

# ShinMaywa California, Ltd

## ShinMaywa Supplier Interim Authorization to Proceed (SIATP)

### Terms and Conditions

1. Interim Measure: The parties agree that this SIATP is entered as an interim measure in anticipation that a purchase order may be issued or other agreement may be entered between SCL and Supplier covering the subject matter of the SIATP. Any such purchase order or other agreement shall supersede replace and supersede this SIATP for all purposes. Supplier accepts and agrees that this SIATP does not bind SCL to issue any purchase order or other agreement and SCL's obligations are strictly limited to the provisions of this SIATP.

2. Obligations of SCL: In the event that no purchase order or other agreement comes into effect between SCL and Supplier covering the subject matter of this SIATP within the time contemplated by the Schedule or such extended time as the parties may agree in writing, upon the written request of Supplier, SCL shall compensate Supplier in accordance with the provisions of Section 5 of this SIATP, subject to Supplier's compliance with the provisions of Section 5.

3. Records: Supplier shall maintain complete and accurate records and supporting data to permit SCL to evaluate services performed, allowances claimed, and all costs incurred by Supplier in performing the AAPS. Such records must be capable of verification by inspection and/or audit and must be made available to SCL upon the request of SCL or its authorized representative for review and copying. All information acquired by SCL in such inspection and/or audit will be treated as confidential.

4. Warranties: Supplier expressly warrants to SCL that any goods turned over to SCL hereunder shall be merchantable, free from defects in materials and workmanship, and shall conform to description, and applicable quality and other requirements and be fit for the intended purpose.

5. Termination for Convenience:

(a) SCL may terminate performance of work under this SIATP in whole or, from time to time in part for any reason or for no reason. SCL shall terminate by delivering to the Supplier written notification of termination specifying the extent of termination and the effective date. After receipt of a written Notice of Termination, and except as directed by SCL, the Supplier shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.
- (2) Place no further orders (hereinafter "subcontracts") for materials, services, or facilities, except as necessary to complete the portion of this SIATP, if any, which has not been terminated.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to SCL, as directed by SCL, all rights, title, and interest of the Supplier under the subcontracts terminated, in which case the SCL shall have the right to settle or to pay any termination settlement arising out of those terminations.
- (5) With the approval or ratification to the extent required by the SCL, settle outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
- (6) As directed by SCL, transfer title and deliver to SCL
  - (A) the fabricated or un-fabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and
  - (B) the completed or partially completed plans, drawings, information and other property that, if the AAPS had been completed, would be required to be furnished to the SCL.
- (7) Completed performance of the work not terminated.
- (8) Take any action that may be necessary, or that the SCL may direct, for the protection and preservation of the property related to this SIATP that is in the possession of the Supplier and in which the SCL has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the SCL, any property of the types referred to in subparagraph (6) above; provided however, that the Supplier
  - (A) is not required to extend credit to any purchaser and
  - (B) may acquire the property under the conditions prescribed by, and at the prices approved by, SCL. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by SCL under this SIATP, credited to the price or cost of the work, or paid in any other manner directed by SCL.

## ShinMaywa California, Ltd

(b) After termination, the Supplier shall submit a final termination settlement proposal to SCL in the form and with the certification prescribed by SCL. The Supplier shall submit the proposal promptly, but no later than three (3) months from the effective date of termination, unless extended in writing by SC: upon written request of the Supplier within this three-month period. However, if SCL determines that the facts justify it, a termination settlement proposal may be received and acted on after such three-month period or any extension. If the Supplier fails to submit the proposal within the time allowed, SCL may determine, on the basis of information available, the amount, if any, due the Supplier because of the termination and shall pay the amount determined.

(c) Subject to the paragraph above, the Supplier and SCL may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. The STIAP shall be amended, and the Supplier paid the agreed amount.

(d) If Supplier fails timely to submit a proposal, or if the parties fail to agree upon the amount to be paid, SCL may determine, on the basis of information available, the amount, if any, due the Supplier because of the termination and shall pay the amount determined. Such amount shall be based on the reasonable and verified costs incurred in performance of the STIAP.

(e) SCL's liability under this Section 5 shall in no event exceed the Monetary Limit as reduced by the amount of any payments previously made and as adjusted for the value of work not terminated.

### 6. CANCELLATION FOR DEFAULT:

(a) SCL may cancel this STIAP in whole or, in part, effective as of the date specified by SCL if:

(1) Supplier fails to perform the AASP, or comply with any requirement of this STIAP within the time specified herein or any extension granted by SCL, and such failure is not cured within ten days after receipt of notice from SCL specifying the failure;

(2) Supplier fails to make progress towards performance of this STIAP and such failure is not cured within ten days after receipt of notice from SCL specifying the failure; or

(3) Supplier ceases doing business or becomes insolvent or becomes subject to any law relating to bankruptcy, insolvency, or relief of debtors.

(b) If SCL cancels this STIAP in whole or in part for default, it may acquire, under the terms and in the manner it considers appropriate, goods and services reasonably equivalent to those canceled. Supplier will be liable for and will promptly pay to SCL on SCL's first demand the amount by which the cost of such replacement goods and services exceeds the Monetary Limit.

(c) Upon receipt of cancellation notice from SCL's authorized representative, Supplier will stop work as directed by SCL, and transfer title and deliver to SCL in the manner directed, any tools, material, SCL supplied technical data and design information, and completed goods. However, Supplier shall continue the work not canceled.

(d) Upon cancellation, an equitable settlement will be made between Supplier and SCL for costs of partially completed and completed goods conforming to requirements and any other payments due Supplier from SCL. The amount of the settlement will be equal to the verified amount due Supplier for the termination of this STIAP less SCL's costs for procurement or manufacture of the terminated portion of the work. Supplier's claims relating to such settlement are subject to verification by SCL's audit of Supplier's records relating to the AAPS.

(e) SCL's liability under this STIAP shall in no event exceed the Monetary Limit as reduced by the amount of any payments previously made and as adjusted for the value of work not cancelled.

7. CONFIDENTIAL INFORMATION: Supplier agrees to keep confidential and protect from disclosure all (a) confidential, proprietary, and/or trade secret information: (b) tangible items containing, conveying, or embodying such information: and (c) tooling obtained from and/or belonging to SCL in connection with this STIAP (collectively referred to as "Proprietary Materials"). Supplier will use Proprietary Materials only in the performance of and for the purpose of this STIAP. The restrictions on disclosure or use of Proprietary Materials by Supplier apply to all materials derived by Supplier or others from SCL's Proprietary Materials. Upon SCL's request at any time, and in any event upon completion, termination or cancellation of this STIAP, Supplier must return to

# ShinMaywa California, Ltd

SCL all Proprietary Materials, and all materials derived from such materials, unless directed otherwise in writing by SCL. Supplier will not, without the prior written authorization of SCL, sell or otherwise dispose of (as scrap or otherwise) any materials containing, conveying, embodying, or made in accordance with or by reference to SCL's Proprietary Materials. Prior to disposing of such materials as scrap, Supplier will render the materials unusable. SCL may audit Supplier's compliance with this Section 8. Supplier may disclose Proprietary Materials to its subcontractors as required for the performance of this STIAP, provided that each such subcontractor first assumes, by written agreement, the same obligations imposed on Supplier under this Section 8; and Supplier shall be liable to SCL for any breach of such obligation by such subcontractor. The provisions of this Section 8 are effective in lieu of, and will apply notwithstanding the absence of, any restrictive legends or notices applied to Proprietary Materials.

## 8. Disputes:

(a) Pending resolution of any dispute involving this STIAP Supplier shall proceed diligently with performance in accordance with SCL's instructions.

(b) Both parties shall work in good faith to resolve any dispute under this STIAP. Supplier may submit to SCL's authorized representative a written demand for SCL's final decision regarding any dispute or issue between the parties relating to this STIAP unless SCL has already rendered a final decision. If no final decision is issued within 45 days after receipt of Supplier's written demand, SCL shall be deemed to have made a final decision to reject Supplier's demand.

(c) If Supplier disagrees with SCL's decision, Supplier must initiate arbitration pursuant to this Section 8 within 90 days after the date of SCL's final decision or one year following the accrual of Supplier's cause of action, whichever is later.

(d) Any dispute arising under this STIAP that is not settled by arrangement between the parties will be resolved by binding arbitration in accordance with the Commercial Rules of the American Arbitration Association. The arbitration will be conducted by a single arbitrator in the City of Los Angeles, California. The award of the arbitrator must be made in writing and will be final and binding upon the parties. Judgment upon the award may be entered in any court of competent jurisdiction.

9. GOVERNING LAW/VENUE: This STIAP and performance hereof is governed by the laws of the State of California, without regard to the choice of law rules thereof or the United Nations Convention on Contracts for the International Sale of Goods. The venue for any arbitration or lawsuit will be in Los Angeles, California.

11. ATTORNEYS' FEES. In the event of any arbitration, litigation, or other dispute arising as a result of or by reason of this STIAP, the prevailing party in any such arbitration, litigation or other dispute shall be entitled to, in addition to any other damages assessed, its reasonable attorneys' fees, and all other costs and expenses incurred in connection with

12. ENTIRE AGREEMENT: This STIAP sets forth the entire agreement of SCL and Supplier, and supersedes all prior agreements, understandings and communications between them related to the subject matter of the order. This STIAP may be amended or modified solely by a written instrument signed by SCL's duly authorized representative. The rights and remedies afforded to SCL pursuant to this STIAP are in addition to any other rights and remedies available under contract or law.

13. LIMITATION OF LIABILITY: **IN NO EVENT SHALL SCL BE LIABLE FOR ANTICIPATED PROFITS OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF SCL'S PERFORMANCE OR FAILURE TO PERFORM HEREUNDER. SCL'S LIABILITY ON ANY CLAIM OF ANY KIND OR FOR ANY LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH THIS STIAP SHALL IN NO EVENT EXCEED THAT PORTION OF THE MONETARY LIMIT ALLOCABLE TO THE AAPS WHICH GIVES RISE TO THE CLAIM. ANY ACTION BY SUPPLIER AGAINST SCL ARISING FROM THIS STIAP INCLUDING SCL'S BREACH THEREOF, MUST BE COMMENCED WITHIN ONE YEAR AFTER THE CAUSE OF ACTION AROSE.**

14. SURVIVAL: All obligations of a continuing nature and warranties will continue in full force and effect after completion, termination or cancellation of this STIAP and will not be extinguished by SCL's payment hereunder.