

**GENERAL TERMS AND CONDITIONS**

**OF PURCHASE**

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## GENERAL TERMS AND CONDITIONS OF PURCHASE

### **1. Scope and Acceptance.**

(a) These General Terms and Conditions of Purchase (“Terms”) automatically apply to and are a part of all written and oral purchase orders and amendments thereto issued by Buyer (collectively referred to as “Order”). The “Buyer” is the entity defined on the face of the Order. The Terms also automatically apply to requests for quotations. All goods and services (whether or not ancillary to a sale of goods) such as production and service parts, raw materials, tooling, engineering and design only, to be provided under an Order are included in the term “Goods”.

(b) An Order is an offer but not a firm offer and may be revoked prior to acceptance. An Order for which written confirmation is requested may be accepted by returning a copy thereof signed by Seller within seven days of the date of the Order. However, Buyer may elect to consider Seller’s oral acceptance, Seller’s preparation to provide the Goods, or Seller’s delivery of the Goods, as an acceptance of an Order and its terms (and of no other terms) and enforce an Order. IN SUCH CASE, SELLER SPECIFICALLY WAIVES ANY REQUIREMENT FOR SIGNED ACCEPTANCE OF AN ORDER, AND SELLER AND BUYER EACH WAIVE ANY DEFENSE TO THE VALIDITY AND ENFORCEABILITY OF THE ORDER ARISING FROM ELECTRONIC SUBMISSION OF THE ORDER TO SELLER AND SELLER’S ACCEPTANCE IN ACCORDANCE WITH THIS SUBSECTION. Buyer objects to any additional or contrary terms in a quotation, acceptance, or other communication from Seller, and such are expressly rejected and will not become part of the Order, but shall not operate as a rejection of the Order if Seller accepts Buyer’s offer by commencement of the work or by other means of acceptance set forth herein, in which case the Order shall be deemed accepted by Seller without any additional or different terms or variations whatsoever. No objection to the Terms or reservation of rights by Seller shall be effective. THE TERMS OF THE ORDER, AS ISSUED BY BUYER, INCLUDING THESE TERMS, ARE EXCLUSIVE, AND EACH ORDER IS LIMITED TO AND CONDITIONAL UPON SELLER’S ACCEPTANCE OF THE ORDER, INCLUDING THE TERMS, EXCLUSIVELY. Any modification of these Terms must be expressly stated on the face of the Order issued by Buyer or made in the manner required under Section 31. The Terms are available at [www.zhongdinggroup.com](http://www.zhongdinggroup.com).

(c) An Order does not constitute an acceptance by Buyer of any offer to sell, any quotation, or any proposal. Reference in an Order to any such offer to sell, quotation, or proposal shall not constitute an addition to or a modification of any of the terms and conditions of an Order, except that a specific item of an offer to sell, quotation or proposal referenced and adopted by an Order shall be included in an Order without adopting any other portion of the offer to sell, quotation or proposal. No course of performance or dealing by the parties shall be construed to waive, modify or otherwise adversely affect Buyer’s rights.

(d) Providing a purchase order number does not constitute an offer or contract for sale, but only a statement of present intent to issue an Order. Issuance of an Order does not constitute an obligation or evidence of an obligation of Buyer to continue to purchase Goods from Seller after expiration of an Order, although Seller may have an obligation of continued supply as provided in an Order. Seller acknowledges Buyer has no such obligation unless contained in a binding written agreement signed by Buyer.

(e) Issuance of an Order for specific Goods such as product design or tooling for example, is not a commitment to issue an Order for other Goods such as production parts for example. Issuance of a letter of intent or other notice stating the Seller has been selected as the intended supplier of Goods does not obligate Buyer to issue an Order for such Goods or purchase such Goods.

(f) An Order shall also include other provisions applicable to the Buyer's purchase of Goods, which may be found on the Buyer's supplier website. Such provisions may include amendments to these Terms and other obligatory instructions to Sellers. The version of these Terms in effect and published on Buyer's supplier website or on Buyer's general website as of the date of an Order or any renewal shall be the applicable Terms to such Order.

## **2. Duration of Order.**

(a) The "Initial Term" of the Order begins on the Effective Date shown on the Order and expires on June 30 of the next calendar year. If, for example, an Order is issued on July 1, the Initial Term will end on June 30 of the next year. Similarly, the Initial Term of an Order issued on January 1 will expire on June 30 of the next year.

(b) An Order will renew automatically on July 1 for an additional 12 months, ending on the next June 30, unless a notice of non-renewal has been provided under the next Subsection (c). This is the "Renewal Term". The Order will automatically be renewed each subsequent year for an additional Renewal Term of 12 months unless a notice of non-renewal has been provided under the next Subsection (c).

(c) Either party may elect not to renew the Order by providing a written notice to the other party to that effect. Buyer must provide its written notice by May 1 of the year in which the Initial Term or Renewal Term (as applicable) is scheduled to expire. Seller shall do so sufficiently in advance of the scheduled expiration date to enable Buyer to resource the production of the Goods in a timely and orderly manner, but in no case later than May 1 of the year in which the Initial Term or Renewal Term (as applicable) is scheduled to expire. In all cases, Seller shall consult with Buyer's production purchasing department prior to giving its written notice to ensure that it will be timely, and the parties will confirm in writing their agreement to Seller's written notice period. If Seller elects not to renew, it shall, if requested by Buyer: (a) work diligently with Buyer to identify an alternative source of supply that is acceptable to Buyer; (b) identify Seller's component part and raw material suppliers relating to the Goods; (c) provide copies of production layout and engineering, and (d) assist the

replacement supplier in its PPAP. Seller shall continue with its supply obligations until the replacement supplier is in production.

(d) Buyer, at its option, may extend the term of the Order for up to four months beyond the scheduled June 30 expiration date of the Initial Term or Renewal Term (as applicable). This is the “Extended Term”. If the Extended Term is implemented, the Order will expire at the end of the Extended Term. Buyer will provide Seller with written notice of any Extended Term on or before the June 1 before the Initial Term or Renewal Term is set to expire. The written notice will specify the Extended Term (up to four months) and include a non-binding volume projection of Buyer’s needs. Prices in effect at the end of the Initial Term or Renewal Term and all other terms and conditions will remain in effect during the Extended Term. If a transition period longer than the Extended Term is required, Buyer and Seller will negotiate in good faith the terms and conditions of any extension

(e) Notwithstanding anything to the contrary in this Section 2, in the event the agreement formed by the Order is for the supply of goods or services sourced for any Original Equipment Manufacturer (“OEM”) vehicle program(s), the Order is binding for the programs production life (including model refreshes and program extensions and subject to program cancellations as determined by the applicable OEM Customer). Both Buyer and Seller acknowledge the risk of the vehicle program production life being cancelled or extended by the OEM.

### **3. Prices, Payment and Audit.**

(a) Seller shall furnish the Goods at the prices in an Order. All prices are in U.S. dollars and FOB destination (place of delivery). Seller warrants that the prices for the Goods are no less favorable than those extended at the time of an Order or during the 12 months immediately preceding an Order to any other customer of Seller for the same or similar Goods in similar quantities. Prices are not subject to increase, unless specifically stated in the Order, and Seller assumes the risk of any event or cause affecting prices, including without limitation, foreign exchange rate changes, increases in raw material costs, inflation, increases in labor or other production and supply costs, and any other event which impacts the price or availability of materials or supplies. Buyer shall also receive the full benefit of all discounts, premiums and other favorable terms of payment customarily offered by Seller to its best customers. If Seller reduces its prices for the same or similar Goods to below prices in an Order, Seller shall reduce the price to Buyer to the same price. Seller warrants that the price in an Order shall be complete, and no additional charges of any type shall be added for any reason without Buyer’s express written consent, including but not limited to, current or increased costs of materials, labor, packaging, labeling, custom duties, taxes, storage, insurance, boxing and crating. Seller shall submit invoices, in duplicate, which include Seller’s supplier number, date and number of Buyer’s Order, Seller’s tax identification number, the date, place, and quantity of each delivery, and other information requested by Buyer. No invoice may reference any term separate from or different than the Order, including these Terms. All duties, taxes, and any other items which Buyer may specify shall be separately listed on invoices. All cash discounts shall be computed from the date of receipt by Buyer of a final correct invoice or receipt of the Goods, whichever

occurs later. Cash discounts shall be based on the full amount of invoice, less freight charges and taxes if itemized separately on the invoice. Correct invoices must be received by Buyer at least 10 days prior to the cash discount payment date. Delay in receiving invoices or Goods is considered good cause for withholding payment and shall extend the cash discount period. Buyer at its option may pay for Goods based upon its records of the receipt of Goods without invoicing by Seller.

(b) Buyer's payment will be made in accordance with the payment terms specified on the Order. Payment will be made by mailing on or before the due date unless otherwise expressly agreed by Buyer. Buyer shall pay for Goods on a Net Settlement Basis all of the accounts of Seller arising from the Orders and other agreements Seller has with Buyer. "Net Settlement Basis" means that, unless prohibited by law, Buyer may set off and recoup against Buyer's accounts payable to Seller any amounts for which Buyer determines in commercial good faith Seller or any affiliate is liable to Buyer or any affiliate of Buyer under any Order or other agreements with Seller or any affiliate. Buyer may do so without notice to Seller. An affiliate is any entity in which a party or an entity controls or is under common control. "Control" means at least a 25% voting interest. Buyer may withhold payment pending receipt of evidence, in the form and detail requested by Buyer, of the absence of any liens, encumbrances or claims on Goods provided under the Order.

(c) Seller warrants prices for tooling, special equipment and other special items required specifically for an Order, which are disclosed in quotations or otherwise, shall be Seller's net cost after all discounts, rebates and other benefits, whether the prices are to be separately paid by Buyer or amortized by Seller in the price for Goods.

(d) Seller shall participate in Buyer's value added/value engineering and warranty reduction programs to lower the prices of Goods. Seller's prices shall be reduced by the same percentages Buyer reduces its prices to its Customers under productivity programs.

(e) During the term of the Order and for at least four (4) years following the later of: the last delivery of the Goods; the date of the final payment to Seller under the Order; or the expiration of any applicable warranty periods for the Goods or of any applicable governmental or industry required retention periods, Seller grants Buyer access to Seller's premises and all pertinent information including without limitation documents, data, records and other materials), and Buyer has the right at any reasonable time to send authorized representatives, for the purpose of auditing Seller's compliance with the terms of the Order (including, without limitation, charges under the Order) or inspecting or conducting an inventory of finished goods, work-in-process, raw materials, any Furnished Property and all work or other items to be provided pursuant to the Order located at Seller's premises or otherwise in the possess of or under the control of Seller. Seller shall cooperate with Buyer so as to facilitate Buyer's audit, including, without limitation, by segregating and promptly producing such records as Buyer may reasonably request. During the foregoing period, Seller will retain all pertinent documents, data, records and other materials pertaining to the foregoing. If a review/audit shows Seller's noncompliance with the Order, Seller will reimburse Buyer for any price discrepancy or other loss caused by its noncompliance, together with interest at an annual rate of 12% (or, if

less, the maximum rate permitted by law) plus the cost of the review/audit. Any such audit or inspection conducted by Buyer or its representatives will not constitute acceptance of any Goods or other goods (whether in progress or finished), relieve Seller of any liability under the Order or prejudice any rights or remedies available to Buyer. Seller shall obtain from its suppliers right identical to those set forth in this subsection for the express benefit of Buyer.]

#### **4. Quantities and Blanket Order.**

(a) Unless otherwise expressly stated in the Order or other agreement signed by an authorized representative of buyer, if no other quantity is stated on the face of the Order or if the quantity is blank or specifies the quantity as zero, “blanket,” “blanket order,” or “as released,” “as scheduled,” “as directed,” “subject to Buyer’s production releases,” or similar terms, then subject to these Terms, Buyer will purchase from Seller, and Seller will supply to Buyer, Buyer’s requirements for Goods in such quantities as identified by Buyer as firm orders in material authorization releases, manifests, broadcasts or other written delivery instructions (“Releases”) that are transmitted to Seller during the Term of the Order, and Seller shall deliver such quantities on such dates and times at the price and on the other terms specified in the Order Releases are not independent contracts, and all references herein to the Order shall include any related Releases. If the Order covers services, Buyer is required to purchase such services to the extent expressly stated in a Statement of Work signed by the Buyer. Seller shall not provide any services, fabricate or assemble any Goods, procure required materials, nor ship any Goods, except to the extent specifically authorized by the Order or by written Releases. Seller shall maintain at its expense and risk components, materials and finished Goods necessary to assure a continued supply of Goods at the latest design level. Subject to change by Buyer’s Releases, Seller is authorized to fabricate and assemble up to four weeks of finished Goods inventory and acquire up to an additional eight weeks of component and materials inventory based on Seller’s latest Releases. Releases may be modified by Buyer at any time to the extent not contrary to specific terms of the Order. Buyer shall be obligated only to purchase Goods and those components and materials fabricated or acquired by Seller in reliance on a Release that establishes a firm or fixed quantity. Buyer may temporarily suspend delivery or modify delivery dates for fixed or firm quantities. Forecasts and planning advisories are not Releases and may not be relied upon by Seller. Buyer may return overshipments to Seller at Seller’s expense for all packing, handling, sorting and transportation charges. Buyer has and/or will rely upon Seller’s obligations to sell under an Order, and the obligation of Seller to sell under the prices and other terms of an Order continues during the period covered by the Order and thereafter for a reasonable time at the prices in effect as of expiration or earlier termination of the Order so that Buyer may resource supply of the Goods. The inclusion in an Order of prices for periods beyond the term of any firm period of commitment in an Order obligates Seller to accept a new or renewed Order at such prices but is not an implied extension of any commitment of Buyer to purchase.

(b) Quantities listed in an Order as estimated or forecast or for planning purposes are Buyer’s best estimate of the quantities of Goods it might purchase from Seller for the related time period(s) and are subject to change. Seller acknowledges that if an Order is described as a “Blanket” Order or in some other manner indicates Buyer’s obligation to

purchase is limited to those Goods and quantities to be set forth in Releases, a reference in the Order (exclusive of the Releases) to a quantity is an estimate based upon information from Buyer's customer and is not a guarantee of the quantity to be purchased. The inclusion in an Order for tooling or other Orders for non-production Goods is for a warranty of performance of the Goods and is not a guarantee of the issuance of an Order for Goods or for a quantity of Goods to be ordered. A reference in an Order to a minimum or maximum quantity of Goods is a warranty by Seller of its commitment to maintain the indicated production levels, and is not a guarantee of a quantity of Goods to be ordered.

## **5. Customer Requirements; Directed Supplier Relationship.**

(a) Seller agrees to comply with the applicable terms and conditions of any agreements ("Customer Purchase Orders") received by Buyer from a third party ("Customer"), or directly or indirectly applicable to Buyer, pursuant to which or in respect to which Buyer agrees to supply to Customer, or incorporate into goods supplied to Customer, Goods purchased by Buyer from Seller. The terms "Customer" and "Customer Purchase Orders" shall also include the final equipment manufacturer of goods or services into which the Goods are or will be incorporated, as well as any intermediate entities in the supply chain between Buyer's direct Customer and such final equipment manufacturer, and related terms and conditions of such Customers. Buyer may in its discretion supply Seller with information regarding the Customer Purchase Orders. Seller will be responsible for ascertaining how such Customer Purchase Order affects Seller's obligations under the Order, and Seller will meet all such Customer Purchase Order terms and conditions to the extent within Seller's control. Seller acknowledges that it is familiar with the automotive industry and the applicable terms of Customer(s) that would apply in such event. In the event of a conflict between the Order or these Terms and the terms of the Customer Purchase Order, Buyer will determine, in its sole and absolute discretion, which terms will supersede and apply to Seller. Seller will do everything within its control to enable Buyer to meet the terms and conditions of the Customer Purchase Orders, including without limitation, cost and productivity terms and price reductions. By written notice to Seller, Buyer may elect to have the provisions of this Section prevail over any conflicting term between Buyer and Seller.

(b) In addition to the requirements set forth in subsection (a), if an Order derives from a supplier relationship between Seller and Buyer directed or required by the original equipment manufacturer or higher tier supplier ("Directing Customer"), Seller shall comply with all provisions of the Order plus the terms and conditions of the Directing Customer relating to the Goods. At Buyer's request, Seller shall negotiate performance, pricing, quality, warranty and other contract issues relating to the Goods with the Directing Customer to assure that the Directing Customer's requirements are adequately developed, described, and met. Upon Seller's written request Buyer shall pass through to Seller, subject to an appropriate mark-up for Buyer, those commercial terms which Seller negotiates with the Directing Customer regarding the Goods, provided such commercial terms are also provided and granted to Buyer. Seller is solely responsible to provide in writing all information relating to the Goods including, for example, the Goods' design and performance (as approved by the Directing Customer and Buyer), design for interface of the Goods with Buyer's products, testing data and reports, tooling requirements and timing, and other matters which could affect Buyer's use of the Goods and performance of its



obligations to provide, directly or indirectly, products to the Directing Customer. Other than for changes to the terms and conditions of purchase of the Directing Customer granted to Buyer and Seller, Buyer may also require Seller to comply with the Directing Customer's terms and conditions of purchase and these Terms, and to the extent there is a conflict with an Order, to the provisions which Buyer elects to apply.

**6. Delivery, Documentation and Marking.**

(a) Delivery must be on the date indicated, if any, and otherwise as requested by Buyer. If an Order is subject to Releases or if no delivery schedule is provided, deliveries are to be made in quantities and at times specified in Releases, as may be amended by Buyer. Buyer shall have no liability for payment of Goods delivered to Buyer which are in excess of firm quantities specified in an Order (including Releases). Buyer may, from time to time, change delivery schedules or direct temporary suspension of scheduled shipments without additional charge. .

(b) Time and quantities are of the essence under an Order. Seller agrees to 100% on-time delivery of the quantities and at the times specified by Buyer, as set forth in an Order and related Releases. Failure to meet agreed delivery and quantities shall be considered a breach of the Order, and Seller shall pay to Buyer any damages or expenses imposed upon or incurred by Buyer. Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which entitles Seller to modify the price for Goods covered by the Order. Buyer is not obligated to accept early deliveries, late deliveries, partial deliveries or excess deliveries or to make payment for Goods delivered to Buyer that are in excess of quantities specified in Buyer's delivery schedules.

(c) Seller must assure overall equipment (shared and specific) and plant capacities are adequate to meet Buyer's needs. Ongoing capacity analysis must account for scrap variation, downtime, maintenance, and other Customer requirements.

(d) All Goods shall be delivered clean and ready for further processing. If any rust inhibitor or other chemical protection is required, it must be water soluble and approved by Buyer in writing prior to use.

(e) All shipping, drayage, demurrage, storage, insurance, export and import duties, packing, and related charges shall be paid by Seller. If Buyer is specifically responsible for such charges according to the terms of an Order, they shall be prepaid by Seller, and then billed to Buyer.

(f) All Goods shall be suitably packed to avoid damage, marked and shipped in accordance with the requirements of common carriers in a manner to secure the lowest transportation costs consistent with the requirements hereof and to ensure the Goods arrive in good condition at the final destination. No additional charge shall be made to Buyer for

packaging or shipping. Packing slips identifying the purchase order number, release number and part number must accompany each shipment in an envelope marked "Packing slip enclosed".

(g) Seller shall mark each package with an Order number, and where multiple packages comprise a single shipment each package shall be shown on packing slips, bills of lading, and invoices. If Buyer is obligated to pay for shipping, Seller shall pay for all extra charges incurred because of Seller's failure to follow Buyer's shipping instructions, including those related to delivery schedules, whether or not Seller's liability for general damages is excused under other provisions of an Order.

(h) Seller shall describe the Goods on the bill of lading or other shipping receipt and route shipments, in accordance with instructions issued by Buyer, if any.

(i) Seller shall mark Goods, packaging, and packing as instructed by Buyer including but not limited to any parts branding requirements, and in otherwise accordance with the standards of the Uniform Commercial Code and Automotive Industry Action Group ("AIAG"). Markings shall be in English, AIAG format bar code including completed fields for part number, container quantity, shipping date, and a unique serial number, and such other form as determined by Buyer.

(j) Seller shall pay all express and other charges necessary to speed delivery to enable Seller to meet the delivery schedule. Seller shall ship all late shipments by express or other priority methods of delivery at its expense as requested by Buyer.

(k) Seller shall be responsible for the cleaning, replacement and repair costs of any reusable dunnage, delivery cartons or other materials delivered to Seller by Buyer.

(l) Seller shall provide all packaging and documentation in compliance with the law of all countries of shipment, routing, and destination.

(m) Whether or not the Goods will be provided in multiple deliveries, the Order is for a single contract.

(n) Seller shall comply with C-TPAT and other U.S. government programs to improve security and the movement of goods through U.S. Customs.

**7. Risk of Loss and Title to Goods.**

(a) All shipments are at the risk of Seller until receipt at the Buyer's location or other final destination designated in an Order or other writing by Buyer, regardless of the F.O.B. point unless otherwise assumed by Buyer in writing. If risk of loss is assumed by Buyer, all risk casualty insurance for replacement value must be provided by Seller for the benefit of Buyer. The cost of any insurance shall be paid by Seller unless otherwise agreed in writing by Buyer. Under no condition will the risk of loss be that of Buyer unless such insurance is provided. Risk of loss shall not be governed by transfer of title.

(b) Title to all Goods shall vest in Buyer the earlier of the date of an Order and their identification to an Order. Identification shall occur not later than the date Seller acquires or begins manufacture of the Goods. Buyer's obligation to pay for Goods is limited by terms of the Order. Seller shall pay all taxes related to ownership of the Goods until Seller assumes the risk of loss.

## **8. Samples and Specifications.**

(a) Seller shall comply with all requirements necessary to complete timely Buyer's, Buyer's Customer's and original equipment manufacturer's quality control, inspection systems, and production part approval process as adopted from time to time ("PPAP"). Seller shall, without cost to Buyer, deliver sample parts required by Buyer for testing and inspection, including without limitation, the PPAP. Seller shall inspect such samples before delivery and shall certify inspection results in the manner requested by Buyer. Seller shall not begin the manufacture of Goods for production prior to the satisfactory completion of PPAP procedures of Buyer, its Customer, and the original equipment manufacturer. Seller shall not make any changes in the materials or manufacturing process without completion and approval of a Level 3 PPAP.

(b) Buyer reserves the right at any time to make changes in quantities, drawings, specifications, testing or quality control, packing, shipment, scope of work and other terms of an Order. The specifications shall include those in an Order and any statement of work or statement of requirements issued by Buyer or its Customer. Any purported change shall be binding on Buyer only if made in a writing signed by Buyer. Any difference in price or time for performance necessarily resulting from such changes shall be adjusted and an amendment to the Order shall be provided by Buyer in writing, if Seller makes demand for such adjustments and delivers all supporting documentation within 10 days of receipt of Buyer's written notice of change. Time is of the essence for such demand. Notwithstanding anything to the contrary, the price shall be adjusted solely to compensate Seller for increased costs of materials and other direct production costs (excluding overhead and profit) necessarily incurred as a result of the changes, and the terms for performance shall be adjusted only for the period actually required to comply with the changes. Seller may not substitute materials or change the specifications of the Goods in any way without written authorization from Buyer. Seller shall diligently perform the Orders and all changes while its claim is being evaluated and during any period of dispute regarding requested adjustments.

## **9. Quality, Development and Inspection.**

(a) Seller shall, as Seller's cost, participate in any supplier quality and development programs and comply with all quality requirements and procedures specified by Buyer from time to time, including ISO-9001, QS-9000, TS-16949, IATF-16949 and any other quality assurance standards required by Buyer. Buyer may inspect the Goods in process and Seller's facilities at reasonable times, but such inspection or approval shall not constitute acceptance of the Goods or a waiver to insist on strict performance. Seller shall design and

manufacture the Goods to be suitable for installation and use in the product to be sold to the end user.

(b) All Goods shall be received subject to right of inspection and rejection by Buyer and its “Customer” (which term includes, without limitation, Buyer’s immediate customers, subsequent original equipment manufacturers and end-users). Buyer may rely on Seller’s obligations and is not required to inspect the Goods prior to use. In addition, Buyer and its Customer shall have a reasonable time, but not less than 14 days after delivery, to inspect delivered Goods prior to accepting the Goods. Defective Goods and Goods otherwise not in conformity with Buyer’s specifications or an Order will be held pending Seller’s instructions at Seller’s risk and expense and, if Seller so directs, may be returned at Seller’s expense; provided, if Seller fails to provide written instructions within seven days of notice, Buyer may return the Goods freight collect or otherwise dispose of them at Seller’s expense. Goods returned as defective or nonconforming shall not be returned to Buyer or replaced without Buyer’s approval and may, at Buyer’s option, constitute a reduction in quantity of Goods Buyer may be obligated to purchase. Payment for the Goods prior to inspection shall not constitute an acceptance thereof or waive Buyer’s right to revoke acceptance. Acceptance, whether or not it has been revoked, shall not release Seller’s responsibility for defects, non-conformities, warranty, or other claims.

(c) All Goods (which term includes for this Section, without limitation, raw materials, components, intermediate assemblies, end products, tooling and accessories) shall be subject to inspection and test by Buyer, its Customer, and federal and state governments, at all times and places to the extent practicable, and in any event prior to final acceptance by Buyer and its Customer.

(d) If any inspection or test is made on the premises of Seller or its subcontractor, Seller without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and tests on the premises of Seller or its supplier shall be performed in such a manner as not to unduly delay Seller.

(e) Seller shall provide and maintain an inspection and process control system acceptable to Buyer and its Customer covering the Goods. Records of all manufacture, testing and inspection by Seller of the Goods shall be kept complete, separate and available to Buyer and its Customer during the performance of an Order and for such longer periods as may be specified in an Order, but not less than ten years after the last delivery of the Goods to Buyer.

#### **10. Materials and Safe Use.**

Seller shall provide with the Goods, in English and in writing, all materials and other information necessary for the safe installation, use, maintenance and repair of the Goods and to maximize the efficient use and useful life of the Goods. Prior to and with the shipment of the Goods, Seller shall furnish to Buyer sufficient warning and notice in writing (including material safety data sheets and appropriate labels on the Goods, containers and packing) of any hazardous material that is an ingredient or a part of any of the Goods, together with such special handling

instructions as may be necessary to advise carriers, Buyer, and their respective employees, how to exercise that measure of care and precaution that will best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the Goods, containers and packing shipped to Buyer. If requested by Buyer, Seller shall promptly furnish to Buyer in such form and detail as Buyer may direct, in addition to standard material safety data sheets: (a) a list of all ingredients in the Goods; (b) the amount of all ingredients; (c) information concerning any changes in or additions to such ingredients; and (d) other information required by International Material Data Systems.

**11. Electronic Data Interchange.**

Seller shall, at Buyer's request and Seller's expense, connect to Buyer's electronic data interchange ("EDI") system. All transactions initiated under EDI shall be governed by the terms contained in Buyer's transmissions, except that standard terms and conditions which may be a part of Buyer's EDI system shall be supplemented by, and superceded to the extent inconsistent with, the terms of these Terms. A transmission shall be deemed signed if it contains the name of the individual authorizing the transaction and is otherwise in accord with authentication and other provisions of Buyer's EDI system.

**12. Confidentiality and Intellectual Property.**

(a) At all times prior to, during, and after an Order, Seller shall (i) maintain the confidentiality of any information disclosed by Buyer or any of its parents, subsidiaries, affiliates, customers, and contractors, including but not limited to any technical, process or economic information derived from drawings, specifications and other data furnished by Buyer in connection with an Order, whether or not identified as "confidential" upon disclosure ("Confidential Information"); (ii) not disclose or permit the disclosure of any Confidential Information to any person other than its employees for whom such knowledge is essential for performance of an Order; and (iii) not use Confidential Information except for performance of an Order. Seller shall immediately notify Buyer of any disclosure of any Confidential Information that is not permitted by these Terms and Conditions or other misuse of any Confidential Information or breach of these Terms and Conditions. Except as required for the efficient performance of an Order, Seller shall not use such information or make copies or permit copies to be made of such drawings, specifications, or other data without the prior written consent of Buyer and may not sell to any third party any Goods which are constructed with or incorporate such information disclosed to Seller from reverse engineering of the Goods. If any copies of Confidential Information are made with prior consent, notice referring to the requirements of this Subsection shall be placed on the copies. Without limiting the direct liability of Seller's employees and others who may have received Confidential Information directly or indirectly from Seller, Seller shall be responsible for the improper disclosure or other misuse of Confidential Information by Seller's employees and others in privity with Seller, and Seller shall immediately take such steps as may be necessary to terminate any continuing improper disclosure or misuse by any of Seller's employees and others of which Seller becomes aware. Buyer makes no representation or warranty of any kind, express or implied, with respect to any Confidential Information. Buyer may, at its sole discretion, elect at any time, by written notice to Seller, to

terminate Seller's further use of Confidential Information for any purpose. Upon receipt of such notice, Seller shall, and shall cause Seller's employees and its subcontractors to, promptly cease all further use of Confidential Information, return to Buyer all physical materials containing Confidential Information, whether the materials were originally provided by Buyer or copied or otherwise prepared by Seller or any of Seller's employees, and erase or otherwise destroy any Confidential Information kept by Seller or any of Seller's employees in electronic or other non-physical form. Such termination by Buyer shall not affect Seller's continuing obligations in this Subsection.

(b) Any knowledge or information disclosed by Seller or on its behalf to Buyer, its affiliates or contractors, which in any way relates to an Order, shall not, unless otherwise specifically agreed to in writing by Buyer, be deemed to be confidential or proprietary information, and shall be acquired by Buyer, free from any restrictions (other than a claim for patent infringement), as part of the consideration for an Order.

(c) Seller at its expense shall defend, indemnify and hold harmless Buyer and its successors, assigns, Customers, and users with respect to every claim that may be brought against Buyer or others that use the Goods, for any actual or alleged infringement of any present or future patent, copyright, industrial design right or other proprietary right based on Seller's activity under an Order, or the manufacture, sale, or use of the Goods (i) alone; (ii) in combination by reason of their content, design or structure; or (iii) in combination in accordance with Seller's recommendations. Seller shall investigate and defend or otherwise handle every such claim, and at Buyer's request, assist Buyer in Buyer's investigation, defense, or handling of any such claim. Seller shall pay all expenses and damages or settlement amounts that Buyer and others selling buyer's products or using the Goods of an Order may sustain by reason of each such indemnified claim. If the use or sale of the Goods is enjoined, Seller shall, at its own expense and at Buyer's option, either: (i) procure the right to continue using the Goods; (ii) replace same with a non-infringing equivalent; or (iii) remove the Goods and refund the purchase price and the transportation and installation costs thereof. Seller's obligations shall apply even though Buyer furnishes all or any portion of the design and specifies all or any portion of the processing used by Seller.

(d) Any information or materials which may be patented or copyrighted that are created in the performance of an Order shall be work for hire and be the exclusive property of Buyer and to the extent it cannot qualify as work for hire, Seller assigns all such information and materials to Buyer.

(e) Seller shall promptly inform Buyer in writing of the full details of all inventions, discoveries, concepts, and all copyright material, ideas, information and improvements relating to the Goods or Buyer's business ("Developments"), whether patentable or not, including, but not limited to: hardware and apparatus, processes and methods, designs, formulae, computer programs and techniques, as well as any improvements and related knowledge, which Seller conceives, develops, makes, contributes to or reduces to practice (whether alone or jointly with others) while developing or supplying Goods. Seller shall grant, and hereby does grant, an irrevocable, paid-up worldwide license to make, sell, use, and exploit

the Developments (with the right to sublicense), to Buyer or Buyer's designee: all Developments; all trademarks, copyrights and mask work rights in Developments; and all patent applications filed and patents granted on any Development, including those in foreign countries, necessary or convenient to the use, sale, or manufacture of the Goods, or any improvements or derivatives. Seller shall execute any papers and take such further actions as Buyer may consider necessary or helpful to obtain, maintain, defend and enforce patent, copyright, trademark or other intellectual property rights, and all related expenses shall be paid by Buyer.

(f) Seller shall specifically identify in a writing delivered to Buyer prior to any shipment, all components, processes, tooling or equipment used in the production of the Goods that are subject to any patent of Seller or third party.

(g) Seller grants to Buyer a permanent, paid-up, nonexclusive, worldwide license, including a license to any operating software incorporated into the Goods sold hereunder with a right to grant a sublicense to others, to make, have made, use, have used and sell the Goods or any improvements or derivatives thereof under any patents or intellectual property now or hereafter owned or controlled by Seller.

(h) Seller grants to Buyer, and agrees to grant to any entity designated by Buyer, a nonexclusive license, on reasonable terms and conditions, to make, have made, use, have used and sell under any other patents or technology now or hereafter owned or controlled by Seller which cover any application of the technology embodied in the information or data Seller acquires or develops in the course of Seller's activities under an Order or which are convenient for the manufacture, use and sale of the Goods or products of the same general type of the Goods.

(i) Seller hereby grants Buyer, and Buyer's present and future affiliates, an irrevocable, non-exclusive, worldwide, royalty-free, paid-up, license, including the right to sublicense, under any and all proprietary rights controlled by Seller or its affiliates, including, without limitation, any patent, copyright, moral, industrial design right, trademark, technical information, know-how or other proprietary right ("Seller Proprietary Rights"): (i) in the event that the Order is terminated by Buyer under Sections 17 or 21, and/or (ii) in the event that Seller for any reason (including without limitation requirements imposed on Buyer by Buyer's Customer) is unable to satisfy the quality, quantity, delivery or related requirements of Buyer for Goods under the Order and/or additional orders (including, for example and without limitation, in the event of force majeure, or increased demand due to volume requirements for a corrective field service action/recall, or by reason of Seller's insolvency, or in the event of a required change or expansion in relation to the country(ies) of manufacture or delivery): (A) to make, have made, use, sell, offer to sell, and import the Goods, (B) to copy, modify, use, distribute, publicly display/perform, prepare derivative works of, reproduce in the case of a mask work, and import or distribute in the case of a semiconductor chip product in which a mask work is embodied, any copyrighted or copyrightable portions of such Seller Proprietary Rights relating in any way to Goods, and (C) to do all other things and exercise all other rights in the Seller Proprietary Rights necessary or useful to avoid, remedy and mitigate, as Buyer reasonably determines to be appropriate, all or any portion of any consequences to Buyer, and to any direct and indirect customers of Buyer, arising from any situation under subparagraphs (i) or (ii) above. Seller shall

also cooperate with Buyer in the exercise of such license including providing, without restriction on use, reproduction or disclosure, all information and data deemed necessary by Buyer. At no additional cost, Seller hereby grants Buyer an irrevocable, nonexclusive, worldwide license under Seller Proprietary Rights that is necessary or incident to the reasonably intended use or application of the Goods. Rights under this Section 12(i) are intended to be subject to 11 USC Section 365(n), and are supplementary to any other rights of Buyer under existing Orders and other agreements with Seller.

(j) Seller shall not manufacture or sell any product which uses the design of the Goods sold under an Order or which is produced with the tooling used to produce Goods sold under an Order.

### **13. Service and Replacement Parts.**

Seller shall sell to Buyer Goods as ordered by Buyer for use as service and aftermarket replacement parts, at the prices set forth in the Order, plus any actual costs for any unique packaging required because the Goods are intended for service and aftermarket. If the Goods are systems or modules, Seller shall sell to Buyer as ordered by Buyer the system or module, or the components or parts that comprise the system or module. The prices for the components or parts shall not, in the aggregate, exceed the price of the system or module less assembly costs. During the 15 years after Buyer completes production of its products incorporating any Goods for use by an original equipment manufacturer's current model purchases, Seller shall sell Goods to Buyer as ordered to fulfill Buyer's past model service and replacement parts requirements. Unless otherwise agreed to by Buyer in writing, the price during the first five years of this period shall be those in effect at the conclusion of purchases for production for the original equipment manufacturer. For the remainder of this period, the price for Goods shall be as agreed to by the parties, not to exceed the lower of (a) the cost of manufacturer and a reasonable contribution to overhead and profit; (b) the price at which Buyer is obligated to sell to its Customer; and (c) the price at the conclusion of production for use by an original equipment manufacturer's current models. When requested by Buyer, Seller shall make service literature and other materials available at no additional charge to support Buyer's service and replacement part sales activities. Notwithstanding the foregoing, this is not a requirements contract, and Buyer is only obligated to purchase Goods as stated in an Order.

### **14. Warranties.**

(a) Seller warrants and represents to Buyer, to Buyer's successor, assigns, and Customer, and any other end user of Buyer's products, that all Goods shall be: (i) merchantable; (ii) free from failure in the final product as sold to the end user for the periods of all Buyer's warranties to its Customer but not less than the lesser of five years or 60,000 miles for production parts, the greater of one year or the remaining term of the OEM warranty on the part for service and aftermarket parts, and two years from installation for all other Goods; (iii) free from all defects including for example design, workmanship and materials; (iv) fit for the particular purposes for which they are purchased; including the specified performance in the component, system, subsystem and vehicle location specified by Buyer and the environment in



which the Goods are or reasonably may be expected to perform; (v) in strict compliance with the specifications, samples, drawings, designs, Seller's advertisements, statements on containers and labels, and statements of work and statements of requirements of Buyer and its Customers and other requirements (including performance specifications) approved or adopted by Buyer as of the date of delivery or such other date provided by Buyer in writing; (vi) in compliance with all government requirements and applicable laws; (vii) composed of all new materials and components; (viii) produced and provided with the highest degree of care; (ix) furnished promptly; (x) provided by experienced and well trained personnel in accordance with professional and industry best practices; (xi) free of liens; and (xii) to the satisfaction of Buyer and its Customers, whether or not any of the foregoing has been approved by Buyer or its Customers. Any attempt by Seller to limit, disclaim, or restrict any such warranties or any remedies of Buyer, by acknowledgement or otherwise, in accepting or performing an Order, shall be null, void, and ineffective without Buyer's prior written consent. Approvals by Buyer of Seller's design drawings, specifications, samples, etc. are to assist Seller without charge to Seller but they do not replace or share Buyer's responsibility and do not waive or limit any warranty.

(b) Seller warrants that it shall engage in the continuous improvement of the Goods, other than Goods which by their nature cannot be improved, and advise Buyer in writing promptly of any possible changes to the Goods which would result in cost savings or quality improvement.

(c) If Seller is certified under ISO-9000, QS-9000, TS-16949 or any original equipment manufacturer quality program, Seller shall maintain such certification during the performance of any Order. If Seller is not so certified, Seller shall begin and continue the certification process under ISO-9000, QS-9000, or TS-16949 as selected by Buyer, in a diligent manner. Seller warrants that its performance of an Order shall be in compliance with the provisions of those supplemental sections of ISO-9000 (e.g., 9001, 9002, or 9003), QS-9000, or TS-16949, applicable to the obligations of Seller under the Order, whether or not Seller is certified or registered under such standards.

(d) Seller warrants (i) that no child, prison, forced, or involuntary labor shall be used by Seller or its subcontractors in the production of Goods; (ii) that Seller and its subcontractors shall produce all Goods in a work place free from physical abuse and any practice in violation of local law; and (iii) that Seller and its subcontractors shall provide to all workers producing the Goods a healthy, safe work environment, wages and benefits as required by law, freedom of association, and reasonable working conditions.

(e) All warranties and remedies provided by these Terms are cumulative and in addition to those provided by law and shall survive inspection, testing and inspection of the Goods.

## **15. Liability, Indemnity, and Insurance.**

(a) Seller shall defend and indemnify Buyer against all liabilities, claims or demands for injuries or damages to any person or property arising out of the performance of an

Order, by Seller, its servants, employees, contractors, agents, or representatives or from the storage or use of the Goods. Seller shall furnish an insurance carrier's certificate showing that Seller has adequate insurance coverage in the following minimum amounts: workmen's compensation - statutory limits for jurisdictions in which work is to be performed; employer's liability - \$100,000; general liability - bodily injury \$10,000,000 single limit; automobile liability - bodily injury \$1,000,000 per person and \$10,000,000 per occurrence; and property damage \$5,000,000. All policies shall be issued by an insurer licensed to do business in Michigan. Liability coverage shall include completed products, completed operations, and (if available) recall. Buyer shall be named as an additional insured under the policies. Seller shall furnish to Buyer a Certificate of Insurance completed by its insurance carrier(s) certifying that the required insurance coverages are in effect and will not be canceled or materially changed until 30 days after prior written notice has been delivered to Buyer. The certificate must set forth the amount of each coverage, number of policy, date of expiration, and Seller as an additional insured. If Seller is a self-insurer of workers compensation liability, Seller shall furnish Buyer a certificate of the Department of Labor of the jurisdiction in which any labor is to be performed approving the self-insurance. The purchase of such insurance coverage or the furnishing of a certificate shall not be a satisfaction of Seller's liability hereunder, or in any way modify Seller's obligation to indemnify Buyer.

(b) If Seller's performance under an Order involves operations by Seller on the premises of Buyer or one of its Customers, Seller shall take all necessary precautions to prevent the occurrence of any injury to persons or damage to property during the progress of such work, and except to the extent that any such injury or damage is due solely and directly to the negligence of Buyer or a third party, Seller shall defend and indemnify Buyer against any claim which may result in any way from any act or omission of Seller, its agents, employees or subcontractors arising under or related to an Owner.

#### **16. Termination for Convenience.**

In addition to any other rights of Buyer to cancel or terminate an Order or any Releases issued pursuant to an Order, Buyer may at its option immediately terminate all or any part of an Order or any Releases issued pursuant to an Order for Buyer's convenience, at any time and for any or no reason, by giving 30 days' written notice to Seller. Upon such termination for convenience, Buyer shall pay to Seller the following amounts without duplication: (i) the Order price for all conforming Goods which have been completed in accordance with an Order not previously paid; and (ii) the actual direct costs of work in process and raw materials incurred by Seller in furnishing the Goods under an Order or any Releases issued pursuant to an Order to the extent such costs are reasonable in amount and are properly allowable or apportionable, under generally accepted accounting principles, to the terminated portion of an Order or any Releases issued pursuant to an Order; less, however, the reasonable value or cost (whichever is higher) of any Goods or materials subsequently used or sold by Seller with Buyer's written consent and of the cost of any damaged or destroyed Goods or materials. Notwithstanding the foregoing or any transfer to Buyer, Buyer shall not be liable to pay for finished Goods, work in process or raw materials obtained, fabricated or processed by Seller in amounts in excess of those authorized in Releases (if Releases are required or contemplated by an Order), for any undelivered Goods

which are Seller's standard stock or which are readily marketable, or for any finished Goods which are not promptly delivered to Buyer after request by Buyer. Payments made under this Section shall not exceed the aggregate price payable by Buyer for finished Goods which would be produced by Seller under Releases outstanding at the date of termination. Except as provided in this Section, Buyer shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, product development and engineering costs, facilities and equipment, rearrangement cost or rental, unamortized depreciation costs, general and administrative burden charges arising from termination of an Order, or interest on claims. Within 60 days from the effective date of termination, Seller shall submit a comprehensive termination claim to Buyer with sufficient supporting data to permit Buyer's audit and shall thereafter promptly furnish such supplemental and supporting information as Buyer shall request. Buyer or its agent shall have the right to audit and examine all books, records, facilities, work, material, inventories and other items relating to any termination claim of Seller. Buyer, however, shall have no obligation to Seller if Buyer terminates its purchase obligations under an Order or any releases issued pursuant to an Order other than for Buyer's convenience. Payment under this Section shall constitute the exclusive liability of Buyer if an Order is terminated by Buyer for its convenience.

#### **17. Default and Remedies.**

(a) Seller shall be in default: (1) if Seller fails to perform any obligation within the time specified herein or any extension thereof or upon Buyer's demand if no time has been specified; or (2) if Seller fails to make progress in the performance of any obligation so as to make Buyer reasonably apprehensive about Seller's ability or willingness to perform its obligations; and if in either of these circumstances Seller does not cure such failure within five days or such longer period as Buyer may authorize in writing after receipt of notice from Buyer specifying such failure. Upon such default, Buyer may by written notice of default to Seller: (i) terminate the whole or any part of an Order; and (ii) procure alternative product or services upon such terms as it shall deem appropriate. Seller shall continue performance of an Order to the extent not terminated and shall be liable to Buyer for any excess costs for such similar Goods and other direct, incidental, and consequential damages. As an alternative remedy, and in lieu of termination for default, Buyer, at its sole discretion, may elect: (x) to extend the delivery schedule; (y) procure alternative Goods upon such terms and for such periods as it deems proper; and/or (z) to waive other deficiencies in Seller's performance; in which case an equitable reduction in an Order price shall be established by Buyer to compensate Buyer for its damages. If Seller for any reason anticipates difficulty in complying with a required delivery date, or in meeting any of the other requirements of an Order, Seller shall promptly notify Buyer in writing of the potential default, the cause thereof, and the estimated length of the anticipated default. Buyer is under no obligation to waive any default.

(b) Buyer may terminate an Order, in whole or in part, upon written notice to Seller, if control of Seller changes. A change of control includes: (a) the sale, lease or exchange of a substantial portion of Seller's assets used for the production of the Goods; (b) the sale or exchange of a controlling interest in the shares of Seller; or (c) the execution of a voting or other agreement of control. Seller shall provide Buyer with written notices of a proposed and actual

change of control at least 10 days prior to the date the change of control is scheduled to occur and within 10 days after the change of control has become effective. Buyer will have 30 days from the date the written notice from Seller is effective within which to notify Seller of its decision to terminate the Order and the effective date of the termination, which will be no sooner than 30 days after the date the written notice of termination is effective (as described in Section 44.02).

(c) If any of the Goods are found at any time to be defective in design, material or workmanship, or otherwise not in conformity with the requirements of an Order, Buyer, in addition to such other rights, remedies and choices as it may have under an Order or by law, at its option and sole discretion may: (1) reject and return such Goods at Seller's expense; or (2) require Seller to inspect the Goods and remove and replace nonconforming Goods with Goods that conform to an Order. If Buyer elects option (2) and Seller fails to promptly make the necessary inspection, removal and replacement, Buyer may at its option and Seller's cost, inspect and repair or replace the Goods.

(d) Seller grants Buyer a security interest in the Goods to secure Seller's return of any deposits and performance of other obligations of Seller, and grants Buyer an irrevocable power of attorney coupled with an interest to execute and file appropriate financing statements evidencing such interest and the interests of Buyer and its Customers in property furnished by them.

(e) Seller's continued holding of the Goods, Furnished Property or Required Property (as defined herein), after demand has been made by Buyer for delivery, will substantially impair their value, and Buyer shall be entitled to a court order for possession without bond. Seller shall continue to sell Goods under an Order during any dispute with Buyer provided Buyer continues to pay Seller amounts owed in excess of any right of offset.

(f) If Buyer or Seller is sued by any third party, including original equipment manufacturers, distributors or dealers, for loss, damage to property or for personal injury or death that is alleged or may have been caused by a failing of Goods supplied by Seller to conform to Seller's warranties, Seller and Buyer will cooperate with each other and provide technical assistance in defending such suit. Buyer and Seller give the other prompt notice of any such suit. Buyer and Seller shall use their best efforts to defend and minimize any damages and costs in connection with such suit or a settlement thereof. If it shall be alleged that failure of the Goods supplied by Seller to conform to any of Seller's warranties is a proximate cause of any damage, losses, injuries or claims asserted in such lawsuits, then Seller shall defend, indemnify and hold harmless Buyer, its affiliates, subsidiaries, directors, officers, employees, agents and other representatives from and against any and all claims for loss, property damage, death or personal injury, including, without limitation, product liability claims, directly resulting from such breach of Seller's warranties.

(g) At Buyer's request, Seller will reimburse Buyer for all incidental, consequential and special damages caused by non-conforming Goods, including but not limited to, costs, expenses, and losses incurred directly or indirectly by Buyer or its Customers: (i) in inspecting, sorting, repairing or replacing the non-conforming Goods; (ii) resulting from

production interruptions; (iii) conducting recall campaigns or other corrective service actions; or (iv) resulting from personal injury (including death) or property damage caused by the non-conforming Goods. Consequential damages include attorney and other professional fees incurred by Buyer. In any action brought by Buyer to enforce Seller's obligation to produce and deliver Goods under an Order, Buyer, at its option and in addition to any other remedies available, is entitled to specific performance of Seller's obligations under an Order.

(h) In the event of any service program, general recall or similar action ("Recall") involving the Goods, whether initiated by Buyer, Seller, an original equipment manufacturer, or any regulatory or other governmental body, both Buyer and Seller shall use reasonable commercial efforts to minimize costs in connection with such Recall. If it shall be alleged or determined that failure of Goods supplied by Seller to conform to Seller's warranty is a proximate cause of any Recall, Seller shall defend, indemnify and hold harmless Buyer, its affiliates, subsidiaries, directors, officers, employees, agents and other representatives from and against all expenses and costs of such Recall.

(i) Buyer's remedies under this Section and the U.C.C. shall be cumulative and additional to any other or further remedies provided under these Terms or by statute, law or equity, including, but not limited to, the recovery of direct, incidental and consequential damages and the entry of injunctive relief, but Buyer shall be entitled to only one full recovery of all of its damages and enforcement of all its rights.

(j) A delay by Buyer in notification of a breach or making a claim shall not constitute a waiver of a breach or remedy. No waiver of a breach of any provision of an Order by Buyer shall constitute a waiver of any other breach, or of the breached provision itself. No claim or right of Buyer arising under, or related to, an Order can be discharged in whole or in part by a waiver or renunciation unless supported by additional consideration and in writing signed by Buyer.

(k) Seller acknowledges that Buyer may supply to Customers the Goods as purchased from Seller or as a component of a system or other product in the sale of a system or other Product. Seller's rights and remedies against Buyer shall be limited to the extent Buyer's rights against the Customers are limited.

(l) Termination of an Order or any Release by Buyer for any reason permitted by the Order does not affect Seller's obligations under the Order as to Goods delivered or obligations not directly dependent upon the delivery of Goods. Nothing herein shall be interpreted to allow Seller to terminate any Release or Order.

(m) Money damages, as limited by these Terms and the Order, is Seller's exclusive remedy for breach of contract or other claim or theory. Seller may not allege breach of contract or other theory of recovery without providing a written notice of breach, documentation supporting the claim, and a reasonable time for Buyer to cure any breach and otherwise resolve the claims.

(n) UNDER NO CIRCUMSTANCE SHALL BUYER BE LIABLE TO SELLER OR ANYONE CLAIMING BY OR THROUGH SELLER FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES. WITH REGARD TO ANY FURNISHED PROPERTY, BUYER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND SELLER WAIVES, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, ALL CLAIMS OF NEGLIGENCE AND STRICT LIABILITY.

(o) Time and quantity requirements for Seller's performance are of the essence of an Order.

**18. Property Furnished or Purchased by Buyer and Its Customer for Seller's Use.**

(a) Unless otherwise agreed in a writing signed by Buyer, all tooling, equipment or material of every description furnished to Seller by Buyer or its Customer, or paid for or to be paid for by Buyer, and any materials affixed or attached thereto and replacement thereof, all of which constitutes "Furnished Property," shall be and remain exclusively the personal property of Buyer or its Customer and held in trust for the benefit of Buyer or its Customer. Seller shall install, maintain, repair, replace, and return Furnished Property in good condition, reasonable wear and tear excepted, at Seller's cost. Seller shall pay all taxes assessed against the Furnished Property or for its use while in the possession or control of Seller, whether or not Buyer is required by law to pay such taxes. All Furnished Property must be maintained in a condition that is adequate for at least one year of production of Goods based on Buyer's forecasts and historical production levels. Furnished Property, and wherever practical each individual item thereof, shall be plainly marked or otherwise adequately identified by Seller as the property of Buyer or its Customer and shall be safely stored separate and apart from Seller's property. Seller shall maintain the character of Furnished Property as personal property. Buyer and its Customers may enter Seller's premises and inspect Furnished Property and all related records during normal business hours. Seller shall not substitute any of its own property for Furnished Property and to the extent it does so, such property shall become Furnished Property. Seller shall not use or permit others to use Furnished Property except to fill Orders. Seller shall not, under any circumstance, sell or transfer any product or service produced with the Furnished Property except to Buyer. Seller shall not move the Furnished Property from any location without the prior written consent of Buyer. Title to Furnished Property to be produced or otherwise provided by Seller and its contractors and the components thereof shall vest in Buyer upon their acquisition or production, even though the Furnished Property is not completed. All additions, attachments, accessories, and repairs to the Furnished Property, and replacements thereof, shall be deemed part of the Furnished Property and shall become the exclusive property of Buyer or its Customer without payment. Seller accepts delivery of the Furnished Property "AS IS" and without any representation, warranty or duty from Buyer. Furnished Property while in Seller's custody or control shall be held at Seller's risk and shall be kept insured by Seller at Seller's expense under a fire and extended all risk policy in an amount equal to the replacement cost with loss payable to Buyer or its Customer as their interests may appear. Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such insurance shall be primary.

Seller shall use Furnished Property in a careful and safe manner and shall defend and indemnify Buyer from any claims, liabilities, expenses, and damages arising from or related to the installation, use, possession, storage, or repair of the Furnished Property. Furnished Property may be removed at any time by Buyer, at Buyer's written request, whether or not Buyer and Seller are engaged in litigation or other dispute, in which event Seller shall prepare Furnished Property for shipment and shall redeliver it to Buyer or its Customer in the same or equal condition as originally received by Seller, reasonable wear and tear excepted, all at Seller's expense. All consumable Furnished Property not used in the manufacture of the Goods shall, as directed, be returned to Buyer at Buyer's expense and if not accounted for or returned, shall be paid for by Seller to Buyer at Buyer's cost. Seller shall have no right to retain possession of Furnished Property to secure payment of amounts owed or for any other reason, as a claim for damages is an adequate remedy.

(b) Orders for tooling, equipment and materials to be purchased by Buyer or its Customer ("Purchased Tooling") shall be subject to the following additional terms and conditions:

(i) Seller shall submit to Buyer biweekly (or more frequently if requested by Buyer) status reports on the manufacture and/or acquisition of Purchased Tooling. Each status report shall set forth percentage of completion of Purchased Tooling, the status of each stage of manufacture, the scheduled arrival dates of components of Purchased Tooling, and estimated time for completion and delivery of the Purchased Tooling. Seller shall advise Buyer when Seller becomes aware of any event (including an actual or potential labor dispute) which may delay Seller's timely performance of an Order. Upon completion of Purchased Tooling, Seller shall submit a Part Submission Warrant package ("PSW"), sample Goods manufactured with Purchased Tooling, and any other tangible and intangible items or information requested by Buyer. Upon approval by Buyer and its Customer, a written PSW approval shall be issued to Seller.

(ii) Buyer shall not pay for any Purchased Tooling without: (x) the issuance of the written PSW approval without condition for all Purchased Tooling ordered; and (y) receipt by Seller of a waiver of lien of the manufacturer and Seller's supplier of the Purchased Tooling.

(iii) Seller shall permanently mark Purchased Tooling with the name of Buyer and the part number of the Goods it manufactures.

(iv) Seller, at its sole cost and expense, shall furnish appropriate safety systems for Purchased Tooling as integrated into the production process to meet OSHA and any other applicable safety rules and regulations.

(v) Payments made by Buyer for Purchased Tooling are expressly intended by Buyer to be held in express trust for the benefit of any toolmaker used by Seller to produce the Purchased Tooling. Seller shall hold these payments as trustee in

express trust for the toolmaker. Seller acknowledges that the toolmaker is an intended third party beneficiary of the terms of this Section and that the toolmaker has the right to enforce these terms directly against Seller. Buyer has no obligation to Seller or the toolmaker under this Section other than payments to Seller under an Order. If a toolmaker brings an action against Seller for payment of the Purchased Tooling, Seller will not join Buyer in the action, and Seller shall defend and indemnify Buyer.

(vi) The price shall not exceed the lesser of: the maximum price in the Order; Seller's actual cost of acquiring the Purchased Tooling without any mark-up; or Seller's actual direct costs of materials and direct labor at a shop rate approved by Buyer.

#### **19. Required Tooling.**

Seller, at its own expense, shall furnish, keep in good condition, and replace when necessary all tooling, jigs, dies, gages, fixtures, molds, patterns, other, and other personal property, whether or not they are Furnished Property or they are owned or leased by Seller, which are necessary for the production of the Goods without defects and in accordance with an Order ("Required Tooling"). All Required Tooling must be maintained in a condition that is adequate for at least one year of production based on Buyer's forecasts and historical production levels. The cost of changes to Required Tooling necessary to make design changes and specification changes authorized by Buyer in writing shall be paid for by Seller unless otherwise provided in an Order. Buyer may inspect Required Tooling and Seller's facilities during normal working hours upon reasonable notice to Seller. Seller may not relocate the Required Tooling without the prior written consent of Buyer. Seller shall advise Buyer of any required repair or replacement of Required Tooling and be responsible for obtaining any required production part approval process. Seller shall insure Required Tooling with fire and extended all risk coverage insurance for its replacement value and provide Buyer with certificates of insurance evidencing such coverage. Seller grants Buyer an irrevocable option to take possession of and good title to some or all of the Required Tooling (including leases thereof) that is not Furnished Property as selected by Buyer and is special for the production of Goods upon tender to Seller of the book value thereof less any amounts Buyer has previously paid to Seller in any manner for the cost of Required Tooling (*e.g.*, by separate payment or by an allocated portion of the price of the Goods); provided, however, that this option shall not apply to any Required Tooling used to produce products that are standard stock of Seller. Seller shall return the Required Tooling to Buyer at Seller's plant or other location specified by Buyer. Seller is responsible for labor and other costs of dismounting, dismantling, and staging the Required Tooling for removal. Seller will cooperate with Buyer in removing the Tooling from the location of Seller or its subcontractor. Seller grants Buyer a security interest in Required Tooling to secure Buyer's rights in Required Tooling and waives any rights which may conflict with this Section. Seller shall have no right to retain possession of Required Tooling to secure payment of amounts owed or for any other reason, as a claim for damages (with any bond in the amount of the purchase price as may be required by a court) is an adequate remedy. If the Required Tooling is not utilized to produce any parts for Buyer for a period of two years, Seller shall so notify Buyer and request instructions as to the disposition of the Required Tooling.



**20. Indemnification.**

In addition to any rights to indemnification set forth herein or any indemnity or remedy provided to Buyer by the U.C.C., Seller shall defend and indemnify Buyer and its employees for any and all damages and reasonable expenses (including reasonable attorney fees) incurred because of property damages, personal injury, or other claims arising out of the condition, labeling, engineering, use, sale, storage, design, safety, etc. of the Goods whether or not incorporated in another product, if the damages claimed were not caused solely by Buyer or other third party. Seller waives the application of the doctrine of comparative negligence and other doctrines that may otherwise allocate the liability covered by Seller's indemnity

**21. Insolvency.**

(a) Buyer, or a third party designated by and acting on behalf of Buyer, may at any time review the overall financial condition of Seller and its affiliates (including without limitation, if requested by Buyer, providing to Buyer copies of Seller's most current income statements, balance sheets, cash-flow statements and supporting data and schedules), and Seller shall fully cooperate in such review (including without limitation by segregating and promptly producing such records as Buyer may reasonably request) and shall make its financial managers available for discussions during reasonable business hours. Buyer and any such third party shall keep confidential any non-public information about Seller obtained in such financial review.

(b) An Order may be terminated immediately by Buyer without liability to Seller for any of the following events, or any other comparable events, and Seller shall reimburse Buyer for all costs incurred by Buyer in connection with any of the following, including but not limited to all attorney's and other professional fees: (1) Seller becomes insolvent (including if Seller is unable to pay its debts as they come due in the ordinary course of business, or if Seller's liabilities exceed its assets as fairly valued), (2) Seller files a voluntary petition in bankruptcy, (3) an involuntary petition in bankruptcy is filed against Seller, (4) a receiver or trustee or administrator is appointed over Seller or Seller's assets, (5) Seller needs accommodations from Buyer, financial or otherwise, in order to meet its obligations under the Order, (6) Seller executes an assignment for the benefit of creditors or (7) Seller is unable promptly to provide Buyer with adequate of Seller's financial capability to perform any of Seller's obligations under the Order on a timely basis. In the event that the Order is not terminated in accordance with the immediately preceding sentence, upon the occurrence of an event described in the immediately preceding sentence, Buyer may make equitable adjustments in the price and/or delivery requirements under the Order as Buyer deems appropriate to address the change in Seller's circumstances, including Seller's continuing ability to perform its obligations regarding warranty, nonconforming Goods or other requirements under the Order. Seller agrees to reimburse Buyer for all costs and expenses incurred by Buyer in connection with any of the foregoing events (regardless of whether Buyer exercises its termination rights with respect thereto, including, without limitation, all legal and other professional fees).

(c) Seller agrees that if Seller experiences any delivery or operational problems, Buyer may, but is not required to, designate a representative to be present in Seller's

applicable facility to observe Seller's operations. Seller agrees that if Buyer provides to Seller any accommodations (financial or other) that are necessary for Seller to fulfill its obligations under an Order, Seller will reimburse Buyer for all costs, including attorneys' and other professionals' fees, incurred by Buyer in connection with such accommodation and will grant access to Buyer to use Seller's premises and machinery, equipment, and other property necessary for the production of the Goods covered by the Order. Notwithstanding anything contained in this Section 12 to the contrary, financial information provided by Seller to Buyer may be provided to the Customer if Seller fails to provide Buyer with adequate reasonable assurance of Seller's financial capability to perform any of Seller's obligations under the Order on a timely basis.

**22. Maintenance and Safe Use; Compliance with Laws.**

(a) Seller shall comply with all laws and standards adopted by Buyer and its Customers affecting the environment including those, for example: (i) requiring design and materials to maximize the recycling Goods and end products; (ii) marking Goods with material composition; (iii) handling waste and chemicals; (iv) reacting to sentimental emergencies; and (v) use of reusable packaging. Seller shall obtain and retain third party certification of compliance with ISO 14001 for all Seller's facilities that produce Goods or have a significant impact on the environment.

(b) Seller shall comply with any provisions, representations or agreements, or contractual clauses required thereby to be included or incorporated by reference or operation of law in the contract resulting from acceptance of an Order and dealing with, Equal Employment Opportunity, Employment of Veterans, Employment of the Handicapped, Employment Discrimination Because of Age, Utilization of Disadvantaged Business Enterprises, and the related Acts and Executive Orders as now or hereafter amended or codified.

(c) Seller warrants that it is, and shall continue to be, in compliance with the requirements for non-segregated facilities set forth in 41 CFR Chapter 601.8 and is an equal opportunity employer.

(d) Seller warrants that each chemical substance constituting or contained in the Goods sold is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended, and that the Goods are not hazardous under any state or federal law except as clearly stated on the shipping and storage containers. Seller shall defend and indemnify Buyer from any claim alleging improper or illegal dispositions of the Goods except for grossly negligent dispositions by Buyer.

(e) Seller warrants that the Goods shall be in compliance with applicable sections of the Federal Consumer Product Safety Act (15 U.S.C. Sec. 2051 et seq.) as amended, and the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) as amended, and lawful standards and regulations thereunder. Upon the request of Buyer, Seller shall provide Buyer with access to and copies of any data, materials or other information, including any formulas or

analyses, that (i) relates to the Goods, their composition, any component or part of the Goods, or any materials or substances used in the Goods or in connection with their production; and (ii) is needed, as determined by the requestor, to enable compliance with any requirement of a Government (either mandated or voluntarily agreed upon by Buyer or any of its Related Companies) relating to the hazardous, toxic or other content or nature of the Goods, or the ability to recycle the Goods or any component, part or materials in the goods. Seller shall comply with Buyer's and Customer's requirements relating to the use (or prohibition on use) of certain materials and substances in the Goods and shall utilize and comply with Buyer's reporting processes and requirements relating to any such data, materials or other information (such as the International Material Data System).

(f) Seller warrants that the Goods produced in the United States shall be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended, including Section 12(a) and Seller shall insert a certificate to that effect on all invoices submitted in connection with an Order.

(g) Seller warrants that it shall comply with all applicable industry standards and United States, federal, state and local laws, rules, regulations and ordinances applicable to the Goods and performance of an Order.

(h) Seller warrants that it and the Goods shall comply with all federal, state and provincial statutes, rules and regulations directly or indirectly relating to the manufacture of vehicles, vehicle equipment, vehicle materials or vehicle supplies, as well as compliance with similar statutes and rules effective in North America, including, but not limited to: the North American Free Trade Agreement and the North American Free Trade Agreement Implementation Act, American Automobile Labeling Act; Section 329 of the Motor Vehicle and Cost Savings Act, as amended; Fastener Quality Act; the Hazardous Materials Transportation Act, as amended, as well as all laws and regulations related or applicable thereto (including, but not limited to, 49 C.F.R. Part 171 et seq.); Title 48, Code of Federal Regulations, Section 52-219-8 (Utilization of Small Business Concerns), Section 52.225-11 (Restrictions on Certain Foreign Purchases), Section 52.222-21 (Prohibition of Segregated Facilities), Section 52.222-26 (Equal Opportunity), Section 52.222-35 (Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans), Section 52.222-36 (Affirmative Action for Workers with Disabilities), Section 52.222-37 (Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans), and Section 52.222-41 (Service Contract Act); and all laws, rules, regulations and orders in North America, the National Traffic and Motor Vehicle Act (49 U.S.C. Sec. 30101 et seq.) as amended, the Federal Motor Vehicle Safety Standards and rules, regulations and procedures promulgated by the National Highway Traffic Safety Administration of the United States Department of Transportation under the Safety Acts, and rules, regulations and procedures promulgated by the National Institute of Standards and Technology of the Department of Commerce to implement the provisions of the Fastener Quality Act. Seller shall provide to Buyer originals or copies of the test reports and reports to government agencies related to the satisfaction of such legal requirements upon the earliest of their availability or the date required by law or Buyer.

(i) Seller warrants that the Goods and Seller shall comply with applicable Directives of the European Union and implementing legislation as to all Order involving Goods which Seller has reason to know will be used in production of end products to be sold within the European Union.

**23. Non-Assignment and Subcontracting.**

Seller's assignment of an Order or any interest herein of any payment due or to become due hereunder, without the prior written consent of Buyer, shall be void and not binding on Buyer. Seller may not subcontract any part of an Order without the prior written consent of Buyer. Buyer shall not be obligated to any subcontractor or for the product or services of any subcontractor whether or not Buyer has consented to or designated a subcontractor. Approval of a subcontractor is not a release or waiver of any obligation of Seller or right of Buyer. Seller is responsible for all actions or inactions of any subcontractor and shall bind its subcontractors for the benefit of Seller and Buyer to perform its obligations under these terms. Buyer shall have the right to assign or delegate any right or duty under an Order to any third party with our without Seller's consent.

**24. Set-Off.**

Buyer shall have the right to reduce, set-off and recoup against amounts payable under an Order any indebtedness or other claim which Buyer, its parent, subsidiaries or affiliates, may have against Seller, its parent, subsidiaries and affiliates, under an Order or any other agreement between or among Seller, Buyer, and/or such third parties.

**25. Foreign Purchases.**

The following applies to all transactions involving Goods or portions of Goods to be imported into the country in which Buyer's place of final delivery is located:

(a) Seller warrants that all sales made hereunder are or will be made at not less than fair value under the United States Anti-Dumping Law (19 U.S.C. Sec. 160 et seq.) and Seller will indemnify, defend and hold Buyer harmless from and against any costs or expenses (including but not limited to any anti-dumping duties which may be imposed) arising out of or in connection with any breach of this warranty.

(b) Buyer shall not be a party to the importation of the Goods, the transaction(s) represented by an Order will be consummated subsequent to importation, and Seller will neither cause nor permit Buyer's name to be shown as "Importer of Record" on any customs declaration.

(c) Upon request and where applicable, Seller shall provide Buyer U.S. Customs Form 7543 entitled "Certificate of Delivery" (or its replacement) properly executed. Upon request, Seller shall furnish promptly all documents required for customs drawback

purposes, properly completed in accordance with government regulations applicable thereto. Unless otherwise stated herein, all customs drawback will be credited to Buyer.

(d) Upon request, Seller shall furnish promptly to Buyer certificates of local value added and certificates of origin in accordance with applicable government regulations.

(e) An Order includes all related export and import customs duties and import drawback rights, if any, including rights developed by substitution and rights that may be acquired from Seller's supplier(s) that Seller can transfer to Buyer.

**26. Applicable Law, Jurisdiction, Waiver of Liens; Waiver of Jury Trial.**

(a) An Order shall be construed and enforced under the laws of Michigan. The provision of the United Nations Convention on Contracts for the International Sales of Goods (Vienna, 1980), as amended, and any conflict of laws provisions that would require application of another choice of law shall not apply. Subject to Section 27 regarding arbitration, (i) any litigation on contractual claims arising from this Order may be brought by Buyer in any court(s) having jurisdiction over Seller, or at Buyer's option, in any state or federal court(s) in Michigan having jurisdiction over Buyer's headquarters or administrative offices, in which event Seller consents to jurisdiction and service of process in accordance with applicable procedures, and (ii) any actions or proceedings by Seller against Buyer shall be brought by Seller only in the Michigan state or federal courts having jurisdiction over Buyer's headquarters or administrative offices. Buyer and Seller hereby consent to such jurisdictions and service of process in accordance with the applicable procedures.

(b) Seller warrants that no lien shall be filed by Seller or anyone claiming under or through Seller against Buyer, the Goods, the Furnished Property, the site for delivery or installation of the Goods, or Buyer's Customer, for materials, labor, services, equipment, or goods furnished as part of the Goods or Furnished Property. Seller waives any right it may have pertaining to, and agrees not to file or otherwise assert or prosecute or suffer or permit any mechanic's, materialman's, or other type of liens to be filed or continued against any property. Seller shall insert the prior sentence in any lower tier subcontract or purchase order for labor, equipment or materials furnished. If any such lien shall be filed by Seller's direct subcontractor, or any of its lower tier subcontractors, Buyer shall take any and all steps necessary for the immediate release and discharge of such lien, in the manner required by the law upon demand by Buyer. Seller shall defend and indemnify Buyer and its Customer from and against all liens, losses, damages, claims, debts and actions of any kind whatsoever, which might be asserted at any time whatsoever, arising in any way out of the recording of a lien by subcontractor or any lower tier subcontractor under it, including without limitation all costs, reasonable attorney fees and expenses incurred by Buyer or its Customer in the releasing, satisfying and discharging of such liens and enforcement of this clause. Further, Seller shall secure and furnish to Buyer and its Customer, upon request, a waiver of lien from each lower tier subcontractor under it.

(c) THE PARTIES HERETO ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL RIGHT, BUT THAT THIS RIGHT MAY BE

WAIVED. EACH OF BUYER AND SELLER HEREBY KNOWINGLY, VOLUNTARILY AND WITHOUT COERCION, AFTER CONSULTING (OR HAVING THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, WAIVE ALL RIGHTS TO A TRIAL BY JURY OF ALL DISPUTES ARISING OUT OF OR IN RELATION TO ANY ORDER OR OTHER DOCUMENT PERTAINING TO ANY ORDER. NO PARTY SHALL BE DEEMED TO HAVE RELINQUISHED THE BENEFIT OF THIS WAIVER OF JURY TRIAL UNLESS SUCH RELINQUISHMENT IS IN A WRITTEN INSTRUMENT SIGNED BY THE PARTY TO WHICH SUCH RELINQUISHMENT WILL BE CHARGED .

**27. Arbitration.**

If both parties agree in writing or if Buyer elects, any controversy or claim arising out of or relating to these terms or an Order, shall be settled by arbitration before three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be held in Southfield, Michigan. In rendering an award, the arbitrators are bound by the Order and must apply the substantive law of Michigan other than its principles of choice of law. Each party has the right before or during the arbitration to seek and obtain from the appropriate court provisional remedies such as attachment, claim and delivery, preliminary injunction, replevin, etc., to avoid irreparable harm, maintain the status quo or preserve the subject matter of the arbitration. The arbitrator shall be bound by the terms of the Order. All expenses and fees of the arbitration shall borne equally by the parties and each party shall pay its own attorney fees. The award may be enforced in any court of competent jurisdiction.

**28. Publicity.**

Without obtaining the prior written consent of Buyer, Seller shall not in any manner advertise or publish the fact that Seller has contracted to furnish Goods to Buyer (or Buyer's Customers), or use any trademark or tradenames of Buyer (or Buyer's Customers) in Seller's advertising or promotional materials. Seller shall not disclose or imply in its marketing that any of Seller's other products are equivalent to the Goods purchased by Buyer. If Seller breaches this Section, Buyer shall have the right to cancel the undelivered portion of any Goods covered by an Order and shall not be required to make further payments except for conforming Goods delivered or services rendered prior to cancellation.

**29. Ethical Standards.**

Seller shall not: (a) give or offer to give any gift or benefit to Buyer's employees; (b) solicit or accept any information, data, services, equipment, or commitment from Buyer's employees unless it is (i) required under a contract between Buyer and Seller, or (ii) made pursuant to a written disclosure agreement between Buyer and Seller, or (iii) specifically authorized in writing by Buyer's management; (c) solicit or accept favoritism from Buyer's employees; (d) enter into any outside business relationship with Buyer's employees or suppliers without full disclosure to, and prior approval of Buyer's management; or (e) provide to or accept from suppliers any information regarding Buyer or its business. For the purposes of this Section: "employee" includes members of the employee's immediate family and household, plus any

other person who is attempting to benefit from his or her relationship to the employee; “Seller” includes all employees and agents of Seller; “gift or benefit” includes money, goods, services, discounts, favors and the like in any form but excluding items with a value of \$25.00 or less; “supplier” includes prospective, current and past suppliers; and “favoritism” means partiality in promoting the interest of Seller over that of other suppliers. Such activity by Seller shall constitute a material default by Seller of every contract and Order with Buyer and may further result in Seller’s debarment from doing business with Buyer.

**30. Third Party Representatives.**

Seller represents and warrants that Seller has not and will not pay any third parties any commissions, fees, or other compensation for acquiring or attempting to acquire an Order without providing Buyer with written notice thereof at the time an Order is solicited.

**31. Entire Agreement and Modifications.**

An Order (including these Terms) is intended by the parties as a complete and exclusive statement of the terms of their agreement. It supersedes all prior agreements, written or oral. No course of prior dealings between the parties and no usage of the trade may be used by Seller to supplement or explain any term used in an Order. All modifications must be in a writing signed by Seller and Buyer, except as otherwise provided in an Order; provided, however, Buyer may modify these Terms with respect to future Orders and Order amendments or revisions by posting revised Terms on its internet website, and such revised Terms will apply to all Orders and Order revisions issued thereafter. It is the responsibility of the Seller to review and obtain a copy of the current version of the Terms. The Terms that are applicable to the Order and Order revisions shall be the version of the Terms that is in effect on the date of the order or Order revisions, whichever date is later.

**32. No Implied Waiver.**

The failure of either party at any time to require performance by the other party of any provision of an Order shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver by either party of a breach of any provision of an Order constitute a waiver of any succeeding breach of the same or any other provision.

**33. Relationship of Parties.**

Seller and Buyer are independent contracting parties and nothing in an Order shall make either party the agent, joint venturer or legal representative of the other for any purpose whatsoever, or grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Although third parties may be referenced, there are no third party beneficiaries to an Order, except as specifically provided. All employees and agents of Seller or its respective contractors are employees or agents solely of Seller or such contractors, and not of Buyer, and are not entitled to employee benefits or other rights accorded to Buyer’s employees.

Buyer is not responsible for any obligation with respect to employees or agents of Seller or its contractors.

**34. Severability.**

If any term of an Order is invalid or unenforceable under any statute, regulation, ordinance, or any other rule of law, such term shall be reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of an Order shall remain in full force and effect.

**35. Claims.**

COMMUNICATIONS FROM SELLER CONCERNING CLAIMS OF SELLER, INCLUDING AN INSTRUMENT TENDERED AS FULL SATISFACTION OF A DEBT OR CLAIMS, MUST BE SENT TO THE PRESIDENT OF BUYER.

**36. Government Contractor.**

Buyer may from time to time be considered a government contractor subject to the federal regulations referenced below, therefore, any Seller which is a subcontractor to Buyer, as defined in and for purposed of the relevant federal regulations (“Subcontractor”), agrees at any time Buyer is a government contractor during the performance the Purchase Order, as follows:

E.O. 11246

(a) The equal opportunity clause (“E.O. Clause”) required of government contractors and subcontractors, and as set forth in Federal Regulations promulgated under Executive Order No. 11246 of September 24, 1965, as amended (“E.O.11246”) (41 C.F.R.Section 60-1.4), is incorporated by reference in the Purchase Order as provided by 41 C.F.R. Section 60-1.4(d). The E.O. Clause includes Subcontractors commitments of non-discrimination and affirmative action regarding employment decisions; posting of notices; certain statements in advertisements; notice to unions; compliance with E.O. 11246 and its implementing regulations, and penalties for noncompliance; furnishing information and reports; and inclusion by Subcontractor of these E.O. Clause commitments in its subcontracts or purchase orders.

(b) Subcontractor will certify upon request that it requires its own subcontractors to comply with the E.O. Clause unless the value of its subcontract or purchase order is exempt under the rules, Regulations, or orders of the Secretary of Labor.

(c) Subcontractor shall file complete and timely reports on Standard Form 100 (550.1), as required by Federal regulations.



(d) Subcontractor certifies, as required by Federal regulations (41 C.F.R. Section 60-1.8), that it does not and will not maintain or provide for its employees any segregated facilities.

#### Rehabilitation and Veteran's Acts

(e) The affirmative action clauses required pursuant to regulations issued under Section 503 of the Rehabilitation Act of 1973 (regarding persons with disabilities), 29 U.S.C. Section 793, and Section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974 (regarding veterans), 38 U.S.C. Section 2012, are incorporated herein by reference as provided by those regulations. These clauses include Subcontractor's commitments of nondiscrimination, affirmative action, compliance with law and penalties for noncompliance, posting of notices, notification to unions, and Inclusion of the clauses in subcontracts and, in the case of veterans, to listing of openings and reporting requirements.

#### Small Business Act

(f) It is the policy of the United States, as expressed in the Small Business Act (15 U.S.C. Section 637(d)), that small business concerns ("SBC") and small business concerns owned and controlled by socially and economically disadvantaged Individuals ("SBCO") shall have the reasonable and practicable opportunity to participate in performing contracts let by the Federal agency.

(g) Subcontractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. In such circumstance, Subcontractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or other awarding agency of the United States as may be necessary to determine the extent of compliance with the clause.

(h) Subcontractor acting in good faith may rely on written representations by one of its subcontractors regarding its status as either an SBC or an SBCO.

(i) Subcontractor agrees to require all subcontractors (except SBC's) that receive subcontracts in excess of \$500,000 to adopt a subcontracting plan similar to the plan required by the clause at 48 C.F.R. Section 52.219-9.

#### General

(j) To the extent required as a result of United States government contracts, Subcontractor agrees to file with Buyer an executed copy of Buyer's Certificate of Compliance, which fully sets forth the various clauses referred to above as being part of the Purchase Order.

(k) Buyer shall be permitted access to Seller's facilities in connection with work under this agreement and while on Seller's premises, shall comply with all plant rules & regulations, and where required by government regulations, submit satisfactory clearance from the U.S. Department of Defense and other Federal authorities concerned. No charge will be made for such visits.

**37. Sales Tax Exemption.**

Buyer certifies that Goods purchased under an Order and identified as industrial processing are eligible for state and federal tax exemption under the federal identification number indicated on the face of the Order or otherwise provided by Buyer.

**38. Force Majeure.**

Any delay or failure of either party to perform its obligations under an Order shall be excused to the extent that it is caused directly by an event or occurrence beyond the reasonable control of such party and without such party's fault or negligence (a "force majeure event"). By way of example, this includes, if applicable, restrictions, prohibitions, priorities or allocations imposed by or actions taken by any governmental authority (whether valid or invalid), embargoes, fires, floods, windstorms, earthquakes, severe weather, explosions, riots, natural disasters, wars, sabotage, or court injunction or order. Seller's inability to perform as a result of, or delays caused by, Seller's insolvency or lack of financial resources is deemed to be within Seller's control. Notwithstanding anything to the contrary herein, the change in cost or inability to obtain power, materials, components, labor, equipment or transportation based on market conditions, supplier actions, contract disputes, mechanical failures (other than those caused by severe weather), or any labor strike or other labor disruption applicable to Seller or any of its subcontractors or suppliers, will not excuse Seller's performance (under theories of force majeure, commercial impracticability or otherwise), and Seller assumes these risks. Written notice of such delay (including the anticipated duration of the delay) must be given to the other party as soon as possible after the occurrence (but no more than ten (10) days after). Seller will use all diligent efforts to ensure that the effects of any force majeure event are minimized and, as promptly as possible, resume full performance under an Order. During any force majeure event affecting Seller's performance, Buyer may, at its option (i) purchase Goods from other sources and reduce its schedules to Seller by such quantities, without liability to Seller, (ii) ask Seller to deliver to Buyer at Buyer's expense all finished goods, work in process and parts and materials produced or acquired for work under this Order, and/or (iii) require Seller to provide Goods from other sources in quantities and at a time requested by Buyer at the price set forth in this Order. If Buyer requests in writing, Seller shall, within five (5) days of Buyer's request, provide adequate assurance that the delay in Seller's performance resulting from a force majeure event will not exceed thirty (30) days. If the delay lasts more than 30 days or Seller does not provide such

adequate assurances, Buyer may immediately terminate the Order without liability to Seller, and without prejudice to Buyer's other remedies under this Order or applicable law. If, due to forces beyond its control, Buyer determines to alter Buyer's delivery schedule to delay delivery: (x) the provisions of this Section (rather than Section 8(b)) will control; and (y) Seller will hold any such delayed Goods at Seller's cost and at Buyer's request deliver them when the cause affecting the delay has been removed. This section shall not constitute a waiver of and is without prejudice to, any and all of Buyer's other rights and remedies under an Order or applicable law, each of which are hereby reserved.

**39. Battle of the Forms Not Applicable.**

**The parties have agreed and it is their intent that the battle of the forms Section 2-207 of the Uniform Commercial Code shall not apply to these Terms or to any invoice or acceptance form of Seller relating to these Terms. It is the parties' intent that these Terms shall exclusively control the relationship of the parties, and in the event of any inconsistency between any invoice or acceptance form sent by Seller to Buyer and these Terms, these Terms shall control.**