contract or agreement.

**13.3 No Solicited Promotion** - The Seller shall not without the prior written consent of New Bright reveal or publish the name, logo or identity of New Bright in any of its promotion campaign, advertising scheme or marketing activity.

**13.4 Private Label Program** - (a) Where any goods are specifically or tailor/custom- made by the Seller for New Bright and which are intended to be ultimately distributed, sold or marketed as New Bright brand products ("Private Label Items"), the Seller shall not without the prior written consent of New Bright make known the Seller's own identity/name or promote/publish the Seller's brand on those Private Label Items. (b) The Seller shall not use, sell, market, distribute, dispose, alter or modify any Private Label Items for any other purpose (whether for self interest or third party gain or otherwise) without the prior written consent of New Bright.

## **14. Intellectual Property Rights**

**14.1 Intellectual Property Right Ownership** - (a) All information, data, drawings, works, designs, labels, prototypes, samples, materials, plans, documents and/or specifications furnished by New Bright to the Seller ("NBIP Information") shall remain New Bright's property. (b) Any copyright, patent, design right and all other intellectual/proprietary right in those NBIP Information shall vest in New Bright. (c) All such NBIP Information shall not be divulged or disclosed by the Seller to any third party without New Bright's prior written consent. (d) All such NBIP Information shall only be used for fulfillment of the relevant New Bright purchase order, contract or agreement but not otherwise in the absence of any prior written consent of New Bright. (e) All such NBIP Information shall be returned forthwith by the Seller to New Bright on demand.

**14.2 Assignment of Rights** - For any Private Label Items or other special/tailor/custom-made goods produced or supplied by the Seller for New Bright, the Seller shall, upon request and subject to payment of the price for such Private Label Items or such goods by New Bright, do such things and execute such deed or instrument at no additional cost (or nominal charges only) as New Bright may require to assign or transfer all and any intellectual property / proprietary rights in such Private Label Items or in such goods or in any incidental works resulting in such Private Label Items or such goods to New Bright.

## **15. Rights & Remedies of New Bright**

**15.1 Early Delivery** - See §4.1 above.

**15.2 Late/Non-Delivery** - See §4.2 above.

**15.3 Defective/Non-Conforming Goods** - In addition to the rights afforded by §11.1(b), (c), (d), (f), (g) above-

- (a) New Bright shall be entitled to reject (or refuse acceptance of) all and any goods that are not in conformity to the Seller's warranties, representations, descriptions of the goods, or goods that are otherwise defective or inferior in quality (and in which event and for the avoidance of doubt, any acceptance deemed to have been given by New

Bright as a matter of law or pursuant to the contract shall be conclusively treated as absolutely revoked and invalidated). Without prejudice to any other rights and remedies available to New Bright whether under §2.5 above, this Master Agreement, New Bright purchase order, contract or agreement or at law, the rejected goods will at New Bright's unfettered discretion either be-

(i) returned to the Seller together with deduction/set off in the price or replacement with goods of good quality that conform in all respects to New Bright's order, contract or agreement at no additional cost; or

(ii) disposed of in accordance with New Bright's policy;

and in either case, all incidental and related expenses such as handling/repacking charges, transportation expenses and storage fees shall be borne and paid by the Seller.

(b) Payment for the price of any goods ordered does not prevent or limit the right of New Bright to reject (or refuse acceptance of) and return the goods (and in which event and for the avoidance of doubt, any acceptance deemed to have been given by New Bright as a matter of law or pursuant to the contract shall be conclusively treated as absolutely revoked and invalidated).

(c) New Bright's right to reject and return any defective or non-conforming goods shall apply notwithstanding those goods have been incorporated into and become part of New Bright products so long as any non-acceptable features or sub-standard / inferior qualities are attributed to the Seller's defective / non-conforming goods.

(d) Where any goods are returned by New Bright to the Seller, title (but not the risk) in those goods shall remain with New Bright until all sums due by the Seller under the relevant New Bright purchase order, this Master Agreement and such other contract or agreement have been fully settled by the Seller. For the avoidance of doubt, where goods are returned by New Bright to the Seller, risk of loss and damage shall be assumed by the Seller upon receipt of the goods by the Seller or through its authorized agent.

**15.4 Goods Recall, etc.** - For Private Label Items or goods sold/distributed/supplied by the Seller to New Bright that are intended to be used in their own right or are incorporated into and form part of New Bright products, where any of them are required to be recalled / seized / destroyed / detained-

(a) by any government or competent authority;

(b) in the reasonable opinion of and determination in good faith by New Bright for public health, safety, welfare or any other good reason;

(c) for ensuring compliance with laws, rules, regulations, codes, industry standards, this Master Agreement, any New Bright purchase order, contract or agreement;

(d) for safeguarding any third party's rights;

(e) for any other cause;

the Seller shall bear and pay all costs and expenses arising out of and in connection with such recall, seizure, destruction and/or detention and fully indemnify and compensate New Bright for all losses and damages suffered including but not limited to loss of profits/revenues, goodwill and damages payable to New Bright customers or end-users.

**15.5 Infringement of Intellectual Property Rights** - In addition to the rights afforded by §11.1(e) above-

(a) the Seller shall compensate New Bright for all and any losses (including but not limited to loss of profits/revenue) and damages (including but not limited to damage to goodwill) suffered by New Bright;

(b) New Bright shall be entitled to-

(i) cancel the relevant order, contract or agreement at no compensation to the Seller;

(ii) sort, and/or rework goods at the expense (including transportation costs) of the Seller to keep New Bright and/or New Bright customers' production lines free from interruption; and

(iii) all and any equitable relief and remedies including but not limited to injunction and specific performance as to refrain the Seller or any party acting/working for the Seller from committing any further or continued infringement of any third party rights, intellectual property / proprietary rights.

**15.6 Non-compliance with Laws, etc.** - In addition to the rights afforded by §11.1(f) above, New Bright shall be entitled to so much of the remedies mentioned in §15.5(a), (b) above (applying *mutatis mutandis*) in relation to all and any goods of the Seller that do not conform to or are in violation of any applicable laws, rules, regulations, codes, industry standards, safety or health requirements.

**15.7 Breach of Warranties, etc.** - In addition to the rights afforded by §11.1(g) above, New Bright shall be entitled to so much of the remedies mentioned in §15.5(a), (b) above (applying *mutatis mutandis*) in relation to all and any goods of the Seller that are in breach of any warranty, representation, description or guarantee.

**15.8 Saving of Rights** - In addition to all the rights and remedies mentioned in this §15, New Bright shall be entitled to all other rights, remedies and relief under this Master Agreement, any relevant New Bright purchase order, contract or agreement, as well as those afforded by law or in equity, which the Seller fully acknowledged and agreed without demur.

## **16. Force Majeure**

**16.1 Force Majeure Events** - In the event of any delay, non-performance or incomplete performance of any New Bright purchase order, contract or agreement on the part of the Seller as a result of any acts of god, civil commotion, riots, war, fires, floods, government intervention or other unforeseeable causes beyond the Seller's control or reasonable contemplation (labor strikes, lock out and other labor disputes relating to the workforce of the Seller, its contractors or suppliers all excepted/excluded), the Seller may subject to New Bright's approval and the provision in §16.2 below postpone delivery or performance for a period not exceeding forty-five (45) days without being liable to New Bright unless provided otherwise in New Bright purchase order, after which period New Bright may depend on the circumstances either (i) afford the Seller with a further extension of time; or (ii) cancel the order, contract or agreement (as the case may be), and in the latter event New Bright shall be entitled to a full refund of all price paid at no interest or other compensation and neither party shall have any claim against the other of them.

**16.2 Exigency Events** - Upon happening of any of the foregoing force majeure events at a time when New Bright requires

urgent / prompt / punctual / complete delivery or performance within the 45-day grace period, New Bright may- (a) disapprove any allowable grace period, (b) obtain the goods from other sources or elsewhere, (c) cancel the whole or any part of the order, contract or agreement, (d) recover all and any price paid at no compensation to the Seller, and (e) owe no liability to the Seller.

#### **17. No Waiver**

**17.1 No Acquiescence or Waiver** - No delay, forbearance or failure on the part of New Bright at any time to take any relevant action, or to enforce any provisions, rights or remedies shall be deemed acquiescence on its part of any Seller's act, omission default or breach committed nor shall it be construed as a waiver of any such action, provisions, rights or remedies whatsoever.

#### **18. Notice**

**18.1 Notice** - Any notice or communication required or permitted in this Master Agreement, any New Bright purchase order, contract or agreement shall be in writing and shall be sufficiently given if delivered- (a) personally, (b) by prepaid post, registered mail or courier service, or (c) by facsimile, electronic-mail or such other means of electronic communication with confirmed dispatch/receipt report; at the address given in this Master Agreement, the applicable order, contract or agreement, or in the absence of which, at the parties' last known business address in Hong Kong; and any notice or communication sent by mode (a) and/or (c) shall be deemed given and received on the day of personal delivery and/or transmission; and any notice or communication sent by mode (b) shall be deemed received in the ordinary course of post/mail, or on the fifth business day following the date of courier dispatch.

#### **19. Relationship of the Parties**

**19.1 No Agency Relationship** - It is declared that both the Seller and New Bright are independent contracting parties and nothing in this Master Agreement, any New Bright purchase order, contract or agreement shall make either party the agent or representative of the other of them nor does it authorize either party to enter into any contract or agreement, or create/assume any obligations for and on behalf of the other of them.

#### **20. Severance of Void Provisions**

**20.1 Void/Invalid Provisions** - Any term, condition or provision contained in this Master Agreement, any New Bright purchase order, contract or agreement which is or may be void, invalid or unenforceable shall be deemed severed from and shall not affect the remaining terms, conditions and provisions as if that void / invalid / unenforceable term / condition / provision has been excluded from this Master Agreement, order, contract (or agreement) concerned *ab initio*.

**20.2 Headings** - All headings and sub-headings in this Master Agreement are for ease of reference only and shall not affect the construction of any term, condition or provision.

#### **21. Governing Law & Jurisdiction**

**21.1 Governing Law, etc.** - This Master Agreement, New Bright purchase order, contract or agreement shall, unless otherwise specified, be governed by and construed in accordance with the laws of Hong Kong and both the Seller and New Bright agreed to submit themselves to the non-exclusive jurisdiction of Hong Kong courts in resolving any disputes or matters between them.

### **Special Terms and Conditions**

#### **22. Special Terms**

**22.1 Application** - For the kind of goods identified in the following Schedules A, B, C, D, E, F, G, H and I, the special terms and conditions contained in the relevant Schedule shall apply, in addition to the foregoing general terms and conditions, to the kind of goods concerned in conjunction with the relevant New Bright purchase order, contract or agreement.

**22.2 Conciliation of Terms** - Unless otherwise specified in writing by New Bright to the contrary, (a) in case of any discrepancy or inconsistency between the general terms and conditions contained in this Master Agreement with the special terms and conditions contained in the relevant Schedule, the special terms shall prevail; (b) in case of any discrepancy or inconsistency between the special terms and conditions contained in the relevant Schedule and the terms and conditions contained in any relevant New Bright purchase order, contract or agreement, the latter shall prevail; (c) in case of any discrepancy or inconsistency between the general terms and conditions contained in this Master Agreement with the terms and conditions contained in any relevant New Bright purchase order, contract or agreement, the latter shall prevail.

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#### **Schedule A**

#### **Printer Box/Paper Goods/Packaging Materials**

A1 **Warranty of Safety** - Without prejudice to any warranty of health and safety as contained in this Master Agreement in relation to the goods, the Seller further warrants that all and any materials used in the supply or manufacture of the subject printer box, paper goods and/or packaging materials, including but not limited to paper, foils, printing ink, paints, varnish, lacquers, thinners, coloured materials and similar or such other items, whether in solid, liquid or other form, shall fully comply with both ASTM F963-07 and EN71 Part 3 toxic element content limitation requirements.

A2 **Restriction on Heavy Metal Contents** - Any materials, parts, components or goods supplied by the Supplier shall also comply with (a) the Coalition of Northeastern Governors (CONEG) developed Model Toxics Packaging Legislation if

used in the US or in the territories where the U.S. standards are to be applicable, which governs the reductions in the amount of certain heavy metals (specifically, mercury, lead, cadmium and hexavalent chromium) in packaging, (b) the heavy metals requirements of the European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste if used in the European Union ("EU") or in the territories where the EU standards are to be applicable.

## Schedule B

### Part 1

#### Nickel-Cadmium ("Ni-Cd") / Nickel Metal Hydride ("NiMH") 4.8V / 6.0V / 7.2V / 9.6V / 19.2V Rechargeable Battery Pack

- B1 Plastic Casing - Where the Seller is required to bond and weld its battery goods inside a plastic casing to be supplied by New Bright, the Seller shall-
- (a) Casing Supply - for the purpose of performing the relevant New Bright purchase order, contract or agreement, obtain exclusively from New Bright such plastic casing at a cost to be set by New Bright and borne by the Seller;
  - (b) Further Supply - The Seller may obtain a further supply of such plastic casing (not more than 2% of the total quantity of the goods covered by the relevant New Bright purchase order, contract or agreement unless otherwise specified) at the same price as a reserve to replace any defective, damaged or worn out plastic casing.
- B2 Thermal Cut-Offs Fuse - Where the Seller is required to build-in thermal cut-offs fuse into its battery goods, the Seller shall-
- (a) Fuse Supply - for the purpose of performing the relevant New Bright purchase order, contract or agreement, obtain exclusively from New Bright such thermal cut-offs fuse at a cost to be set by New Bright and borne by the Seller;
  - (b) Further Supply - The Seller may obtain a further supply of such thermal cut-offs fuse (not more than 2% of the total quantity of the goods covered by the relevant New Bright purchase order, contract or agreement) at the same price as a reserve to replace any defective, damaged or worn out thermal cut-offs fuse.
- B3 No Improper Use - (a) Any plastic casing or thermal cut-offs fuse obtained by the Seller from New Bright shall only be used in fulfillment of the relevant New Bright purchase order, contract or agreement and not for any other unrelated purpose. (b) If, in the genuine belief and determination in good faith by New Bright, any further supply of plastic casing or thermal cut-offs fuse will be used for resale or any purpose other than that related to the relevant New Bright purchase order, contract or agreement, New Bright may at its sole unfettered discretion-
- (i) increase the unit cost of plastic casing or thermal cut-offs fuse concerned;
  - (ii) seek from the Seller for an account of profits so made; and/or
  - (iii) seek for an injunction or such other appropriate equitable relief so as to refrain the Seller from making any unauthorized or improper use or application of the plastic casing or thermal cut-offs fuse;
- and in all cases the Seller is bound to take the plastic casing (and/or thermal cut-offs fuse) at the new unit cost and/or to account for the profits so made and/or subject to such equitable relief as sought by New Bright without demur.
- B4 No Sourcing Elsewhere - Where any plastic casing and/or thermal cut-offs fuse is/are required to be obtained from New Bright, the Seller shall not obtain the same from any other sources or suppliers without the prior written consent of New Bright.
- B5 Safety of Cell - Each of the Ni-Cd / NiMH AA size single cell in the battery goods shall comply with UL2054 safety standard and be accompanied by the relevant certificate.
- B6 Pre-Production Sample - The Seller shall, unless otherwise specified, submit at its own costs no less than 12 pieces of pre-production samples of the battery goods to New Bright for approval on each and every occasion before proceeding to mass production and free from defects.
- B7 Produced Goods - The produced goods shall conform in all respects to the approved samples and specifications.
- B8 Inspection Report - The Seller shall submit to New Bright ex-factory inspection report / certificate of the goods on each and every shipment/delivery.
- B9 Inspection Standard - In accordance with New Bright's quality assurance programme, the goods received will be inspected according to U.S. Military Standard 105D General Inspection Level II or the equivalent. Acceptance Quality Level is set for 0.65 for major defect and 4.0 for minor defect. All sub-standard goods will be processed in accordance with New Bright's rejection policy.
- B10 No Mandatory Inspection - New Bright shall not be obliged to inspect the goods. The Seller warrants to compensate New Bright without demur for all losses and damages arising out of or in connection with any defects of the Seller's goods.
- B11 Exclusive Supply - The Seller (and its associates/affiliates) warrants and confirms to New Bright that the goods covered by New Bright's orders sold and supplied to New Bright shall be exclusive to New Bright and no goods as covered in New Bright's order or similar thereto (including any variance thereof) may be produced and/or supplied or sold by the Seller to any other party without the written consent of New Bright. The Seller further undertakes to indemnify any loss and damage which New Bright may suffer (whether directly or indirectly) in addition to any other legal or equitable remedy which New Bright may have against the Seller for any breach or non-fulfillment of this warranty.
- B12 Order Cancellation/Reduction - Without prejudice to any rights of New Bright under this Master Agreement, New Bright purchase order, contract or agreement or at law or in equity,
- (a) New Bright shall have full and unfettered right to cancel the relevant New Bright purchase order, contract or agreement without incurring any liability to the Seller if-
    - (i) the pre-production sample or the produced goods do not meet New Bright's approval, specification or requirement, or

- (ii) the produced goods are not delivered within the prescribed time or do not match New Bright's own production lead-time;
  - (iii) there is any late delivery or non-delivery of the whole or a substantial part of the goods; or
  - (iv) there is any material breach or default committed by the Seller.
- (b) If New Bright's order with its own customers / clients is cancelled / reduced in size, New Bright shall be at liberty to cancel / reduce the size of its order, contract or agreement with the Seller PROVIDED THAT New Bright shall only compensate the Seller with all out-of-pocket costs actually and properly incurred and expended by the Seller on direct labor, materials and overheads for the ordered / contract goods since order acceptance up to the time of cancellation / reduction in size of the Seller's order as full, final and complete compensation.
- B13 Patent/Know-how - If the Seller is required to possess any valid licence or permit before the Seller is in a position to sell, supply or manufacture the Ni-Cd or NiMH battery goods, the Seller warrants to have such a licence or permit and will only sell, supply and manufacture within the scope of such licence or permit; and New Bright shall be at liberty to re-sell such battery goods in New Bright's own brand name as Private Label Items without infringing any third party rights (whether intellectual property rights or proprietary rights, technology, know-how or otherwise) nor being susceptible to payment of any royalty.
- B14 What Unit Price Covers - Without prejudice to §6.3 above, where any battery goods shall include plastic casing and/or thermal cut-offs fuse, then unless otherwise specified in writing by New Bright to the contrary, the unit price quoted in any New Bright purchase order, contract or agreement for such battery goods shall include the costs for the plastic casing and/or thermal cut-offs fuse as well as all royalty fees payable to any proprietor(s) of the relevant battery technology/know-how to the intent that the unit price shall represent an all-in price without any additional cost or charge to New Bright.

## Part 2

### Ni-Cd / NiMH / Alkaline / Lithium / A, AA, AAA, C, D – size Batteries

- B15 US Regulation on Mercury-Containing Batteries – For battery goods to be used in the US or in territories where the US standards are to be applicable, the use of Mercury in batteries and disposal of used nickel cadmium (Ni-Cd) batteries shall follow the US Public Law 104-142 (the Mercury-Containing and Rechargeable Battery Management Act).
- B16 European Directives – For battery goods intended to be marketed, sold or distributed to any member states of the European Union, such battery goods must pass the European Parliament / Council Directive 2006/66/EC, which specify the permissible heavy metal (mercury, cadmium and lead content) limits, the symbol that such batteries should carry, and other related battery requirements. The Seller shall submit relevant certificate of compliance issued by independent accredited laboratory as approved by New Bright, which certificate should have been issued for not more than one (1) year in duration.
- B17 Packaging Design – The packaging design and arrangements shall follow precisely the specification as set forth in the relevant New Bright purchase order and shall not be altered in any way without the prior written consent of New Bright.
- B18 Inclusion of Terms - §§B7, B8, B9, B10, B12, and B13 above shall apply *mutatis mutandis* to those battery goods that fall within this Part II of Schedule B.
- B19 Additional Terms – Other applicable terms and conditions are either set forth or are incorporated by reference in the relevant New Bright purchase order.

## Schedule C

### Chip-on-Board / Dual-in-Line / Small Outline Package Integrated Circuits (“IC”) for radio control application

- C1 Demo Prototype - The goods demo shall be made available for New Bright's approval on or before the date specified in the relevant New Bright purchase order, contract or agreement. The demo shall conform in all respects to the requirements, features, functions, configurations, characteristics and specification as are more particularly set forth in that order, contract or agreement.
- C2 Engineering Sample - The Seller shall make available not less than 100 pieces of the engineering sample of the goods for New Bright's approval within 35 days from the date of approval of the goods demo (unless otherwise stated in the relevant New Bright purchase order, contract or agreement to the contrary).
- C3 Finished Product - The Seller shall proceed to mass production of the goods in their final product/finish form within 10 days after New Bright's approval of the engineering sample (unless otherwise stated in the relevant New Bright purchase order, contract or agreement to the contrary).
- C4 Masking Charge - All masking charge payable by New Bright to the Seller shall be refundable if the cumulative quantity of the goods ordered within the time specified in the relevant New Bright purchase order, contract or agreement reaches the “minimum refund quantity” as stipulated by the Seller.
- C5 Markings of IC - (a) All the goods shall be printed with New Bright's own markings and only identify New Bright mark, logo, product information, and intellectual property right notice without revealing the Seller's name, logo, identity or brand awareness. (b) Without prejudice to §14 above, whenever any artwork of the markings (“**IC Marking Artwork**”) will be provided by New Bright for marking any intellectual property right notice on the goods, the Seller shall use and print such IC Marking Artwork on the goods. The IC Marking Artwork shall not be used in any other way without New Bright's prior written consent. (c) The Seller (and its associates/affiliates) acknowledges that the copyright of the design of the IC Marking Artwork shall belong to New Bright. The Seller shall not copy, duplicate or make any unauthorized use of all or any part of the IC Marking Artwork without New Bright's prior written consent.

- C6 Inspection Report - §B8 above shall apply *mutatis mutandis*.
- C7 Inspection Standard - §B9 above shall apply *mutatis mutandis*.
- C8 No Mandatory Inspection - §B10 above shall apply *mutatis mutandis*.
- C9 Exclusive Supply - §B11 above shall apply *mutatis mutandis*.
- C10 Mask Ownership - (a) The mask shall belong to New Bright. (b) The Seller shall not use the mask to produce the goods for sale or distribution to any third party (whether at a profit, gain or not) without New Bright's prior written consent. (c) All intellectual property and proprietary rights in the mask and the goods shall belong to New Bright. The Seller shall, if called upon by New Bright to do so, assign and transfer all and any such intellectual property and proprietary rights to New Bright (or its designated party) at no or nominal cost and shall do all such acts and things as to complete the title and ownership and vest the same on New Bright (or its designated party).
- C11 Guaranteed Replacement - Without prejudice to any rights or remedies of New Bright in this Master Agreement, the relevant New Bright purchase order, contract or agreement or at law or in equity, the Seller guarantees 100% replacement of all and any of its defective goods at no additional charge to New Bright whenever called upon to do so.
- C12 Order Cancellation / Reduction - Without prejudice to any rights or remedies of New Bright under this Master Agreement, New Bright purchase order, contract or agreement or at law or in equity,  
 (a) New Bright shall have full and unfettered right to cancel the relevant New Bright purchase order, contract or agreement without incurring any liability to the Seller if-  
 (i) the goods demo or the engineering sample or the finished goods- (1) do not meet New Bright's approval, specification or requirement; (2) are not delivered within the prescribed time; or (3) do not match New Bright's own production lead-time;  
 (ii) there is any late delivery or non-delivery of the whole or a substantial part of the goods; or  
 (iii) there is any material breach or default committed by the Seller.  
 (b) If New Bright's order with its own customers / clients is cancelled / reduced in size, New Bright shall be at liberty to cancel / reduce the size of its order, contract or agreement with the Seller PROVIDED THAT New Bright shall only compensate the Seller with all out-of-pocket costs actually and properly incurred and expended by the Seller on direct labor, materials and overheads for the ordered / contract goods since order acceptance up to the time of cancellation / reduction in size of the Seller's order as full, final and complete compensation.
- C13 Price Adjustment - (a) The Seller shall afford New Bright any reduction in cost, labor, material and/or unit price at any time before delivery of the goods to the intent that of so much savings in costs and expenditures achieved by the Seller, a proportionate reduction in the unit price of the goods shall apply. (b) Subject to §C13(a), the unit price of the goods shall remain valid and effectual for a period of 24 months from the date of approval of the engineering sample of the goods to be placed subsequently, unless otherwise varied by the Seller and New Bright in writing. This provision shall survive completion.

#### **Schedule D**

##### **Silicon Steel, Electrolytic Galvanized Steel, Stainless Steel, and other Steel Products**

- D1 Packing Requirement - Unless otherwise specified to the contrary, the goods (whether plate steel, sheet steel, steel coil or in such other form) shall be properly wrapped with waterproof and corrosion resistant materials in the product finish.
- D2 Inspection Report - §B8 above shall apply *mutatis mutandis*.

#### **Schedule E**

##### **Strip Copper/Brass**

- E1 Miscellaneous Costs Included - Unless otherwise stated in the relevant New Bright purchase order, contract or agreement to the contrary, (a) where delivery of this category of goods is by way of sea carriage, the delivery cost shall include terminal handling charge, document fee, bunker charge, demurrage charge, arbitrary charge, and such other charges as may be levied; (b) no cutting charge or any other surcharge may be levied without prior written consent of New Bright.
- E2 Inspection Report - §B8 above shall apply *mutatis mutandis*.

#### **Schedule F**

##### **Enameled Wire**

- F1 Quality Requirement - All enameled wires must be UL approved.
- F2 Inspection Report - §B8 above shall apply *mutatis mutandis*.

#### **Schedule G**

##### **Resin PP/ABS, Terulan & Plastic Materials**

- G1 Miscellaneous Costs Included - Unless otherwise stated in the relevant New Bright purchase order, contract or agreement to the contrary, where delivery of this category of goods is by way of sea carriage, the delivery cost shall include terminal handling charge, document fee, bunker charge, demurrage charge, arbitrary charge, and such other charges as may be levied.

**Schedule H**  
**Rubber Synchronous Belt**

- H1 Product Finish - There shall be no marking on the goods which identifies either the name, logo or identity of the Seller or the Seller's model number, code, reference, dimension, specification or otherwise.
- H2 Inspection Report - §B8 above shall apply *mutatis mutandis*.

**Schedule I**  
**Magnet**

- I1 Inspection Report - §B8 above shall apply *mutatis mutandis*.

**Schedule J**  
**Heavy Metals and Hazardous Substances contained in any**  
**Materials, Parts, Components, Systems and/or Goods Supplied**  
**which are subject to governmental control, law, regulations and/or directives**

- J1 General Applicability of this Schedule J – For the avoidance of doubt, whenever any raw materials, parts, components, systems and/or goods supplied by the Seller shall contain or be composed of all or part of the following heavy metals, chemicals, compounds or substances and/or whenever the same do fall within the scope or are subject to the control of the laws, regulations, directives, and/or industry standards mentioned in §J2 below, the Seller shall ensure that any raw materials, parts, components, systems and/or goods supplied shall fully conform to those laws, regulations, directives and/or industry standards. The Seller may be required to produce relevant test certificates, laboratory reports or documents of the like free of charge to New Bright to prove lawful compliance. In the event that there are related provisions in other Schedule(s) in this Master Agreement governing such raw materials, parts, components, systems and/or goods supplied, the Seller shall ensure that any raw materials, parts, components, systems and/or goods so supplied shall comply with all the requirements of such Schedule(s) and of this Schedule J.
- J2 Controlled Substances – The Seller shall ensure that if any raw materials, parts, components, systems and/or goods supplied do contain or be composed of any of the following substances described, then they shall fully comply with the applicable laws, regulations, directives and/or industry standards concerned (as the case may be):-
- (a) Phthalates Content – EU Phthalates Directive 2005/84/EC whereby (i) the sum of bis (2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP) and benzyl butyl phthalate (BBP) shall be less than 0.1% by mass of the plasticized material in toys and childcare articles; and (ii) the sum of di-isononyl phthalate (DINP), di-isodecyl phthalate (DIDP) and dioctyl phthalate (DNOP) shall be less than 0.1% by mass of the plasticized material in toys and childcare articles which can be placed in the mouth by children.
  - (b) Hazardous Substances under RoHS – EU Directive 2002/95/EC of 27 January 2003 on the Restriction of the Use of certain Hazardous Substances (“RoHS”) in electrical and electronic equipment. The hazardous substances under control are (i) lead, (ii) mercury, (iii) cadmium, (iv) hexavalent chromium (Cr), (v) polybrominated biphenyls (PBB), and (vi) polybrominated diphenyl ether (PBDE).
  - (c) Polycyclic Aromatic Hydrocarbons (PAH) Content – German Food and Feed Act (LFGB) Parts 30 and 31, Prohibition of Chemicals Act (ChemVerbotsV) and Part 4 of the Equipment and Product Safety Act (GPSG).
  - (d) Lead and Phthalates under HR 4040 – US Consumer Product Safety Improvement Act of 2008.
  - (e) Antimony, Arsenic, Barium, Cadmium, Chromium, Lead, Mercury & Selenium under EN71-Part 3 – European Standard on Safety of Toys EN71 – Part 3 which relates to the requirements and methods of test for the migration of certain elements from toy materials.
  - (f) Lead-Paint & Lead Content – US Code of Federal Regulations Title 16, Part 1303, 16 C.F.R. 1303.
  - (g) Soluble Heavy Metals Content – US Standard Consumer Safety Specification for Toy Safety as promulgated by the American Society for Testing and Materials ASTM F963.
  - (h) Heavy Metals Content – Canadian Hazardous Products Regulations CHPA Heavy Metals Content.
  - (i) Cadmium Content – EC Directive 91/338/EEC of 18 June 1991.

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