

MASTER TERMS AND CONDITIONS FOR SERVICES

1. Definitions; Services.

1.1. Definitions: For purposes of this Master Agreement, the following terms shall have the following meanings:

- (a) "Agreement" means an Order and the documents incorporated into the Order including without limitation this Master Agreement;
- (b) "Customer" means the customer of FlexXray as identified in the applicable Order;
- (c) "FlexXray" means FlexXray LLC, a Texas limited liability company, with offices located at 3751 New York Ave., Suite 130, Arlington, TX 76014;
- (d) "Master Agreement" means these Master Terms and Conditions; and
- (e) "Order" means any order or other agreement between FlexXray and Customer that references this Master Agreement.
- (f) "Parties" means Customer together with FlexXray, and each may individually be referred to as a "Party".

1.2. Acceptance; Binding Agreement: Acceptance of the Order and this Master Agreement and formation of the Agreement binding on FlexXray and Customer shall be deemed to have occurred upon the earlier of (i) when Customer executes the Order, (ii) when Customer places or accepts the Order (which may occur by email or phone and/or by any form of acceptance or directive to proceed forward with performing Services), (iii) when Customer provides its products to FlexXray for FlexXray to perform its Services, or (iv) when Customer is otherwise aware that FlexXray has commenced performance under the Order.

1.3. Services: FlexXray provides foreign material contamination and quality assurance hold resolution services, including x-ray inspection, metal detection, contaminant retrieval, reporting and/or disposal, can and jar dud detection, and other ancillary services. The specific services FlexXray shall provide to Customer (the "**Services**") are as set forth in the Order.

1.4. Compliance: In connection with FlexXray's Services, FlexXray operates USDA and FDA registered and inspected sites that are audited annually by an accredited third party (currently AIB International) for certification to the British Retail Consortium (BRC) Global Food Safety Management System standard as recognized by the Global Food Safety Initiative (GFSI). Further, FlexXray complies with GMPs, and maintains quality assurance standard operating procedures and USDA and FDA compliance at its facilities.

2. FlexXray Warranties; Disclaimer.

2.1. FlexXray warrants that it will perform the Services in accordance with the Protocol (as defined below) and in a professional and workmanlike manner using personnel (i.e., employees or contracted personnel retained by FlexXray) of required skill, experience, and qualifications.

2.2. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS SECTION 2, FLEXXRAY MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING WITHOUT LIMITATION ANY (A) WARRANTY OF MERCHANTABILITY; OR (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, STATUTORY OR OTHERWISE, ARE EXPRESSLY DISCLAIMED.

3. Quality Assurance. Customer shall be responsible for designating and approving in writing the protocol for the performance of the Services (the “**Protocol**”), including without limitation, designating the type and size of foreign material or defect that is suspected to be in Customer’s products, and approving in writing the actual inspection or detection method to be applied by FlexXray in connection with the Services. FlexXray agrees to run the Protocol as designated and approved by Customer and to provide Customer with a written report of its inspection results, but does not represent, warrant or guarantee that all contaminants or defects in the products provided by Customer and inspected by FlexXray will be detected or identified. Additionally, FlexXray shall have no obligation to review or bring to Customer’s attention matters and concerns that are outside the scope of the Services and/or the applicable Protocol. Customer acknowledges and agrees that any products released into commerce following the Services are released in Customer’s absolute and sole discretion and therefore Customer agrees to indemnify and hold FlexXray harmless from and against any demand, claim, cause of action, judgment, liability, damage, cost or expense (including attorney’s fees) suffered by Customer, FlexXray or any third party arising from or related to the Protocol and the Services performed.
4. Delivery and Pick-up. Customer shall be responsible for delivering all applicable products to FlexXray for the provision of Services and then picking up all applicable products after completion of the Services.
5. Storage. FlexXray provides refrigerated and dry product storage, subject to availability and applicable fees. Refrigerated storage fees are communicated to Customer in respect of the Order and are charged daily from day one (1). FlexXray provides complimentary dry storage for up to seven (7) calendar days after Services have been performed, after which time Customer will be charged a monthly fee for storage, such storage fee to be determined by FlexXray in its reasonable discretion based on the amount of product to be stored.
6. Fees and Expenses.
 - 6.1. In consideration of the provision of the Services by the FlexXray and the rights granted to Customer under the Agreement, Customer shall pay the fees set out in the Order. Payment to FlexXray of such fees and other applicable expenses pursuant to this Section 6 shall constitute payment in full for the performance of the Services. Unless otherwise provided in the Order, all fees will be payable within thirty (30) days from the date of FlexXray’s invoice. If FlexXray does not receive full payment by the due date, a 1.5% interest charge may be applied to the balance per month, and Customer will be responsible for all collection costs FlexXray incurs to collect any overdue amounts. If Customer elects to pay by credit card, a 4% credit card processing fee will be added to each credit card transaction. In addition to all other remedies available under the Agreement or at law (which FlexXray does not waive by the exercise of any rights hereunder), FlexXray shall be entitled to suspend the provision of any Services if the Customer fails to pay any amounts when due hereunder.

6.2. In addition to the amounts invoiced for Services, Customer shall be responsible for then current product storage fees (subject to Section 5) and other ancillary fees, credit card processing fees, and all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by Customer hereunder; and to the extent FlexXray is required to pay any such sales, use, excise, or other taxes or other duties or charges, Customer shall reimburse FlexXray in connection with its payment of fees and expenses as set forth in this Section 6. Notwithstanding the previous sentence, in no event shall Customer pay or be responsible for any taxes imposed on, or regarding, FlexXray's income, revenues, gross receipts, personnel, or real or personal property or other assets.

7. Records; Audit Rights. FlexXray maintains electronic copies of its Service records for a period of one (1) year in accordance with its record retention policy. During the term of the Agreement, upon Customer's written request, FlexXray shall allow Customer or Customer's representative to inspect and make copies of such records in connection with the provision of the Services; provided that Customer gives FlexXray at least three (3) business days advance written notice of the planned inspection, any such inspection shall take place during regular business hours, and any such inspection shall occur no more than once per twelve (12) month period.

8. Confidentiality. From time to time during the term of the Agreement, either Party (as the "**Disclosing Party**") may disclose or make available to the other Party (as the "**Receiving Party**"), non-public, proprietary, and confidential information of Disclosing Party ("**Confidential Information**"); provided, however, that Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Receiving Party's breach of this Section 8; (b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (c) was in Receiving Party's possession prior to Disclosing Party's disclosure hereunder; or (d) was or is independently developed by Receiving Party without using any Confidential Information. The Receiving Party shall: (x) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (y) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under the Agreement; and (z) not disclose any such Confidential Information to any person or entity, except to the Receiving Party's Group (as defined below) who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under the Agreement. Receiving Party further agrees that it will be responsible for any breach of this Section 8 caused any member of Receiving Party's Group.

If the Receiving Party is required by applicable law or legal process to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to notify Disclosing Party of such requirements to afford Disclosing Party the opportunity to seek, at Disclosing Party's sole cost and expense, a protective order or other remedy.

For purposes of this Section 8, "**Receiving Party's Group**" shall mean the Receiving Party's employees, officers, agents, consultants, attorneys, accountants and financial advisors.

9. Term, Termination, and Survival.

9.1. The term of the Agreement shall continue from the effective date of the Order until the earlier of (a) expiration of the term of the Order or (b) termination of the Agreement as provided in the Agreement.

9.2. Either Party may terminate the Agreement effective upon written notice to the other Party (the “**Defaulting Party**”) if the Defaulting Party:

(a) Materially breaches the Agreement, and the Defaulting Party does not cure such breach within thirty (30) days after receipt of written notice of such breach, or such material breach is incapable of cure.

(b) Becomes insolvent or admits its inability to pay its debts generally as they become due.

(c) Becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven (7) business days or is not dismissed or vacated within 45 days after filing.

(d) Is dissolved or liquidated or takes any corporate action for such purpose.

(e) Makes a general assignment for the benefit of creditors.

(f) Has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

9.3. The rights and obligations of the Parties set forth in this Section 9 and any right or obligation of the Parties in the Agreement which, by its nature, should survive termination or expiration of the Agreement, will survive any such termination or expiration of the Agreement.

10. Remedies; Limitations of Liability.

10.1. FlexXray shall not be liable for a breach of the Agreement unless Customer gives written notice of the breach to FlexXray within ten (10) days after the date when Customer discovers or ought to have discovered the breach but in no event more than thirty (30) days after the performance of the applicable Services.

10.2. For any breach of warranty under Section 2.1 or other failure of the Services to comply with the Agreement for which Customer timely makes a claim, FlexXray shall, in its sole discretion, and as Customer’s sole and exclusive remedy, either: (i) re-perform such Services (or the defective part thereof); or (ii) credit or refund the price paid for the applicable Services.

10.3. IN NO EVENT SHALL FLEXXRAY BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES OR LOST PROFITS OR LOSS OF REVENUE WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL THEORY.

10.4. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, FLEXXRAY’S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT AND/OR THE PROVISION OF THE SERVICES, WHETHER ARISING OUT OF

OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL THEORY, SHALL NOT EXCEED THE AGGREGATE AMOUNT PAID OR PAYABLE TO FLEXXRAY IN RESPECT OF THE SERVICES TO WHICH SUCH LIABILITY RELATES.

10.5. THE LIMITATIONS OF LIABILITY IN SECTION 10.3 AND 10.4 APPLY REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT FLEXXRAY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

11. Intellectual Property. FlexXray shall be the sole and exclusive owner of any and all reports, documents and materials provided to Customer and all intellectual property rights therein (collectively "Materials"). FlexXray grants to Customer a limited, non-exclusive, non-transferable license to use the Materials solely for its business purposes and limited to the purposes set forth in the Order.
12. Entire Agreement. The Agreement, including and together with the Order, exhibits or schedules hereto or thereto, constitute the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter. The Parties acknowledge and agree that the Agreement shall prevail over any other terms and conditions or written document submitted by FlexXray or Customer regardless of timing, and may only be amended or modified in a writing stating specifically that it amends the Agreement and is signed by an authorized representative of each Party.
13. Notices. Except for regular communications between FlexXray and Customer via telephone conference or electronic mail regarding the provision of Services, or written reports transmitted via electronic mail, all notices, requests, consents, claims, demands, waivers and other communications under the Agreement (each, a "**Notice**", and with the correlative meaning "**Notify**") must be in writing and addressed to the other Party. All Notices must be delivered by personal delivery, nationally recognized overnight courier or certified or registered mail (in each case, return receipt requested, postage prepaid).
14. Severability. If any term or provision of the Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify the Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
15. Waiver. No waiver by any Party of any of the provisions of the Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in the Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from the Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

16. Assignment. Neither party may assign or transfer the Agreement or its rights or obligations hereunder without the prior written consent of the other party, such consent not to be unreasonably withheld; provided however that either party may assign the Agreement in connection with a merger or sale of all or substantially all of its assets or business operations without the consent of the other party. Any purported assignment or transfer in violation of this Section 16 shall be null and void.
17. Force Majeure. FlexXray shall not be liable for any loss, damage, detention or delay due directly or indirectly to causes beyond its reasonable control, including without limitation, acts of God, acts by Customer, acts of civil or military authority, fires, strikes, floods, epidemics, pandemics, war, riot, delays in transportation, government restrictions or embargoes, or difficulties in obtaining necessary labor, materials, facilities, or transportation due to such causes.
18. Successors and Assigns. The Agreement is binding on and inures to the benefit of the Parties to the Agreement and their respective permitted successors and permitted assigns.
19. Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.
20. Third Party Beneficiaries. The Agreement benefits solely the Parties to the Agreement and each of their respective permitted successors and assigns and nothing in the Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of the Agreement.
21. Conflict. Any purchase order or other document issued by Customer is for administrative convenience only and does not govern, control or amend the terms of the Agreement. In the event of any conflict between this Master Agreement and an Order, this Master Agreement shall prevail unless the Order expressly references amending and superseding a specific provision of this Master Agreement.
22. Choice of Law. The Agreement, and all matters arising out of or relating to the Services, whether sounding in contract, tort, or statute, are governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to the conflict of laws provisions thereof.
23. WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THE AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.
24. Counterparts. The Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.