

XERIUM CANADA INC.  
TERMS AND CONDITIONS OF PURCHASE (Canada)

1. **Definitions** – These Terms and Conditions of Purchase (these “Terms and Conditions”) are between Xerium Canada Inc. or its applicable affiliate purchasing the Goods (“Buyer”) and the Seller named on Buyer’s purchase order form. These Terms and Conditions, together with Buyer’s purchase order form, any special terms and conditions, and all attachments, exhibits and documents expressly referenced in this Purchase Order, shall collectively constitute the “Purchase Order.” “Buyer” and “Seller” are identified and defined as set forth within this Purchase Order. This Purchase Order is entered into between Buyer and Seller, who may be referred to individually herein as a “party” or collectively as the “parties.” Seller agrees to sell, and Buyer agrees to buy, the goods, work and/or services described in and furnished under this Purchase Order (the “Goods”), under these Terms and Conditions. Seller is acting in all respects as an independent contractor under this Purchase Order.
2. **Acceptance, Integration, and Controlling Terms** – This Purchase Order becomes a binding contract on the terms set forth herein when it is accepted either by acknowledgement or by performance by Seller. This Purchase Order constitutes the entire agreement between Buyer and Seller with respect to the Goods, superseding all quotations, proposals, communications, negotiations and counter-proposals. This Purchase Order expressly excludes any quotations or proposals of Seller unless such quotation or proposal is specifically referenced and incorporated herein. Any different or additional terms and conditions by Seller in Seller’s acceptance or during Seller’s performance of this Purchase Order, including any terms and conditions contained on any of Seller’s quotations, proposals, or forms, shall be null and void and of no effect on the parties. If this Purchase Order has been issued by Buyer in response to a proposal or offer by Seller, it is Buyer’s intention that its counteroffer to Seller will be governed solely by these terms and conditions and not by any of Seller’s terms or conditions which may be contained in its proposal or offer. If Seller includes or attaches any different and/or additional terms or conditions in Seller’s executed acceptance of a Purchase Order issued by Buyer and proceeds to commence performance or tender all or any part of the Goods without Buyer’s express acceptance of such different or additional terms or conditions, Seller agrees that a binding contract will be formed solely upon Buyer’s terms and conditions, which contract will not include any of Seller’s different and/or additional terms or conditions. Seller’s proposal or quotation is not included as part of the Purchase Order unless expressly referenced herein as part of the agreement. In the event of any inconsistency between the terms of any pre-existing master agreement, the terms on the face of Buyer’s purchase order form, or these Terms and Conditions, the following shall be the order of precedence: (i) the terms of the master agreement, (ii) the terms on the face of Buyer’s purchase order form, and (iii) these Terms and Conditions.
3. **Prices** – This Purchase Order is to be filled at the prices specified herein unless otherwise agreed in writing.
4. **Quantities** – All Goods called for in this order must be tendered in a single delivery and must not be delivered in installments unless otherwise specified herein.
5. **Time of Delivery** – Seller acknowledges that the time required for performance and the delivery schedule specified herein are critical, material and of the essence to performance of this Purchase Order for the avoidance of substantial loss to Buyer. In the event of delay, or anticipated delay, from any cause, including Force Majeure (as defined below), Seller will immediately notify Buyer in writing of the delay or anticipated delay, and its approximate duration, and Seller agrees to take all reasonable commercial efforts to mitigate, shorten or make up the delay by all reasonable and expeditious means. Buyer, at its option, may require or approve in writing a change in the delivery schedule as established in this Purchase Order in response to Seller’s notice. Any such approval by Buyer, however, will not constitute a waiver of any provision herein but will serve only to delay the delivery schedule. If Seller fails to obtain the approval of Buyer for any such change in delivery schedule, and Seller fails for any reason to meet the delivery schedule or it becomes apparent that Seller will not for any reason meet the schedule, Buyer may in such case, without penalty, cancellation fee, restocking or other fee or charges, and without prejudice to any other rights which it may have, terminate all or any part of the Purchase Order for cause and take any other action as Buyer may consider necessary or desirable under the circumstances to avoid or minimize losses. Buyer may backcharge Seller for all direct costs and expenses of any nature resulting from Seller’s unexcused nonperformance, delays or failure to meet the required delivery schedule.
6. **Force Majeure** – An event of Force Majeure under this Purchase Order shall be an excused delay, and Buyer may, at its option, agree to extend the delivery schedule or terminate this Purchase Order for convenience provided Seller has provided timely written notice of the occurrence of such event to Buyer. “Force Majeure” is defined as any act of God, flooding, fire, severe storm, lightning, act of war, act of terrorism, or unforeseeable governmental action, beyond the control of and not caused in any part by any fault of Seller, but shall not include any power, supply, transportation or labor problems.

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7. **Improper Delivery** – Seller is fully responsible for the timely, proper and accurate performance of this Purchase Order, including, to the extent applicable, for the design, fabrication, manufacture, production, construction, and shipment of the Goods, and for compliance with all terms, conditions, specifications, drawings, and other written requirements of Buyer. If the words “or equal” are used in this Purchase Order, proposed equals must be approved in writing in advance by Buyer. In addition to other remedies provided by law, Buyer reserves the right to refuse any Goods and to terminate all or any part of this Purchase Order for cause if Seller fails to deliver all or any part of the Goods in accordance with the terms and conditions of this Purchase Order. Acceptance of any part of the order shall not bind Buyer to accept any future shipments nor deprive it of the right to return the Goods already accepted.
8. **Title; Risk of Loss** – Subject to any freight terms included in Buyer’s purchase order form, Seller will bear the risk of loss and damage until all Goods called for in this order have been actually received and accepted by Buyer at the destination specified herein. Should any loss or damage occur to the Goods prior to acceptance by Buyer, Buyer at its option may terminate this Purchase Order for cause. Goods paid for by Buyer but held for future delivery by Seller in accordance with Buyer’s instructions must be fully insured at Seller’s expense. Unless otherwise specified herein or in Buyer’s purchase order form, title to the Goods will vest in Buyer immediately upon acceptance of the Goods by Buyer. Seller warrants free and clear title to the Goods, free and clear from any and all liens, claims, restrictions, reservations, security interests and encumbrances.
9. **Transportation** – Shipments shall be made by the lowest cost reliable means of transportation available unless otherwise specified by Buyer in the Purchase Order. Any additional charges due to the use of unauthorized premium transportation must be borne by Seller. Buyer’s Purchase Order number, charge area and requisition number must appear on all waybills, invoices and cartons. Seller assumes full responsibility for preparing, packing, crating, marking, transporting, and providing all required shipping documentation.
10. **Inspection and Rejection** – All Goods delivered to Buyer shall be subject to Buyer’s inspection before acceptance or payment, provided that Buyer reserves all rights provided for herein to reject any Goods, in whole or in part, at a later time upon discovery of a latent defect or non-compliance not apparent by such normal visual inspection. Expenses incurred by Buyer in such inspection of the Goods may be recovered from Seller if all or parts of the Goods are non-conforming and are rejected by Buyer. If Goods received do not conform to those ordered, or if a different quantity is shipped, Buyer may reject such shipment in whole or in part by giving notice thereof to Seller and may terminate this Purchase Order for cause. All rejected Goods will be held at Seller’s risk and expense. Seller will remove any rejected Goods at Seller’s expense within ten (10) working days after notice. If any Goods are rejected by Buyer, Seller will not ship any replacement Goods without the prior written approval of and in accordance with the instructions provided by Buyer. If, in Buyer’s judgment, additional work or rework on non-conforming Goods is required to make such Goods acceptable to Buyer, Seller agrees that Buyer may perform such work at Seller’s expense and that the performance of such work shall in no way invalidate Seller’s warranty of quality on the Goods.
11. **Warranty** – Seller warrants to Buyer that the Goods furnished under this Purchase Order, whether manufactured, fabricated, or otherwise produced or provided by Seller or others, will be (a) new, (b) of the latest design or model conforming to Buyer requirements, (c) conform to the descriptions, data, drawings, plans, specifications, any performance criteria, and other requirements specified herein or provided by Buyer to Seller, (d) be of merchantable quality, (e) if specified in this Purchase Order, fit for the purpose(s) intended, (f) conform with all applicable laws, ordinances, codes and regulations, and (g) free from defects in materials, performance, operation, and workmanship. The Goods will be warranted hereunder, as may be applicable, for a period of twenty-four (24) months from date of delivery to and acceptance by Buyer. This express warranty shall not be deemed waived by reason of the acceptance of the Goods or payment therefore by Buyer.
12. **Warranty Remedies** – If, within the warranty period specified above, Buyer discovers any defect, error, noncompliance, omission, operational or performance deficiency, or breach of warranty set forth above as to the Goods, upon notice from Buyer, Seller will promptly repair or replace, without cost, the Goods in question (including bearing any necessary removal, reinstallation, access, shipping, labor and other direct costs resulting therefrom) in accordance with Buyer instructions. If Seller fails to proceed promptly with and complete the repair or replacement of the defective Goods, Buyer may repair or replace the Goods and charge all related direct costs (including labor and access costs) to Seller without voiding the warranties herein, and without Buyer waiving any other rights or remedies it may have under this Purchase Order. Such repair or replacement will be rewarranted for a period of twelve (12) months from the date of its acceptance by Buyer. If Buyer determines, for any reason, that the remedies provided for herein are not adequate or feasible, Buyer may elect to have such Goods removed at Seller’s expense and any portion of the purchase price paid refunded in full.

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13. **Infringement Warranty** – In respect of any Goods, device, process, or composition furnished hereunder which is of Seller’s design or Seller’s standard manufacture, the Seller shall indemnify and hold Buyer and its agents harmless from any liability, expense or damages arising from any actual or alleged infringement of any trade-mark, patent, copyright or moral right, and upon request of Buyer, Seller shall at its own expense defend any action in which such infringement is alleged with respect to the manufacture, sale or use of such items delivered hereunder.
14. **Buyer’s Property** – Seller agrees that all drawings, artwork, negatives, data specifications, tools, dyes, equipment or material furnished to Seller by Buyer or specifically paid for by Buyer and any replacement thereof shall be and remain the personal property of Buyer. Such property whenever practical shall be plainly marked or otherwise adequately identified by Seller as “Property of Xerium Canada Inc.” and safely stored and kept insured by Seller at Seller’s expense in an amount equal to the replacement cost with loss payable to Buyer and shall be subject to removal by Buyer’s written request. Seller shall prepare such property for shipment and shall redeliver to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted.
15. **Termination for Cause** – In the event of Seller’s (a) actual breach of or default under any provision of this Purchase Order; (b) anticipated breach of or default under any provision of this Purchase Order, which Seller has not cured or reasonably commenced to cure within two (2) days after written notice of such has been provided to Seller by Buyer; or (c) actual or threatened bankruptcy, reorganization, receivership, insolvency, making an assignment for the benefit of creditors, liquidation, dissolution, or other financial or organizational instability, Buyer has the right, in addition to any rights or remedies it may have in law, in equity, or under this Purchase Order, to immediately terminate this Purchase Order for cause by written notice to Seller, and Seller will not be entitled to any cancellation or termination charge or other fee or penalty hereunder, nor will Buyer be liable to pay any costs of termination. In such event, Buyer may immediately take possession of all or any portion of the Goods, subject only to an obligation to equitably compensate Seller for same, including for any payments made by Seller for materials or other work incorporated into such Goods. Upon termination by Buyer as a result of Seller’s default hereunder, Seller will be liable to and will immediately pay or reimburse Buyer for all reasonable costs of any nature which may be incurred by Buyer to cover any losses or expenses related to such default and to effect completion of performance of this Purchase Order, and if Buyer does not elect to take possession of any portion of the Goods, Seller shall also promptly refund to Buyer any payments made to Seller related to the Goods.
16. **Termination for Buyer’s Convenience** – In addition, Buyer has the right at any time and without cause to terminate all or any separable part of this Purchase Order by written notice. Seller will be owed only for the actual, verifiable, direct costs of any completed and satisfactory performance prior to the date of such termination, and, if any portion of the Goods will be delivered to Buyer, Seller shall also be reimbursed any direct and necessary costs incurred to preserve, protect, store, and ship such Goods to the point of delivery to Buyer. In no event shall such reimbursement include anticipated profits or revenue or other economic loss for undelivered goods or unperformed services. Any other amounts paid by Buyer for Goods shall be refunded in full to Buyer. At the time of any such termination by Buyer, Seller will immediately discontinue all work pertaining to the Purchase Order, including not placing additional purchase orders or making any other commitment, and canceling forthwith any existing purchase orders and commitments on the best possible terms. Seller will preserve and protect the Goods on hand, work in progress, supplier data, and completed work, both in its own and in its suppliers’ facilities, in accordance with Buyer’s instructions.
17. **Governing Law and Compliance with Law** – Unless otherwise specified in this Purchase Order, this contract will be governed by the laws of the Province of Ontario without reference to its conflicts of laws principles or rules. In its performance under this Purchase Order, Seller agrees to comply with all applicable laws, treaties, ordinances, directives, orders, codes and regulations, and specifically with, but not limited to, any import, export, health, safety, security and environmental laws, treaties, ordinances, codes and regulations of any jurisdiction (whether international, country, region, state, province, territory, municipality, or local) where this Purchase Order may be performed. Seller represents that the Goods called for in this order have been produced in accordance with the requirements of all applicable federal, provincial and territorial laws and regulations, including, without limitation, applicable labor standards and occupational health and safety legislation.
18. **Non-assignment** – Assignment of this Purchase Order or any interest therein or any payment due or to become due thereunder without the written consent of the Buyer shall be void.

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19. **Hazardous and Dangerous Goods** – Seller is solely responsible for examining, inspecting, identifying, and determining whether or not any Goods provided hereunder (in whole or in part) constitute hazardous or dangerous goods, and to notify Buyer of such prior to shipment of the Goods. Unless expressly exempted by Buyer in writing in the Purchase Order, Seller is responsible to determine if a Material Safety Data Sheet (MSDS) is required for the Goods, and if so, to supply with the Goods all such required MSDS documentation and information. In the event any Goods or any portion thereof are so identified by Seller, Seller shall ensure that such Goods are properly handled, labeled, documented, packaged, transported, and shipped in full compliance with any applicable legal requirements, to the point of delivery to Buyer. Seller shall inform Buyer in writing prior to shipment of any precautionary measures that need to be taken with the Goods.
20. **Import and Export Compliance** – Seller agrees that it is solely responsible in its performance under this Purchase Order for required compliance with applicable import and export laws and regulations of any jurisdiction or country. Seller understands and acknowledges that (a) Buyer will rely on the information provided by Seller, including making a determination whether any export or import license or permit is required for the import of the supplied materials into Canada; (b) Seller is responsible for compliance with applicable local import and export control laws of any jurisdiction, and is responsible for compliance with applicable U.S. re-export laws; and (c) Seller will be fully responsible for the accuracy and completeness of import and export documentation prepared or executed by Seller as part of Seller’s performance of this Purchase Order.
21. **Indemnification; Consequential Damages** – The “Buyer Indemnitees” as referred to herein shall mean Buyer, any assignee, their parents, subsidiaries, affiliates, partners, co-participants, investors, and lenders, and the respective officers, directors, employees, consultants, contractors, invitees, agents, representatives, successors, heirs, and insurers of each such entity at all tiers. Seller agrees to release, defend, indemnify and hold harmless the Buyer Indemnitees, against any costs (including legal fees and court or arbitration costs), fines, penalties, damages, and liabilities, arising from, alleged to arise from, or in any way associated with any defects in the Goods, Seller’s performance under this Purchase Order, or arising in any way from any act, omission, negligence or fault of Seller or those for whom Seller is responsible, even in the event of any concurrent or contributory negligence or fault on the part of any Buyer Indemnitee; provided, however, Seller will not be responsible hereunder to the extent of the sole negligence or fault of any Buyer Indemnitee as may be finally determined by a court or arbitrator. **BUYER WILL NOT BE LIABLE TO SELLER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR ANY DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, ARISING OUT OF OR RELATED TO THIS PURCHASE ORDER.**
22. **Taxes** – Unless otherwise provided for in this Purchase Order, Seller is responsible for payment of, and the compensation set forth herein includes, all sales, use, excise, value-added, goods and services, business (franchise or privilege), and other such taxes, any taxes imposed on Seller which are based on revenue, income, net income, net assets, net worth, or capital and any taxes imposed in lieu thereof, and all duties, fees, levies, charges or other assessments of whatever nature imposed by governing authorities or any jurisdiction applicable in connection with performance under this Purchase Order.
23. **Confidentiality** – All data, designs, documents, drawings, specifications, communications and other information, revealed or disclosed in any form or manner to Seller by Buyer (whether written, oral, electronic, visual, graphic, photographic, observational, or otherwise), including any documents or other tangible items supplied, or produced or created by Seller for Buyer hereunder (collectively defined as “Confidential Information”) are proprietary and confidential to Buyer and will be used solely by Seller for purposes of performing this Purchase Order. All such Confidential Information will be treated and protected by Seller as confidential, and will not be disclosed to any third party without the prior written consent of Buyer and may be disclosed within Seller’s organization only on a need-to-know basis. The provisions protecting Confidential Information in any separate confidentiality, secrecy, or nondisclosure agreement heretofore executed by Seller in connection with Buyer’s business, this Purchase Order, or any other contract pertaining to the Goods, are hereby expressly incorporated within this Purchase Order, and these provisions are in addition to such agreement. Upon request of Buyer, Seller will immediately return to Buyer any Confidential Information provided, either upon demand, or upon completion of the warranty period hereunder, including all copies made by Seller.
24. **Documentation and Right of Audit** – Seller will maintain for a minimum period of five (5) years after final payment has been made to Seller under this Purchase Order all records and accounts pertaining to Goods sold or work performed hereunder. Seller agrees that Buyer will have the right to audit, copy and inspect, or cause to have audited, copied and inspected, Seller’s records and accounts pertaining to performance under this Purchase Order at all reasonable times during the course of performance

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hereunder and for a minimum period of five (5) years after final payment has been made to Seller, however, Buyer's rights will not extend to any components of any lump sum amounts or unit rates.

25. **Claims and Dispute Resolution** – Seller will submit any claims or disputes arising under this Purchase Order to Buyer in writing prior to Buyer making final payment. Buyer's obligation to make final payment is conditioned upon Seller's settlement and release of all claims or disputes. Seller agrees that its failure to submit any claims or disputes in writing by such time will constitute an express waiver by Seller of any legal or equitable rights with respect to the subject matter of the claim or dispute. For any claims or disputes arising under this Purchase Order, the parties agree to exert their best efforts in good faith to try to resolve such issues through direct negotiation between management. Seller agrees that any such issues that cannot be resolved through direct negotiation within a reasonable time will be submitted to binding arbitration. Arbitration proceedings will be conducted pursuant to the National Arbitration Rules of the ADR Institute of Canada, Inc. The Arbitral Tribunal shall consist of one (1) arbitrator who shall be appointed in accordance with the National Arbitration Rules of the ADR Institute of Canada, Inc. The award shall be final and enforceable in any court of competent jurisdiction. The place of arbitration shall be the City of Toronto in the Province of Ontario. Each party will bear its own expenses in any dispute resolution process or proceeding. Notwithstanding the existence, filing, or pendency of any claim or dispute under this Purchase Order or with Buyer, Seller will continue to fully perform its obligations hereunder and will not cease or delay performance, fabrication or fail to make any shipment pending resolution of any claim or dispute. Any award of the arbitrator may be enforced in any jurisdiction.
26. **Language** - The parties expressly agree that this Purchase Order and all related documents be written in the English language. *Les parties ont exigé que le présent bon de commande et tous les documents connexes soient rédigés en anglais.*
27. **Severability** - If any provisions of this Purchase Order are deemed invalid, illegal, or unenforceable, then, to the extent permitted by law, this Purchase Order shall be construed as if such invalid, illegal, or unenforceable provision had not been included as part of this Purchase Order.