

# **BOLLINGER MOTORS**

## **BOLLINGER MOTORS, INC. GENERAL TERMS AND CONDITIONS OF PURCHASE**

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## GENERAL TERMS AND CONDITIONS OF PURCHASE

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## **1. The Supplies and Parties Covered by this Contract**

### **1.1 Applicability**

These General Terms and Conditions (these "Terms"), together with the following documents: (a) each purchase order (or any revision thereof) issued by Buyer to Seller and all terms and conditions stated therein (each, a "Purchase Order"); (b) any written supply agreement executed by Buyer and Seller (each as defined below) relating to the Supplies (defined below) (the "Supply Agreement"); (c) Material Releases (as defined in Section 3.1) issued by Buyer to Seller under a Purchase Order; (d) all other documents specifically incorporated into or otherwise made a part of the Purchase Order by Buyer; and (e) as amended by Buyer from time to time, Buyer's Product Manual, Buyer's Seller Quality and Logistics Manual, and all other policies, guidelines, manuals and requirements related to the provision of the Supplies and Services, all of which are incorporated herein by reference and are available and may be accessed at the appropriate links located on Buyer's website at [www.bollingermotors.com/vendors](http://www.bollingermotors.com/vendors) ("Buyer's Requirements") (sub-clauses (a) through (e), this "Contract"), apply to the purchase by Bollinger Motors, Inc. or one of its affiliates, subsidiaries, or divisions identified in a Supply Agreement (defined below) or from whom a Purchase Order is issued ("Buyer") of services (the "Services") and/or the goods (collectively, the "Supplies") described in the Contract (the "Seller"). The term "Supplies" includes, without limitation, all raw materials, components, intermediate assemblies, Tooling (defined herein), molds, equipment and end products and all services, whether or not performed in connection with any of the foregoing items. Buyer may modify these Terms at any time by posting a revised document at <https://www.bollingermotors.com>. Seller is responsible for reviewing Buyer's website periodically so as to familiarize itself with such modifications. Modifications shall be effective on the date modified. Such modified terms and conditions shall apply to all Purchase Order revisions/amendments and new Purchase Orders issued on or after the effective date of such modification.

Buyer and Seller may each be referred to herein as a "Party" and collectively as the "Parties."

## **2. The Terms of this Contract**

### **2.1 Order of Precedence**

To the extent any direct conflict arises between any of the documents comprising the Contract, the following order of precedence shall apply: (a) any document specifically agreed to in writing and signed by Buyer's authorized representative (including a Supply Agreement); (b) the terms of any Purchase Order; (c) Material Releases; (d) these Terms; (e) Buyer's Product Manual; (f) Buyer's Seller Quality and Logistics Manual; and (g) all other of Buyer's Requirements.

### **2.2 Seller's Acceptance**

Seller has read and understands this Contract. Seller shall accept these Terms by entering into any Supply Agreement or other written agreement with Buyer incorporating these Terms. Seller may also accept these Terms by doing any one of the following: (a) failing to object to the Purchase Order in writing within five (5) business days after receipt; (b) commencing work or performance under the Purchase Order; (c) notifying Buyer of its acceptance of the Purchase Order in writing (whether by electronic means or otherwise); or (d) engaging in any other conduct relative to the Purchase Order from which a reasonable person would recognize the existence of a contract with Buyer with respect to the subject matter of this Contract. Seller's failure to return an acknowledgment copy of a Purchase Order, even if expressly requested by Buyer, shall not affect Seller's acceptance.

### **2.3 Seller's Terms Rejected**

Seller acknowledges that: (a) a request for quotation or similar document issued by Buyer is not an offer by Buyer and (b) any response by Seller to a request for quotation or similar document issued by Buyer is not an offer by Seller. ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY SELLER, WHETHER IN SELLER'S QUOTATION, ACKNOWLEDGEMENT, INVOICE OR OTHERWISE, ARE UNACCEPTABLE TO BUYER, ARE EXPRESSLY REJECTED BY BUYER, AND ARE NOT PART OF THIS CONTRACT. Any additional or different terms proposed by Seller shall not operate as a rejection of the Purchase Order if Seller accepts the Purchase Order in accordance with Section 2.2 above. Seller hereby waives any right to invoke Seller's standard terms and conditions of sale under the Purchase Order.

## **2.4 Entire Agreement**

This Contract is the entire agreement between the Parties with respect to the Supplies, Services, and the subject matter of each Purchase Order and supersedes any prior agreements, quotations, proposals, negotiations, understandings, and other communications of the Parties regarding the same. No course of dealing, course of performance, usage of trade, or other understanding that purports to modify or amend this Contract shall be binding unless in writing and signed by Buyer's Supply Chain Director (or more senior representative) and Seller.

## **3. Quantity; Blanket Orders; Material Releases**

### **3.1 Releases**

Seller shall deliver Supplies in strict conformance with the dates, times, quantities and delivery locations required by Buyer, including as specified in Buyer's material authorization releases, delivery or performance schedules, manifests, broadcasts or similar releases ("Material Releases"). Time of delivery, quantities, quality, and location are of the essence and Seller shall deliver all Supplies and Services in the quantities and at the times specified by Buyer. Buyer shall not be responsible for commitments made by Seller for raw materials, components, other inventory, or labor in advance of the time, or in quantities in excess of those, necessary to meet Buyer's firm delivery requirements.

### **3.2 Quantity**

Quantities of Supplies and Services shall be specified in a Purchase Order, Supply Agreement, or other Contract document. Except as otherwise stated in a Purchase Order, or other Contract document, this Contract constitutes a requirements contract pursuant to which Buyer shall purchase 100% of Buyer's requirements of the Supplies and/or Services, as the case may be, from Seller. Any use of the term "blanket order" or a similar designation by Buyer shall be deemed to refer to such a requirements contract. Buyer is not obligated to order, release or purchase from Seller any particular quantity or volume of Supplies or Services, regardless of any estimates or projections of future purchases, and Buyer shall determine its required quantities of Supplies based on the needs of Buyer's customers and market, economic, and other conditions.

### **3.3 Forecasts**

Buyer may provide Seller with estimates, forecasts, or projections of its anticipated future needs for the Supplies ("Forecasts"). Seller acknowledges that any estimates or Forecasts, whether issued before or during the term of the Purchase Order, are for informational purposes only, do not express an intent by Buyer to purchase any minimum quantity or volume of Supplies, are not a commitment by Buyer to purchase any particular quantity of Supplies, are subject to change by Buyer from time to time, and shall not be binding upon Buyer. Inclusion of any estimates or Forecasts shall not modify the duration of the Purchase Order. Buyer may change the timing of scheduled shipments, or direct temporary suspension of scheduled shipments without entitling Seller to a price adjustment or other compensation. Seller bears all risks with respect to such

changes or with respect to any discrepancies between such estimates or forecasts and the actual production volumes or length of program. Buyer makes no representation, warranty or guaranty of any kind or nature as to the accuracy of any Forecast or the volume/duration projections, and Seller acknowledges that the actual volumes/duration may vary substantially from Buyer's estimates.

### **3.4 EDI**

Buyer may require Seller to participate in electronic data interchange or similar inventory management program, at Seller's expense, for notification of Material Releases, shipping notices and confirmation and other information. Seller agrees that any Buyer-designated communication system satisfies any legal requirement for a writing or signature and the notice requirements of this Contract.

### **3.5 Suspension of Performance**

Buyer may at any time, by prior written notice to Seller, suspend performance of deliveries and Seller's other obligations for such time as Buyer deems appropriate, without entitling Seller to a price adjustment or other compensation. Upon receiving such notice, Seller shall promptly suspend deliveries and work to the extent specified, and properly care for and protect all work in progress and materials, supplies, inventory, and equipment that Seller has on hand. Buyer may, upon written notice to Seller, withdraw such suspension in whole or in part. Seller shall resume performance on Buyer's specified effective date of withdrawal.

## **4. Shipping and Delivery**

### **4.1 Buyer's Requirements**

Seller shall (a) properly pack, mark, and ship Supplies (and provide related documentation) according to Buyer's Requirements, the requirements of involved carriers and any applicable Law (defined below), (b) label and/or tag each package according to Buyer's instructions and any applicable Law, and (c) provide packing slips with each shipment showing the Purchase Order number, Seller's name and D-U-N-S or other applicable number, net weight, gross weight, the number of containers, and any other information reasonably requested by Buyer. Seller shall promptly provide Buyer with, in the form required by Law and as requested by Buyer, the identity and amount of all ingredients (and any changes in the ingredients) of the Supplies. Seller shall promptly indemnify, defend, and reimburse Buyer for any liabilities, expenses, and costs incurred by Buyer as a result of Seller's improper marking, packing, routing, shipping or any other noncompliance with the Contract.

### **4.2 Delay in Delivery**

Deliveries shall be made both in quantities and at time specified in schedules furnished by Buyer (whether directly, by electronic mail, electronic data interchange, or otherwise). Buyer shall not be required to make payment for Supplies delivered to Buyer that are in excess of quantities and delivery schedules as specified in Buyer's releases or the Purchase Order. Such Supplies shall be subject to rejection and return at Seller's expense, including all transportation charges. Should Seller experience or anticipate any delay in performing this Contract, whether or not such delay is excusable under any provision hereof, Seller shall immediately notify Buyer, in writing, of such delay, the expected duration thereof, and the reasons thereof. Neither such notification nor an acknowledgment by Buyer shall constitute a waiver of any delivery schedule. If Seller does not comply with Buyer's delivery schedule or any other requirements of a Material Release, Buyer may, at its sole option: (a) approve a revised delivery schedule; (b) require expedited or premium shipment of any of the Supplies, at Seller's expense; or (c) cover from other sources, and adjust any quantity requirement under the Purchase Order accordingly. Seller is liable for all costs and for all other damages and losses incurred by Buyer as a result of Seller's failure to comply with Buyer's

delivery requirements, including: (i) additional transportation costs (including, without limitation, an expedited or premium shipment); (ii) the cost of any production disruption; and (iii) the cost of obtaining Supplies from an alternate source. The rights and remedies reserved to Buyer under this Section are cumulative with and in addition to all other legal or equitable remedies available to Seller pursuant to Law (as defined herein).

#### **4.3 Title and Risk of Loss**

4.3.1 Unless otherwise stated in a Contract document, Buyer shall take title to all Supplies DAP Incoterms 2020 Buyer's facility. Title and risk of loss or damage to the Supplies shall pass to Buyer upon delivery to such location. Supplies shall be deemed identified to the Contract upon manufacture, unless the Supplies are part of Seller's standard stock and sold to persons in addition to Buyer, in which case identification occurs when the Supplies are marked or otherwise designated by Seller as relating to the Purchase Order.

4.3.2 This Contract shall apply to all Supplies, raw materials, components and other inventory which are in the custody or control of Seller or Seller's suppliers, contractors or agents.

#### **4.4 Country of Origin**

Upon request, Seller shall promptly and reasonably furnish to Buyer all certificates of origin or domestic value-added and all other information relating to the costs and places of origin of the Supplies as may be deemed reasonably necessary by Buyer to comply fully with all customs, tariffs and other applicable Laws. Seller shall comply with all such Laws and warrants that any such information that is supplied to Buyer is true and complete and that all sales covered by the Purchase Order shall be made at not less than fair value under the anti-dumping Laws of the countries to which the Supplies are exported.

#### **4.5 Hazardous Materials**

Seller shall comply with all Laws relating to any hazardous, dangerous, or restricted material that is an ingredient in or a part of any Supplies, including, without limitation, appropriate government/country registration requirements such as REACH ("Registration, Evaluation, Authorization, and Restriction of Chemicals") and IMDS ("International Material Data System"). Prior to shipment of the Supplies, Seller shall give Buyer sufficient advance warning and notice in writing (including appropriate labels, containers, and packing, material safety data sheets and certificates of analysis and handling, disposal and recycling instructions as may be necessary to advise carriers, Buyer and their respective employees of how to exercise the measure of care and precaution which shall best prevent bodily injury or property damage in the handling, transportation, processing, use, or disposal of the Supplies containers, and related packaging shipped to Buyer) of any such materials.

### **5. Price and Payment**

#### **5.1 Price**

The purchase price of the Supplies is set forth in the Purchase Order. Unless otherwise stated in the Contract, the purchase price: (a) is a fixed price constituting the total prices for delivery, manufacture, processing, testing, marking, storing, and/or labeling the Supplies for the duration of the Contract and not subject to increase for any reason, including changes in market conditions, increased raw material costs, increased energy costs, increased transportation and logistics costs, increased labor or other manufacturing costs, increased development costs, inflation, or changes in volumes or program length from those estimated or expected; (b) is inclusive of all federal, state, provincial, and local taxes and any duties applicable to provision of the Supplies (including sales, use, value-added and excise taxes), tariffs, insurance and any similar fiscal contribution related to

the Supplies; and (c) is inclusive of all storage, handling, packaging and all other expenses and charges of Seller. Seller assumes all risks regarding cost changes and variances in volume and program length. Seller's shipment of the Supplies or provision of Services constitutes Seller's representation and warranty that such prices are (i) the total price to be charged to Buyer for the Supplies and (ii) at least as low as the price charged by Seller to other buyers for similar goods and services in similar quantities (and the prices to be paid for Supplies and Services shall be reduced to the extent that, during the term of the Contract, Supplier charges a lower price for comparable goods and/or services to other customers).

## **5.2 Invoices**

Unless otherwise stated in a Purchase Order, invoices shall be issued on or after shipment of Supplies to Buyer. Seller shall issue individual invoices for each Service delivered and each shipment of Supplies delivered. Each invoice must be accompanied by proof of delivery for the Supplies or Services delivered, which may include proof of shipment along with appropriate shipment tracking information to allow Buyer to confirm the Supplies were delivered. Each invoice must be sent to the address or electronic mail address provided by Buyer in order to be processed for payment. All invoices for delivered Supplies must be in English and include, as applicable, the Purchase Order number, quantity of pieces in the shipment, the price of the Supplies, and the total amount due, net weights, Seller's name and D-U-N-S or other applicable number, and any other information necessary for identification of the Supplies delivered. All payments shall be made in the applicable currency stated in the Purchase Order. Seller shall, at its expense, comply with Buyer's written instructions and policies with respect to the form, content and method for submission of invoices. Seller's submission of an invoice constitutes a written certification that the quantities of Supplies, performance of the Services, and the amounts contained on such invoice are true and accurate and that such Supplies have been delivered, and Services have been performed in accordance with, and Seller is otherwise in compliance with, the terms of this Contract. Buyer shall not be required to pay any late payment charge, interest, finance charge or similar fee.

## **5.3 Payment Terms**

Unless otherwise stated in the Purchase Order Buyer shall pay to Seller the undisputed portion of each conforming invoice within forty-five (45) days after date (a) of receipt of invoices that are properly presented in accordance with this Contract and the applicable Purchase Order, and (b) in the case of capital equipment, completion of Buyer's final inspection and acceptance after installation. Invoices may not be provided in advance of delivery of the Supplies or Services subject thereto. Buyer is not obligated to pay any invoice that is not submitted in accordance with this Contract and the Purchase Order, or which Buyer disputes in good faith. Payment is deemed to be made on the date Buyer's check is mailed or funds transfer is initiated. If a payment date falls on a non-business day in the State of Michigan, the payment due date shall be the next business day. Payment of an invoice shall not constitute acceptance of Supplies or otherwise be deemed a waiver of any breach of this Contract by Seller (including a breach of any warranty) or any amount otherwise due to Buyer, and does not limit or impair Buyer's right to assert any legal or equitable remedy. Regardless of the items listed on Seller's invoice, Buyer shall only be obligated to pay for the Supplies listed in a Purchase Order and in the quantity required by Buyer. Buyer may withhold payment pending receipt of evidence, in such form and detail as Buyer may direct, confirming that the Supplies are free and clear of all liens, claims, security interests and other encumbrances.

## **5.4 Setoff**

In addition to any right of setoff or recoupment provided by Law, all amounts due from Buyer or its affiliates, subsidiaries or divisions ("Buyer Group") to Seller or its parent company or their affiliates, subsidiaries or divisions ("Seller Group"), whether under the Contract or any other contract between any member of the Buyer Group and the Seller Group, all amounts due to Seller Group shall be considered net of indebtedness of any member of Seller Group to any member of Buyer Group. In

addition to any right of setoff, deduction or recoupment provided or permitted by Law, any member of Buyer Group may, without notice to Seller or any other member of Seller Group, set off against, and deduct and/or recoup from any payment or other amount due, or to become due, from any member of the Buyer Group to any member of the Seller Group any amounts due or to become due from any member of the Seller Group to any member of the Buyer Group, including for chargebacks or for damages, costs, expenses, or liabilities resulting from breaches or nonperformance by Seller of its obligations under this Contract or any other contract between the Parties.

## **5.5 Credits**

Credits or benefits resulting from the Purchase Order, including trade credits, export credits, and/or the refund of duties, taxes, or fees, shall be for the benefit of and belong to Buyer. Seller shall provide all information and certificates necessary to permit Buyer to receive such benefits or credits.

## **5.6 Costs Savings**

Seller agrees to participate in any cost savings and productivity programs initiated by Buyer and to implement Seller's own cost savings and productivity programs and initiatives to reduce Seller's costs. Buyer shall also receive the full benefit of all discounts, and other favorable terms of payment customarily offered by Seller to its customers.

## **6. Tooling**

### **6.1 Tooling**

The term "Tooling" means collectively all tooling, dies, test and assembly fixtures, gauges, jigs, patterns, casting patterns, cavities, molds, and documentation including engineering specifications and test reports used by Seller in connection with its performance of this Contract, together with all related appurtenances, accessions, attachments, parts, substitutions, replacements and accessories, Tooling is included in the Supplies and these Terms apply to Tooling.

### **6.2 Inspection and Approval of Tooling**

- 6.2.1 Buyer may inspect and test all Tooling at reasonable times and places including, when practicable, during manufacture or refurbishment thereof. As part of such inspection or testing, whether or not at Seller's facilities, Seller shall provide, if requested by Buyer, the following: (a) all documentation related to the production, construction, acquisition, or refurbishment of Tooling; (b) a detailed status report of the Tooling, including digital photos of the Tooling that display the current status of the construction, production or refurbishment of the Tooling; and (c) a sample of Supplies manufactured from the Tooling or refurbished Tooling, as the case may be. In addition, Seller shall make available the Tooling for completion of a full "run at rate" test by Buyer's Quality Department in a production environment at Seller's facility.
- 6.2.2 If any such inspection or test is made on Seller's premises, Seller shall furnish all reasonable facilities and assistance required for a safe and convenient inspection or test without additional charge to Buyer.
- 6.2.3 Buyer's inspection of the Tooling or documentation related to the construction or refurbishment of the Tooling, no matter how or when occurring, does not constitute acceptance of any work-in-process or finished Tooling. Notwithstanding prior inspection, payment, or use of the Tooling, Buyer has the right to reject any Tooling that does not conform to the requirements of the Purchase Order.



- 6.2.4 Notwithstanding anything contained herein, Buyer shall not make payment for Tooling until: (a) Buyer accepts the Tooling in accordance with the terms of this Section 6; and (b) Seller transfers title to Buyer to the Tooling free and clear of all liens, claims, security interests and other encumbrances, and completes all related services required under the Purchase Order, or, at Buyer's sole option, provides adequate assurance of continued performance in such form as requested by Buyer.

## **6.3 Acceptance**

For purposes of each Purchase Order, acceptance of Tooling means receipt by Seller of a signed writing by Buyer's authorized representative that acknowledges (a) the Tooling is in compliance with all manufacturing or refurbishment specifications; (b) a full "run at rate" in a production environment at Seller's facility, conducted by Buyer's Quality Department, has been successfully completed; and (c) Buyer's production part approval process ("PPAP") has been completed by Buyer. If Buyer requests, Seller shall provide to Buyer a pre-acceptance run-off test at Seller's facility, at no cost to Buyer. Upon request, Seller shall immediately deliver to Buyer all Tooling layouts and engineering drawings.

## **6.4 Price and Payment Terms for Tooling**

- 6.4.1 The price for the purchase or refurbishment of Tooling set forth in a Purchase Order (the "Tooling Purchase Price") includes all charges and costs associated with the design, development, manufacture, and refurbishment of the Tooling. Seller is solely responsible for the payment of any taxes, tariffs, and duties, as well as all costs associated with freight, transportation, insurance, shipping, storage, handling, and similar charges associated with the Tooling. Subject to the terms and conditions contained herein, except as agreed to by an authorized representative of Buyer in writing, the Tooling Purchase Price is not subject to increase for any reason, including changes in market conditions, increased raw material costs, increased energy costs, increased transportation costs, increased labor or other manufacturing costs, increased development costs, or inflation,.
- 6.4.2 Seller represents and warrants to Buyer that the Tooling Purchase Price is at least as low as the price charged by Seller to other customers for similar tooling and equipment under conditions similar to those specified in the Purchase Order.

## **6.5 Purchase Price Adjustments and Cost Audits**

- 6.5.1 Tooling and refurbishment are purchased by Buyer on a fixed price basis and the Purchase Price is the maximum amount Buyer shall pay (subject to any changes in accordance with the Terms). All costs associated with the procurement or refurbishment of Tooling are part of Seller's overhead costs. Unless otherwise specified in the Contract, Seller is not entitled to a profit on Tooling and is only to recover its actual and reasonable costs of manufacturing, acquiring, or refurbishing the Tooling. If Seller determines that the actual cost of Tooling is or shall be less than the Tooling Purchase Price, Seller must immediately notify Buyer so that the Purchase Price can be reduced to satisfy the requirements of this Section 6.
- 6.5.2 Upon request, Seller must provide Buyer with a detailed breakdown of all costs of the Tooling which form, in whole or in part, the basis of the Tooling Purchase Price, including copies of all invoices from Seller's third-party vendors and suppliers. Buyer reserves the right to audit all costs and expenses claimed by Seller as part of the Tooling Purchase Price, and Seller must grant Buyer reasonable access to Seller's books and records and other documentation reasonably substantiating the Tooling Purchase Price. Buyer's obligation to pay the Tooling Purchase Price is expressly conditioned upon Seller's full cooperation in any such audit. If Buyer's audit concludes that Seller's actual costs are less

than the Tooling Purchase Price, Seller shall reduce the Tooling Purchase Price, or if the Tooling Purchase Price has been paid, refund (within thirty (30) days of Buyer's request) such excess amount paid so as to satisfy the requirements of this Section 6.

## **6.6 Ownership of Tooling**

- 6.6.1 Title to Tooling shall pass to Buyer, free and clear of all liens, claims, security interests and other encumbrances, upon the sooner of (a) when the Tooling is fabricated or completed by Seller or acquired by Buyer, or (b) in the case of a Purchase Order for refurbishment of Tooling to which Buyer does not already hold title, when refurbishment is substantially completed. Title to the Tooling shall pass to Buyer even if Buyer has not made full payment therefor; however, the title transfer shall not affect Buyer's obligation to pay for the Tooling as provided in and according to the terms of the Purchase Order.
- 6.6.2 Once title to Tooling passes to Buyer, the Tooling and related blueprints, designs, specifications, drawings, photographic negatives and positives, artwork, and copy layout provided by Buyer or developed by Seller or its third-party suppliers in connection with or related to any Purchase Order (collectively, "Bailed Property"), shall be held by Seller as a Buyer's bailee-at-shall for the benefit of and at no cost to Buyer. Seller must properly house the Bailed Property and protect it against loss, destruction, damage, and theft. Seller bears all risk of loss of and damage to the Bailed Property and, at its own cost and expense, must keep such Bailed Property insured for the full replacement value thereof, for the benefit of Buyer, naming Buyer as the loss payee and additional insured.
- 6.6.3 Seller agrees that the Bailed Property: (a) shall not be used by Seller for any purpose other than pursuant to the terms of the Contract; (b) shall be deemed personal property of Buyer; (c) must at all times be conspicuously and permanently marked by Seller to identify it as property of Buyer; (d) must not be commingled with Seller's property or with that of a third party; and (e) must not be moved from Seller's premises without the prior written approval of Buyer. Seller must also, at its sole cost and expense, maintain, repair, and refurbish Bailed Property. All replacement parts, additions, improvements, and accessories for such Bailed Property automatically become Buyer's Property upon their incorporation into or attachment to the Bailed Property.
- 6.6.4 Seller shall ensure the operational readiness of the Tooling and maintain the Tooling at Seller's own cost (including both repair and replacement) in the condition necessary to produce the Supplies at the times, in the quantities, and in conformance with all Buyer's Requirements therefor. Tooling replacement requires the approval of new initial samples by the Buyer.
- 6.6.5 Not later than December 31st of each year, Seller shall provide to Buyer a written report, in form and substance reasonably acceptable to Buyer, specifying the condition of all Bailed Property and the expected useful life of such Bailed Property, and including all preventative maintenance, repair and replacement records with respect thereto.
- 6.6.6 Unless the Buyer directs an earlier release by the Seller, Seller must store all Bailed Property for ten (10) years after termination of serial production of the Seller. Seller shall obtain Buyer's written approval prior to any destruction, scrapping or other disposition of Bailed Property.
- 6.6.7 Seller must immediately inform Buyer in writing if the projected lifetime quantities of Supplies reach up to seventy-five percent (75%) of available Tooling capacity to allow Seller to plan for all required production quantities.

## **6.7 Use of Tooling**

Seller must use the Tooling exclusively for production of Supplies required by Buyer. Seller shall not, without the prior written consent of Buyer, use Tooling to produce larger quantities of Supplies than those specified by Buyer or for the manufacture of goods for any other person or entity.

## **6.8 Claims, Lien, and Other Encumbrances**

Seller represents and warrants that neither Seller nor any other person or entity other than Buyer has any right, title, interest, or liens in the Tooling, other than Seller's right, at Buyer's sole option, to utilize the Tooling in the manufacture of the Supplies. In the event Seller has, or obtains, any intellectual property rights in the Tooling or documentation related to such Tooling, Seller hereby conveys, assigns, and otherwise grants to Buyer all of Seller's right, title, and interest in and to such intellectual property and Seller agrees not to transfer, assign, or otherwise grant such intellectual property rights or licenses, by operation of Law or otherwise, to any other person or entity. For the avoidance of doubt, any intellectual property produced by Seller for the Tooling or Supplies shall be deemed to be "work for hire".

## **6.9 Return of Tooling**

Upon request Buyer's request, Seller must properly package (in accordance with Buyer's Requirements and prevailing industry standards) and deliver the Tooling, existing spare parts, and all related documentation in Seller's possession or under its control to Buyer at the location required by Buyer. Buyer shall promptly reimburse Seller for all reasonable, documented, out-of-pocket costs and expenses incurred by Seller in connection with such transportation, including freight and packaging costs. Seller has no right, and waives any right, to withhold delivery of Tooling, documentation, and production equipment that has been paid for by Buyer.

## **7. Non-Conforming Supplies**

### **7.1 Rejection**

Buyer may, at its option, reject or revoke acceptance of any Supplies that fail to conform strictly to the requirements of this Contract (including, without limitation, if the packing or packaging is nonconforming). If Buyer rejects any Supplies or revokes acceptance of any Supplies and/or Services, Buyer may elect to, at no charge to Buyer and at Seller's cost and expense (a) require Seller to immediately replace such Supplies; (b) purchase similar Supplies from another source and reduce the quantities of the Supplies under the Purchase Order (and any corresponding payment); and/or (c) exercise any other right(s) or remedies provided to Buyer in this Contract or available at Law. Following rejection, Seller shall, without prejudice to any other right or remedy of Buyer, at Buyer's sole option and at Seller's expense:

- 7.1.1 Accept return of the defective or non-conforming Supplies to Seller for a refund of the full invoice price, plus payment of transportation charges for such defective or otherwise non-conforming supplies;
- 7.1.2 Immediately replace the non-conforming Supplies with conforming Supplies; and/or
- 7.1.3 Correct the defective or non-conforming Supplies within a specified timeframe determined by the Buyer and at the Buyer's location.

### **7.2 Buyer's Losses**

In addition to any direct damages and losses sustained by Buyer due to or arising from Seller's breach or nonperformance of the Contract, and without limitation to Buyer's other remedies, Seller shall be liable for Buyer's direct and indirect, incidental and consequential damages and losses incurred by Buyer as a result thereof including, without limitation, Buyer's reasonable legal and professional fees. In the event Buyer commences legal action to ensure the Seller's on time manufacture and/or delivery of the Supplies in the requisite quantities, Seller acknowledges that Buyer shall have no adequate remedy at Law therefor and, in addition to all other claims, rights, and remedies of Buyer, Buyer shall be entitled to an immediate injunction and order of specific performance of Seller's obligations under the Purchase Order with the posting of any bond or other security.

## **7.3 Corrective Action**

Promptly upon learning of defective or non-conforming Supplies, Seller shall develop, document and implement corrective actions, including in accordance with all applicable quality control policies and standards as defined in the Seller Quality and Logistics Manual, and as otherwise provided by Buyer. Seller shall immediately notify Buyer in writing when Seller becomes aware of any ingredient, component, design or other defect in the Supplies that is or is reasonably likely to become harmful to persons or property.

## **8. Buyer and Industry Standards and Policies**

### **8.1 Quality Standards**

Seller shall comply, and shall cause its permitted subcontractors and sub-suppliers to comply, in all respects, with Buyer's specifications, Buyer's Requirements, and all applicable Laws. Without limiting the foregoing, Seller shall provide, as and when requested by Buyer, information regarding the origin of all Supplies and raw materials and components contained in Supplies and information regarding its sub-contractors and sub-suppliers. Supplies must conform to all quality control and other standards and inspection systems as established or directed by Buyer in Buyer's Requirements.

## **9. Changes**

### **9.1 Buyer's Changes**

Buyer reserves the right at any time to direct changes, or cause Seller to make changes, to the Supplies, including the design, specifications, engineering level, materials, packaging, testing requirements, shipping date, or time or place of delivery, or to otherwise change the scope of the work covered by the Purchase Order. Such changes may also include work with respect to such matters as inspection, testing and quality control. Seller agrees to promptly make such changes. Such changes shall be deemed not to affect the time for performance or cost under the Purchase Order unless (a) Seller provides Buyer with written notice of a claim for adjustment to time for performance or cost in accordance with Section 9.3 and (b) Buyer determines that an adjustment (up or down) is appropriate. Seller must promptly make any such change as directed by Buyer, subject to Section 9.3.

### **9.2 Seller's Changes**

Seller shall not make any change to (a) the Supplies including, without limitation, changes in contents, design, specifications, raw materials or goods used by Seller in connection with its performance under the Purchase Order, processing, packaging, marking, or shipping or (b) manufacturing locations, manufacturing processes, or sub-suppliers, in each case except at Buyer's written instruction or with Buyer's prior written consent. Seller If Seller learns of a possible change to the Supplies that may reduce costs, improve quality, or otherwise be beneficial to Buyer,

Seller shall promptly inform Buyer of the possible change in writing. Seller shall maintain a process of continuous improvement of the Supplies. Seller may only change the location(s) for production of Supplies or performance of the Services as specified in the applicable Purchase Order with Buyer's prior written consent.

## **9.3 Impact on Changes**

Seller shall, not later than ten (10) days following (a) a request for change by Buyer or (b) the receipt of a Purchase Order change, notify Buyer in writing if such change directed or approved by Buyer shall materially affect Seller's cost or timing of performance. Any such claim by Seller for adjustment the cost or time of performance must be solely and directly the result of the change directed by Buyer and any notice of such claim shall be effective only if accompanied by all information sufficient for Buyer to audit and verify such claim. Following Seller's timely request, Buyer and Seller shall negotiate in good faith and agree on an equitable price adjustment (up or down), a change in shipping or delivery terms, required Tooling investment, or other appropriate adjustment. Notwithstanding any such discussions, Seller shall promptly implement such changes as directed by Buyer without delay. In the event that Buyer and Seller are unable to reach agreement on any pricing adjustment to be made in connection with such changes, any difference in price or time of performance resulting from such changes shall be equitably adjusted by Buyer based on a fair cost assessment after receipt of documentation in such form and detail as Buyer may direct. Seller shall accept any amendments issued by Buyer implementing such changes. Buyer shall have the right to audit all relevant records, facilities, work or materials of Seller to verify any Seller claim under this Section 9.3. Seller shall consider and advise Buyer of the impact of a design change on the system in which the Supplies covered by the Purchase Order are used.

## **10. Service Parts**

### **10.1 Period and Prices**

Unless stated otherwise on the Purchase Order, the duration of each Purchase Order shall be the period of time in which Buyer uses the Supplies in serial production of vehicles (the "Production Period") and for fifteen (15) years thereafter (the "Service Period"). For the avoidance of doubt, this Section 10.1 shall not affect or otherwise modify or limit Buyer's rights of termination set forth herein. During the Service Period, Seller shall sell to Buyer Supplies to fulfill 100% of Buyer's service and replacement requirements. Seller shall sell all such Supplies at the prices specified in the Purchase Order at the end of the Production Period, plus, subject to audit by Buyer, Seller's actual cost differentials for packaging. Buyer shall have the option to designate a different delivery location for service and replacement parts. The price of the Supplies for service requirements shall be, subject to audit by Buyer, no greater than the last price stated in the order plus or minus: (a) any actual changes in the cost of materials as of the expiration of the Production Period; (b) a volume adjustment reflecting the actual increase in the cost per unit of producing fewer units; (c) a set-up charge reflecting the actual cost of preparation for the production run; and (d) any additional costs actually incurred for special packaging ordered by Buyer. Such costs must be documented by Seller to Buyer's reasonable satisfaction, including, but not limited to, set-up detail, machine productivity, scrap allowance, labor inefficiencies and excess raw material requirements. Seller shall mark the Supplies shipped for service requirements, "Made in (country of origin)".

### **10.2 Components**

If the Supplies are systems or modules, the price for each component or part for service or replacement purposes shall be subject to Buyer's approval and shall not, in the aggregate, exceed the system or module price specified in the Purchase Order, less assembly costs, plus any actual cost differential for packaging.

### **10.3 Tooling and Materials**

Following the expiration of the Production Period, Seller shall maintain all Buyer's Property (defined below) and an adequate stock of materials and supplies needed to produce new service parts throughout the Service Period.

## **11. Warranties**

### **11.1 General Warranties**

Seller represents and warrants to Buyer that (a) it is duly qualified to do business and is in good standing in every jurisdiction in which such qualification is required for purposes of each Contract, and (b) it has the authority and ability to enter into, perform the obligations under and agree to the covenants contained in the Contract, and to grant the rights and licenses granted under each Contract.

### **11.2 Supplies Warranties**

In addition to any other express and implied warranties provided by Law or otherwise, Seller, on behalf of itself and its sub-contractors and/or sub-suppliers, as applicable, expressly represents and warrants to Buyer and Buyer's respective customers that the Supplies shall:

- 11.2.1 Be new and conform to the Purchase Order in all respects;
- 11.2.2 Strictly conform to all and/or operate in accordance with the applicable specifications, drawings, samples, PPAP submissions, and other descriptions furnished by or relied upon by Buyer, or otherwise part of the Purchase Order;
- 11.2.3 Be merchantable, free from all defects in design (except to the extent designed by Buyer without input from Seller), workmanship and materials (with the exception of materials or components consigned by Buyer) during the Warranty Period (defined below) and be of highest quality and workmanship;
- 11.2.4 Be selected, designed (to the extent designed by Seller), manufactured and assembled by Seller based upon Buyer's stated use and be fit for the purpose for which they are intended and safe for any use that is reasonably consistent with the applicable specifications;
- 11.2.5 Conform to all generally accepted industry standards and all applicable Laws in countries where the Supplies (or goods into which the Supplies are incorporated) are to be sold (and Buyer shall provide a list of such countries to Seller upon written request), including without limitation, in the case of Supplies used in connection with the manufacture of motor vehicles, the National Traffic and Motor Vehicle Safety Act, United States motor vehicle safety standards and European Union Directive 2000/53/EC;
- 11.2.6 Not infringe, misappropriate or violate the Intellectual Property Rights (as defined herein) of any third parties, either on its own or in combination with any reasonably foreseeable goods, services, and/or software;
- 11.2.7 Properly function and be suitable for use within the systems, the vehicles and the products in which they are to be assembled;
- 11.2.8 Be free of all malware, viruses and all other malicious code, disabling code, or code that causes either the Supplies or any product into which the Supply is incorporated to perform in an unintended manner, and not cause any portion of any software owned or licensed by Buyer, or any derivative thereof to (A) become subject to all or part of the license obligations or other Intellectual Property Rights or restrictions of any third party, including any open source software requirements; or (B) be disclosed or distributed in source code form,



licensed to third parties for the purpose of making derivatives or such software, or redistributed free or charge;

11.2.9 Be conveyed to Buyer with good title, free of all liens, claims, security interests, and other encumbrances; and

11.2.10 Conform in all respects to IATF 16949 and Buyer's Supplier Quality Requirements Manual, as amended by Buyer from time to time.

## **11.3 Service Warranties**

Seller warrants that the Services (a) shall be performed in a professional and workmanlike manner, using qualified personnel with the required skill, education, experience and qualifications to meet its obligations under the Contract, consistent with all standards and specifications established by Buyer and otherwise consistent with industry standards and applicable Law, and (b) not infringe or misappropriate any Intellectual Property Rights of any third party.

## **11.4 Warranty of Continued Performance**

All warranties of Seller extend to future performance of the Supplies and are not modified, waived or discharged by delivery, inspection, tests, acceptance and payment. Buyer's approval of any design, drawing, material, process or specifications shall not relieve Seller of these warranties. Seller waives any right to notice of Seller's breach.

## **11.5 Warranty Period**

Each of Seller's warranties as provided in this Section 11 shall remain in effect and enforceable by Buyer for the longest of: (a) five years from the date Buyer accepts the Supplies in writing; (b) the warranty period provided by applicable Law; or (c) the warranty period offered by Buyer to end-users for the vehicles and products into which the Supplies are incorporated (the "Warranty Period"); however, if Buyer, voluntarily or pursuant to a government mandate, makes an offer to owners of vehicles (or other finished products) on which the Supplies or any parts, components or systems incorporating the Supplies are installed with respect to a Recall (as defined herein) to address a defect or condition that relates to motor vehicle safety or the failure of the vehicle to comply with any applicable law, safety standard or guideline, the warranty will continue for such time period as may be required to complete such Recall. Notwithstanding any expiration of a warranty period set forth in this Section 11.5, Seller will be liable for all damages, losses, costs and expenses incurred by Buyer and associated with any Recall to the extent based, in whole or in part, upon a determination that the Supplies fail to conform to Seller's warranties (as determined by Buyer).

## **11.6 Cumulative**

All warranties and remedies provided by the Contract are cumulative and in addition to those provided by Law and shall survive Buyer's testing, inspection and acceptance of the Supplies and Services.

## **12. Indemnification**

### **12.1 Indemnity**

Seller shall indemnify, defend and hold harmless Buyer, its subsidiaries and its affiliates and their respective directors, officers, shareholders, employees, agents, representatives, successors,

assigns, customers, dealers and users of the Supplies sold by Buyer (or the products in which they are incorporated) (collectively, "Indemnified Parties") from and against all liabilities, losses, claims, demands and expenses (including, without limitation, legal and other professional fees), which, in whole or in part, arises from or relates to: (a) Seller's noncompliance or breach of any representation, warranty or obligation under the Contract (including these Terms); (b) any service campaign, Recall (as defined herein) or other voluntary or involuntary action or effort in which Buyer participates with respect to the Supplies; (c) any infringement or misappropriation of any Intellectual Property Right relating to any Supplies or any portion thereof; (d) the negligence, acts or omissions by Seller, its sub-suppliers and subcontractors, subsidiaries, and affiliates or their respective officers, directors, managers, shareholders, members, employees, subcontractors, agents or representatives; (e) any lien on the Supplies or Buyer's Property; (f) any product liability claim; or (g) any personal injury claim, including death or injury, or damage to property, caused by Seller, its employees, agents, subcontractors, or in any way attributable to the performance of the Supplies or Seller, its employees, agents, or invitees. Seller waives the application of the doctrine of comparative negligence and other doctrines that may otherwise allocate the liability covered by Seller's indemnity. This indemnification obligation shall apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise, even if Buyer furnishes all or a portion of the design and specifies all or a portion of the processing used by Seller in connection with Seller's manufacture of the Supplies, even if the Warranty Period has expired.

## **12.2 Infringement Claims**

If the Supplies or Services become, or in Seller's reasonable opinion are likely to become, the subject of a claim of infringement or misappropriation of any Intellectual Property Right, Seller shall, at its sole expense, either (a) promptly procure for Buyer the right to continue to manufacture and sell the Supplies or provide the Services, or (b) replace or modify such infringing Supplies or Services to make same non-infringing, provided that the modified Supplies and Services meet all specifications and all other requirements under the Contract.

## **12.3 Buyer's Participation**

Buyer may, at its option, participate in or control the defense of any Seller-indemnified third party claim with its own counsel and other professionals, at Buyer's expense. Seller's indemnity obligation shall not be lessened or compromised in any way, even if Buyer is alleged or is found to have contributed in part to the events giving rise to Seller's liabilities or losses.

## **13. Seller's Financial Condition**

Seller represents and warrants to Buyer as of the date it accepts each Purchase Order in accordance with this Contract that: (a) it is not insolvent and is paying all debts as they become due; (b) it is in compliance with all loan covenants and other obligations; and (c) all financial information provided by Seller to Buyer concerning Seller is accurate and has been prepared in accordance with generally accepted accounting principles of the jurisdiction in which it operates.

## **14. Audit**

Seller grants Buyer and its authorized representatives the right to access to Seller's premises and books and records solely for the purpose of (a) auditing Seller's compliance with Seller's obligations under the Contract (including, without limitation, charges hereunder), (b) inspecting or conducting an inventory of finished goods, work-in-process, raw materials, any of Buyer's Property and all work or other items to be provided pursuant to the Contract located at Seller's premises, and (c) to otherwise validate Seller's performance or ability to perform under the Contract. Seller shall cooperate with Buyer to facilitate Buyer's audit, including, without limitation, by segregating and promptly producing such records as Buyer may reasonably request, and otherwise making records and other materials accessible to Buyer. Seller shall preserve all records pertinent to the Contract,



and Seller's performance under the Contract, for a period of not less than one year after Buyer's final payment to Seller under the Contract. Any such audit or inspection conducted by Buyer or its representatives shall not constitute acceptance of any Supplies (whether in progress or finished), relieve Seller of any liability or obligation under the Contract or prejudice any rights or remedies available to Buyer. Seller shall use its best efforts to obtain for Buyer the right to similarly audit and inspect the quality records and facilities of any suppliers of components of the Supplies. Buyer is not required to inspect Supplies delivered or services performed, and no inspection or failure to inspect shall reduce or alter Seller's obligations under the Contract.

## **15. Ethical Conduct**

### **15.1 Compliance; Work Environment**

Seller warrants that neither Seller nor its permitted subcontractors use child, prison, forced or involuntary labor in the provision of Supplies or Services. Seller and its permitted subcontractors shall maintain a workplace free from physical abuse and any practice in violation of applicable Law. Seller and its permitted subcontractors shall provide a healthy, safe work environment, wages and benefits as required by Law, freedom of association and reasonable working conditions. Seller further warrants that neither it nor any of its subcontractors is the subject of any sanctions administered or enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), the United Nations Security Council (UNSC), the European Union (EU), Her Majesty's Treasury (HMT), or other relevant sanctions authority (collectively, "Sanctions"), nor is Seller, or any of its subcontractors located, organized or resident in a country or territory that is the subject of Sanctions.

### **15.2 Business Practices; Anti-Corruption**

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, (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 other suppliers without full disclosure to and prior approval of Buyer's management; or (e) provide to or accept from other 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 (USD) or less; "supplier" includes prospective, current and past suppliers; and "favoritism" means partiality in promoting the interest of Seller over that of other suppliers. Seller shall comply with all applicable anti-corruption Laws, including, without limitation, the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act, and neither Seller nor any of its permitted subcontractors, vendors, agents or other associated third parties shall engage in any form of commercial bribery, nor directly or indirectly provide or offer to provide, anything of value to or for the benefit of, any official or employee of a governmental authority or of any government-owned, government-controlled or government-affiliated entity to obtain or retain any contract, business opportunity or other business benefit, or to influence any act or decision of that person in his/her official capacity. At Buyer's request, Seller shall certify in writing its compliance with the foregoing. Seller shall indemnify and hold Buyer harmless from and against any liability, claims, demands or expenses (including, without limitation, legal or other professional fees) arising from or relating to Seller's noncompliance. Any breach by Seller of its obligations under this Section 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. Seller shall also comply with all ethics, fair business practices, nondiscrimination, and non-harassment policies of Buyer.

## **16. Duration, Termination and Remedies**

Each Purchase Order shall be effective on the date specified in the Purchase Order, or if no date is specified, when accepted, and shall remain in effect until terminated under this Section 16 or by the mutual written agreement of the Parties.

### **16.1 Termination by Buyer**

In addition to any other rights of Buyer to cancel or terminate the Contract, Buyer may terminate all or any part of each Purchase Order by written notice (a "Termination Notice"), as follows:

16.1.1 For Buyer's convenience, thirty (30) days following delivery of a Termination Notice or upon such other date specified by Buyer in writing; and

16.1.2 In addition to its other remedies, Buyer may, at its option, terminate the Contract for cause immediately (or such other time as set forth in a Termination Notice) without liability to Seller upon a direct or indirect change of control of Seller. A change of control of Seller includes: (a) any sale, lease or exchange of a substantial portion of Seller's assets used for the production of Supplies; (b) the sale or exchange, or the entry into an agreement by Seller regarding the sale and exchange, of (i) any portion of Seller's stock or other equity interests to a direct competitor to Buyer or (ii) more than twenty percent (20%) of Seller's stock or other equity interests (or such lesser percentage as would result in a transfer of control of Seller) to any person or entity; and/or (c) the execution of a voting or other agreement providing any person or entity with control of Seller. Seller shall notify Buyer promptly in writing in the event of the earlier of (A) the entry into an agreement or (B) the occurrence of an event described above in this Section 16.1.2.

16.1.3 For Cause, effective upon Seller's delivery of the Termination Notice or upon such other date specified by Buyer in writing. Seller shall be in "Default" if it: (a) repudiates, breaches or otherwise threatens to breach any of the terms of the Contract; (b) fails to timely deliver, or threatens not to deliver, Supplies in connection with a Purchase Order; (c) fails to make progress or to meet reasonable quality requirements so as to endanger timely and proper performance under the Purchase Order; (d) is insolvent; (e) makes an assignment for the benefit of creditors, or proceedings in bankruptcy or insolvency are instituted by or against Seller; (f) requests accommodations from Buyer, financial or otherwise, in order to meet its obligations under the Contract and fails or refuses to perform under the Contract unless Buyer provides such accommodations; (g) fails to timely provide adequate assurance of Seller's future performance within the time period specified by Buyer therefor; (h) at any time if, in Buyer's reasonable opinion, Seller's financial or other condition or progress of work under the Contract is such so as to endanger Seller's full and timely performance; or (i) at any time if, in Buyer's reasonable opinion, Seller fails to be competitive, including, without limitation, in terms of quality, service, delivery, technology, and/or price. Termination by Buyer shall not relieve Seller of any liability under the Purchase Order except as provided in these Terms. Any termination by Buyer for cause, pursuant to this Section 16.1.3, shall be without liability of Buyer to Seller.

### **16.2 Suspension or Termination by Seller**

Seller may terminate or suspend performance under a Purchase Order only for non-payment of the undisputed portions of the purchase price for Supplies under such Purchase Order which are thirty (30) or more days past due and material in amount, and then only if: (a) Seller first provides Buyer written notice specifying the amounts past due and Seller's intent to terminate or suspend performance under the Purchase Order if the past due amount is not paid; and (b) Buyer, within forty-five (45) days of such notice, does not pay those past due amounts not subject to a bona fide

dispute. Seller may not suspend performance or terminate this Contract or any Purchase Order for any reason except as permitted under this Section.

## **16.3 Seller's Obligations Following Termination**

Upon the date for termination specified in a Termination Notice, Seller shall, unless otherwise directed by Buyer and subject to its obligation to provide Transition Support (defined below);

- 16.3.1 Terminate promptly all performance under the Purchase Order and/or this Contract, as applicable and transfer title and deliver to Buyer all finished Supplies completed prior to receipt of the Termination Notice;
- 16.3.2 Transfer title and deliver to Buyer all finished Supplies, and raw materials or components which Seller manufactured or procured in accordance with the Purchase Order and/or this Contract, as applicable, and which Seller cannot reasonably use in producing goods for itself or for others to the extent such use is permitted by Buyer;
- 16.3.3 Verify/settle all claims by subcontractors for actual costs that are rendered unrecoverable by such termination and provided the recovery of materials in Seller's possession is ensured;
- 16.3.4 Take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest until disposal instruction from Buyer has been received;
- 16.3.5 Seller shall continue performance of this Contract to the extent not terminated and shall be liable to Buyer for any excess costs for alternative products or services and other direct damages; and
- 16.3.6 Upon Buyer's request, Seller shall cooperate with Buyer in effecting the resourcing of the Supplies covered by the terminated Purchase Order and/or this Contract, as applicable.

## **16.4 Buyer's Obligations Following Termination**

Upon termination of this Contract or any Purchase Order for Buyer's convenience pursuant to Section 16.1.1., Buyer shall pay to Seller in connection with such termination only the following amounts, without duplication, in complete and final satisfaction of any liabilities relating to the terminated Purchase Order or, if terminated, this Contract:

- 16.4.1 The purchase price, pursuant to and as stated in the applicable Purchase Order, for all conforming Supplies delivered and/or Services provided to Buyer, and accepted by Buyer, prior to the date of the Termination Notice or delivered following the Termination Notice at the written direction of Buyer;
- 16.4.2 Any amounts owed for Transition Support pursuant to Section 16.5; and
- 16.4.3 If terminated for any reason other than for Cause by Seller or for Seller's change of control, Seller's reasonable actual out-of-pocket costs of merchantable and usable finished goods, raw materials and components transferred to Buyer under Section 16.3.2 above (but not to exceed the Purchase Order price of the Supplies had the work been completed).
- 16.4.4 Buyer may audit Seller's records before or after payment to verify amounts requested in Seller's termination claim. Buyer has no obligation under this Section to make any payment for Supplies, raw materials or components: (a) in excess of those authorized or required under any firm Material Release; (b) that are damaged or destroyed or that are not merchantable or useable; (c) that are in Seller's standard stock or that are readily

marketable; or (d) that can be returned to Seller's suppliers or subcontractors for credit. Buyer has no obligation to purchase or pay for work in process. Buyer has no obligation for and shall not be required to pay Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, failure to realize anticipated production volumes, revenues or savings, unabsorbed overhead, interest on claims, product development and engineering costs, Buyer's Property (as defined herein), facilities and equipment rearrangement costs or rental, unamortized capital or depreciation costs, or general administrative burden charges from termination or expiration of the Purchase Order, except as otherwise expressly agreed in a separate Order issued by Buyer.

## **16.5 Transition of Supplies Following Termination or Expiration**

Following expiration or termination of any Purchase Order or this Contract by either Party for any reason (including termination by Seller) and notwithstanding any claimed or actual breach of any obligation by Buyer, Seller shall take all actions requested by Buyer which Buyer determines are necessary in order to ensure that there is no interruption in the supply of Supplies to Buyer, and shall cooperate in the transition of supply to Buyer's successor supplier(s), including the following, which shall collectively be referred to as "Transition Support":

- 16.5.1 Seller shall continue production and delivery of all Supplies as ordered by Buyer, at the prices and other terms stated in the Purchase Order, without premium or other condition, during the entire period reasonably needed by Buyer to complete the transition to the alternate supplier(s), so that Seller's action or inaction causes no interruption in Buyer's ability to obtain Supplies as needed; and
- 16.5.2 At no cost to Buyer, Seller shall promptly provide access to Seller's facility(ies) and all requested information and documentation regarding Seller's manufacturing process, including on-site inspections, bill-of-material data, Tooling and process detail and samples of Supplies and components. Buyer reserves the right to access and actively participate during the disconnect and/or disassemble process for the Buyer's Property.
- 16.5.3 Seller, at Buyer's option: (a) assign to Buyer any or all supply contracts or purchase orders for raw material or components relating to the Purchase Order; (b) sell to Buyer any or all perishable Tooling and Supplies inventory relating to the Purchase Order; and/or (c) sell to Buyer any of Seller's property necessary to perform under the Purchase Order and designated for Seller's manufacture of the Supplies, at a price equal to the lower of the fair market value of such property or Supplier's net book value of such property, and less any amounts Buyer has paid to Seller for such property.

### **16.5.4 Duty to Deliver**

Seller's holding of the Supplies or Buyer's Property without Buyer's consent and after demand has been made by Buyer for delivery thereof, shall substantially impair their value. Seller acknowledges that Buyer shall have no adequate remedy at Law therefor and, in addition to all other claims, rights, and remedies of Buyer, Buyer shall be entitled to an immediate injunction and order of specific performance of Seller's obligations under the Purchase Order with the posting of any bond or other security.

### **16.5.5 Recall**

In the event of any safety, maintenance or improvement program, corrective or remedial action, general recall or similar action, or customer satisfaction campaign (a "Recall") involving any Supplies that Buyer has determined do not meet requirements of the Contract, whether initiated by Buyer, Seller, or any governmental agency or body, if it is alleged or determined that failure of Supplies to conform to Seller's warranty is a proximate cause of any Recall, Seller shall be fully

responsible for and shall defend, indemnify and hold harmless Buyer, its affiliates, subsidiaries, members, directors, officers, employees, agents and other representatives from and against all claims, liabilities, expenses and costs associated with such Recall. All Recalls shall be at the discretion of Buyer after consultation with Seller, except as ordered by a government agency or body. Seller shall immediately notify Buyer, in writing, upon receipt of a Recall notice, or notice of any investigation or inquiry, from a government entity involving the Supplies or Services. Seller shall promptly inform Buyer of its becoming aware of any defect in the Supplies that could reasonably be expected to cause damage, illness, injury or death (whether to persons or property), or the noncompliance of the Supplies with any applicable safety or regulatory standard or Law. Seller's obligations related to Recalls shall continue to apply after the expiration of Seller's warranties. Seller shall use reasonable efforts to reduce costs in connection with such Recall.

## **16.6 Remedies**

### **16.6.1 Cumulative and Additional Remedies**

The rights and remedies reserved to Buyer in this Contract are cumulative with, and additional to, all other rights and remedies of Buyer under applicable Law or in equity.

### **16.6.2 Restrictions on Waiver**

The failure of either Party at any time to require performance of any provision of this Contract shall in no way affect Buyer's right to require such performance at any time thereafter, nor shall the waiver of either Party of a breach of any provision of the Contract constitute a waiver of any succeeding breach of the same or any other provision.

### **16.6.3 Seller's Remedy**

Money damages, as limited by the Purchase Order, are 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 for such money damages 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. In no event shall Buyer be liable to Seller for its indirect, special, consequential (including lost profits, interest, lost market share or damage to brand value), incidental, punitive, and exemplary damages, whether or not foreseeable, and irrespective of whether Buyer has been advised of the possibility of such damages.

## **16.7 Buyer's Remedy for Failure to Deliver**

If Seller is unable or otherwise fails to supply the agreed Supplies by the agreed delivery date(s) or meet quantity or quality requirements in accordance with the Contract (or indicates that it shall not meet any future delivery date), Buyer may: (a) cancel all or a portion of the Contract or Material Release without liability and return rejected Supplies at Seller's cost; (b) require Seller to deliver Supplies using expedited delivery methods necessary to meet delivery schedules set forth in Material Releases (in which case all costs and expenses of such expedited delivery shall be at Seller's sole expense unless the delay or expense was solely the result of Buyer's gross negligence and Seller provides Buyer with notice of any claim against Buyer within ten (10) days after the occurrence of the alleged negligent action of Buyer); or (c) purchase substitute Supplies and alternative Services from other suppliers and hold Seller liable for the difference between the price of the Supplies or Services to have been provided by Seller and amounts charged for the substitute performance, including charges for shipping, insurance, handling and taxes, and other costs incurred by Buyer as a result of Seller's failure.

## **16.8 Remedial Work**



Without limitation to any of Buyer's rights, claims and remedies set forth herein or as available to Buyer pursuant to applicable Law, if repair, sorting, inspection, or similar activity ("Remedial Work") is necessary for any rejected or otherwise non-conforming Supplies, then Buyer may elect either to perform the Remedial Work itself or to have a third party perform it. In either case, the reasonable cost of such Remedial Work shall be either: (a) offset against the amounts otherwise due Seller for such rejected Supplies; or (b) charged separately to Seller. Buyer may require that the Remedial Work be performed on the premises of Buyer or its customer by Seller, in which case Buyer or its Customer shall provide Seller with reasonable access to its premises and otherwise assist Seller with such arrangements as are necessary to perform the Remedial Work. In performing Remedial Work or replacing rejected Supplies, Seller is responsible for segregating and sorting any applicable Supplies, providing for transportation of the Supplies, supervising the segregation and removal of the Supplies, and conducting other incidental activities, all at Seller's sole cost. Remedial Work by Seller requires the prior written consent of Buyer and/or Buyer's customer.

## 17. Buyer's Property

All supplies, materials, prototype and production Tooling, jigs, dies, gauges, fixtures, molds, patterns, equipment, designs, drawings, specifications, spare parts, trial parts, ancillary products, related software and other items (together with any accessions, appurtenances, modifications, repairs, refurbishments and replacements thereof) furnished by Buyer, either directly or indirectly, to Seller to perform the Contract, or for which Seller has been paid by Buyer, in whole or in part (collectively, "Buyer's Property"), shall be and remain the property of Buyer, and all right, title and interest in Buyer's Property shall remain with Buyer, subject only to the limited right of possession granted to Seller under this Section. Buyer shall, at any time, have the right to immediate possession of Buyer's Property, on Buyer's demand. If title in any Buyer's Property has not otherwise passed to Buyer, title shall pass to Buyer immediately upon completion of Buyer's production part approval process (PPAP) for such property or the date Buyer first makes any payment to Seller relating to such property, whichever comes first. Seller shall bear all risk of loss of and damage to Buyer's Property. Buyer's Property shall at all times be properly housed and maintained by Seller, at its expense, shall not be used by Seller for any purpose other than the performance of this Contract; shall be deemed to be personalty; shall be conspicuously marked by Seller as the property of Buyer; shall not be commingled with the property of Seller or with that of a third person; and shall not be moved from Seller's premises without Buyer's prior written approval. Buyer and its designees shall have the right to enter Seller's premises at all reasonable times to inspect Buyer's Property and Seller's records with respect thereto. Upon the request of Buyer, Buyer's Property shall be immediately released to Buyer or delivered to Buyer by Seller, either (a) FCA transport equipment at Seller's plant (Incoterms 2020), properly packed and marked in accordance with Buyer's Requirements and the requirements of the carrier selected by Buyer to transport such property, or (b) to any location designated by Buyer, in which event Buyer shall pay to Seller the reasonable costs of delivering such property to such location. To the fullest extent permitted by Law, Seller waives any liens, claims, security interests, encumbrances and other rights that Seller might otherwise have or assert on or with respect to any of Buyer's Property for work performed on such property, with respect to Supplies produced with Buyer's Property, or otherwise. To the extent any Intellectual Property Rights owned by or licensed to Seller is embodied in, or is otherwise necessary for the intended use of, any Buyer's Property, Seller hereby grants to Buyer a fully paid, royalty free, irrevocable, non-exclusive, worldwide, perpetual to the maximum extent permitted by Law, royalty-free license, with the right to grant sublicenses as necessary for any use of Buyer's Property, to use such Intellectual Property Rights.

## 18. Seller's Property

Unless otherwise agreed to by Buyer, Seller, at its expense, shall furnish, keep in good condition, and replace when necessary all machinery, equipment, Tooling, jigs, dies, gauges, fixtures, molds,

patterns and other items owned or furnished by Seller (collectively, "Seller's Property") necessary for the production of the Supplies. Seller shall insure Seller's Property with coverage for all losses for its replacement value. Seller grants Buyer an irrevocable option to purchase Seller's Property that is used exclusively for the production of the Supplies upon payment to Seller of Seller's net book value thereof, less any amounts that Buyer has previously paid to Seller for the cost of such items and any amounts otherwise owing to Buyer by Seller; provided, however, that this option shall not apply if Seller's Property is used to produce goods that are the standard stock of Seller or if a substantial quantity of like goods are being sold by Seller to other customers.

## **19. Intellectual Property**

### **19.1 Intellectual Property Rights**

Each Party is, and shall remain, the sole and exclusive owner of, and retain all right, title and interest in and to, any Intellectual Property (defined below) owned, controlled, acquired, or created by it prior to the effective date of this Contract or developed by it in a strictly independent and separate manner from this Contract ("Background IP"). Seller hereby grants, and agrees to grant, to Buyer, and shall and hereby causes its affiliates and personnel to grant to Buyer, its subsidiaries and affiliates, and their respective successors and assigns, and Buyer hereby accepts an irrevocable, perpetual worldwide, nonexclusive, royalty free, fully paid-up license, with right to sublicense to others in connection with providing the Supplies or Services to Buyer or Buyer's customer under, all of Seller's Background IP to use, distribute, relocate, display, modify, perform, repair, remanufacture, rebuild, offer to sell, sell, and import, make or have made Supplies or perform the Services purchased by Buyer ("License"). All such licenses shall be effective from the first delivery of the Goods or the Services under the Purchase Order. "Intellectual Property Right" means all rights arising under U.S. or foreign Law relating to patent, trademark, copyright, moral rights, industrial design right, Proprietary Information (as defined in Section 20) and trade secrets or other intellectual property rights. "Intellectual Property" means all patents, patent applications, patentable subject matter, copyrights, copyrightable subject matter, work of authorship, derivative works, trademark, trade name, trade dress, trade secrets, know-how, and any other subject matter, material, or information that is considered by Purchaser to be proprietary or confidential and/or that otherwise qualifies for protection under any Law providing or creating Intellectual Property Rights, including the Uniform Trade Secrets Act.

### **19.2 Foreground IP**

To the extent that Seller creates or develops any Intellectual Property or Intellectual Property Rights in the performance of Seller's obligations under this Contract ("Foreground IP"), such Foreground shall be owned by Buyer. Seller agrees that all Foreground IP are "works made for hire" on behalf of Buyer as that term is used in connection with the U.S. Copyright Act. To the extent that any Foreground IP does not transfer to Buyer as a "work made for hire", Seller hereby assigns, and agrees to assign, to Buyer (or Buyer's designee) all right, title, and interest in and to all Foreground IP. Seller does hereby irrevocably appoint Buyer and its successors and assigns as Buyer's true and lawful attorney in fact (coupled with an interest), and hereby authorizes Buyer to: (a) execute on behalf of Seller all instruments, documents, and the like to transfer the Foreground IP to Buyer and its successors and assigns; and (b) do all acts and things necessary or expedient in furtherance of such purpose. Seller shall promptly disclose all Foreground IP to Buyer and shall cooperate (and cause its employees and contractors to cooperate) in executing any documents and taking any other actions necessary or convenient to patent, copyright, assign to Buyer or otherwise perfect or protect such Foreground IP for the benefit of Buyer.

### **19.3 Third Party Material; Open Source Code**

Seller shall not incorporate any third party proprietary materials, information or Intellectual Property ("Third Party Material") into Supplies or other work product to be delivered to Buyer, unless Seller

has obtained for Buyer a perpetual, worldwide, fully paid-up, royalty-free, non-exclusive license permitting Buyer and its affiliates to use, sublicense and distribute such Third Party Material in the conduct of their normal business operations and otherwise consistent with the License. Seller shall not incorporate any open source code into any Supplies, deliverable, or any other work product to be delivered to Buyer without Buyer's express, prior written consent.

## **19.4 Restriction on Use of Buyer's Intellectual Property**

Seller shall not manufacture or provide, or offer to manufacture or provide, any goods or services (including the Goods and Services) that are based in whole or in part upon inventions, confidential or Proprietary Information of Buyer or Intellectual Property Rights of Buyer, whether for its own purposes (other than to satisfy its obligations under Order), or any other third parties, without Buyer's prior written consent.

## **19.5 Subcontractor Obligations**

Seller shall ensure that the terms of its contracts with its subcontractors and employees are consistent with the terms of this Section.

## **20. Proprietary Information**

### **20.1 Buyer's Information**

All non-public, confidential or proprietary information of Buyer, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists or information, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Contract and any other documents specifically incorporated in the Purchase Order and any and all Services to be rendered and/or work to be performed pursuant to the Purchase Order is and shall be deemed confidential and proprietary information (collectively, "Proprietary Information") of Buyer. Seller shall not, without authorization in writing from Buyer, use (except as necessary to the performance of this Contract), communicate or disclose the confidential and proprietary information of Buyer or use such information for any purpose other than to perform its obligations under a Purchase Order. Seller shall safeguard the Proprietary Information of Buyer in a manner consistent with that used by Seller to safeguard its own confidential and proprietary information, but in no event less than reasonable standard of care. Seller shall cause its employees, contractors, officers, directors, agents and representatives to be bound by and comply with the foregoing restrictions regarding the use or disclosure of such confidential and proprietary information. Seller shall not assert any claims with respect to any technical information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the Supplies.

### **20.2 Limitations on Buyer's Information**

The restrictions and obligations of Section 20.1 do not apply to information that: (a) is already publicly known at the time of its disclosure by Buyer; (b) after disclosure by Buyer becomes publicly known through no fault of Seller; or (c) Seller can establish by written documentation was properly in its possession prior to disclosure by Buyer or was independently developed by Seller without use of or reference to Buyer's information. Notwithstanding anything to the contrary in these Terms, any confidentiality or nondisclosure agreement between the Parties that predates this Contract shall remain in effect except as expressly modified by a Purchase Order, and to the extent of a conflict between the express terms of such an agreement and this Section, the terms of that agreement shall control.

### **20.3 Ownership**



All documents containing Proprietary Information relating to the Supplies produced or acquired by Seller under a Purchase Order shall belong to Buyer and Seller shall execute documents confirming ownership to Buyer. All drawings, know-how, Proprietary Information and confidential information supplied to Seller by Buyer and all rights therein shall remain the property of Buyer and shall be kept confidential by Seller.

## **20.4 Return**

Seller shall, within five (5) business days of Buyer's request or the expiration or termination of a Purchase Order, return Buyer's Proprietary Information (including all copies, notes and/or extracts thereof) to Buyer.

## **21. Insurance; Waiver of Liens**

### **21.1 Insurance**

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 \$1,000,000; general liability including premises, operations, independent contractors, and contractual liability \$10,000,000 single limit; owned and non-owned automotive liability – bodily injury \$5,000,000 per person and \$10,000,000 per occurrence; professional liability if professional services are included in Supplies - \$5,000,000; and broad form property damage on premises and in transit - \$5,000,000; and products and completed operations - \$10,000,000. Seller waives subrogation against Buyer. All policies must provide primary non-contributory coverage. Deductibles and co-insurance obligations of Seller shall be limited to 1% of the amount of the coverages and shall be paid by Seller. All policies shall be issued by an insurer with an AM Best rating of A- or better licensed to do business in the state, province, and country where Buyer shall use and sell the Supplies. Liability coverage must include products, completed operations, and (if available) recall. Buyer must be named as an additional insured under the policies and the acts of Seller contrary to policy provisions shall not be attributable to Buyer. 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 shall not be voided, 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 buyers 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, or similar government authority 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.

### **21.2 Waiver of Lien**

To the fullest extent permitted by Law, Seller hereby waives and releases all liens, security interests, claims, charges, pledges, equitable interests and other encumbrances of any kind, including, without limitation, special tools liens, molder's liens, mold builder's liens, tool operator's liens, toolbuilder's liens, fabricator's liens, mechanic's liens, artisan's liens, tradesman's liens, personal-property liens, and warehouseman's liens, that may otherwise be imposed on or with respect to Buyer's Property and the Supplies. Seller shall, at Seller's expense, keep all Buyer's Property and Supplies free and clear of all such liens, claims, security interests and other encumbrances. Seller shall cause all its subcontractors, materialmen and suppliers (and subcontractors of such Parties) to provide similar waivers and agreements in form and substance satisfactory to Buyer.

## **22. Force Majeure**

Any delay or failure of either party to perform its obligations under this Contract shall be excused to the extent that such delay or failure is caused by an unforeseeable event beyond the control of the nonperforming party and without the nonperforming party's fault or negligence, such as acts of God, actions by any governmental authority, pandemics and epidemics, fires, floods, windstorms, explosions, riots, natural disasters, wars and sabotage, and Buyer's inability to use the Supplies due to disruption or cessation of normal business operations (a "Force Majeure Event"). Written notice of a Force Majeure Event, including the anticipated duration thereof, must be given by the nonperforming party to the other party within twenty-four (24) hours of the occurrence of the Force Majeure Event. In no event, however, shall Seller's performance be excused by: (a) the change in cost or availability of materials, components, labor, utilities, or services based on market conditions, supplier actions, labor disruptions or contract disputes; (b) Seller's financial distress; or (c) any labor strike or other labor disruption applicable to Seller or to any of its subcontractors or suppliers. During any Force Majeure Event affecting Seller's performance, Buyer may, at its option, purchase Supplies and/or Services from other sources and reduce its delivery schedules to Seller by such quantities, without liability to Buyer, or require Seller to provide Supplies from other sources in quantities and at times requested by Buyer at the price set forth in the Purchase Order. Seller shall 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 the Purchase Order. If requested by Buyer in writing, Seller shall, within five (5) days after Buyer's request, provide adequate assurances that the delay in Seller's performance resulting from such event shall not exceed thirty (30) days. If the delay lasts more than thirty (30) days or Seller does not provide such adequate assurances, Buyer may immediately terminate the Purchase Order without liability to Seller. Seller shall at all times maintain, and shall provide Buyer with, a detailed contingency plan for Seller's prompt response to any Force Majeure Event.

## **23. Buyer's Liability**

Except as expressly set forth herein, Buyer's sole liability and Seller's exclusive remedies under this Contract (including its termination, expiration or cancellation) is to pay for the Supplies in accordance with these Terms. In no event shall Buyer be liable to Seller for Seller's indirect, special, consequential (including lost profits, interest, lost market share or damage to brand value), incidental, punitive, and exemplary damages, whether or not foreseeable, and irrespective of whether Seller has been advised of the possibility of such damages.

## **24. Limitation on Assignment and Subcontracting**

This Contract is issued to Seller in reliance upon its personal performance of the obligations. Without Buyer's prior written consent, Seller may not assign this Contract or delegate the performance of its duties hereunder. Seller represents and warrants that any such subcontractor's performance shall satisfy all requirements and obligations applicable to Seller under the Contract. Any subcontracting, assignment or delegation does not relieve Seller of any responsibility under this Contract. For purposes of this Contract, "assign" shall be construed broadly and shall include, but not be limited to, any transfer and any changes in control of Seller.

## **25. Compliance with Laws; Export Compliance**

### **25.1 All Laws**

Seller shall comply with all applicable laws including, but not limited to, those which regulate the sale, manufacture, labeling, transportation, licensing, approval, or certification of the Supplies, and further including: (a) all applicable export control and sanctions Laws of the United States and any other relevant country; and (b) those relating to environmental matters, data protection and privacy, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health and safety and motor vehicle safety (collectively "Laws"). Each Purchase Order shall be

deemed to incorporate by reference all the clauses required by the provisions of said Laws. Upon written request, Seller shall submit to Buyer evidence of such compliance.

## **25.2 Export Compliance**

Seller represents and warrants that it is not subject to the jurisdiction of any country that is subject to a comprehensive U.S. embargo and is not designated on, or associated with, any party designated on any of the U.S. government restricted parties lists, including, without limitation: the U.S. Commerce Department's Bureau of Industry and Security ("BIS") Denied Persons List, Entity List or Unverified List; the U.S. Treasury Department Office of Foreign Assets Control ("OFAC") Specially Designated Nationals and Blocked Persons List; or the U.S. State Department Directorate of Defense Trade Controls ("DDTC") Debarred Parties List. Seller represents and warrants that neither the Supplies nor any related technical data to be provided to Buyer in conjunction with this Contract is controlled under the Commerce Control List of the Export Administration Regulations, the U.S. Munitions List of the International Traffic in Arms Regulations ("ITAR") or under the export control laws of its own country. Seller agrees to obtain any needed export license or authorization prior to the export of the Supplies purchased when necessary. Seller agrees that it shall not export or re-export, directly or indirectly, any of Buyer's information, goods, software, and/or technology provided to it in conjunction with this Contract, without complying with all applicable U.S. and international export control laws for which at the time of export or re-export an export license or other governmental approval is required, without first obtaining such license or approval. Seller agrees to comply with all applicable U.S. export control Laws including, but not limited to, the requirements of the International Emergency Economic Powers Act, 50 U.S.C. 1701 et seq., the Export Administration Act, 50 U.S.C. app. 2401-2420, and the Export Administration Regulations, 15 C.F.R. 730-774, including the requirement for obtaining any export license or agreement, if applicable. Without in any way limiting the foregoing, Seller agrees that it shall not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers, without authority of an export license, agreement or applicable exemption or exception.

## **26. Foreign Purchases**

The following applies to all transactions involving Supplies to be imported into the country in which Seller's place of final delivery is located:

### **26.1 Buyer's Importation Rights**

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

### **26.2 Customs Forms**

Upon request and where applicable, Seller shall provide Buyer and/or its designee all properly executed customs forms required by Law for export and import of the Supplies. 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 in the Purchase Order, all customs drawback shall be credited to Buyer.

### **26.3 Other Certificates**

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

### **26.4 Duties and Drawback Rights**

The price for Supplies includes, and Buyer shall own, 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. Buyer must include such provisions in all its subcontracts.

## **27. Miscellaneous**

### **27.1 Jurisdiction and Applicable Law**

The Contract shall be interpreted and enforced in accordance with the Laws of the State of Michigan and of the United States of America, exclusive of the choice of Law rules thereof. The United Nations Convention on the International Sale of Supplies does not apply. The state courts of Michigan in Oakland County, or the federal courts in the district including Oakland County shall have exclusive jurisdiction and venue over any lawsuit arising out of or related to this Contract and the Supplies. Seller consents to the jurisdiction of the appropriate state court in Oakland County, Michigan or, if original jurisdiction can be established, in the federal courts in the district including Oakland County for any legal or equitable action or proceeding arising out of, or in connection with this Contract. SELLER SPECIFICALLY WAIVES THE RIGHT TO A JURY AND ANY AND ALL OBJECTIONS TO VENUE IN SUCH COURTS.

### **27.2 Waiver**

Either Party's failure to insist on the performance by the other Party of any term or failure to exercise any right or remedy reserved in the Contract, or either Party's waiver of any breach or default hereunder by the other party shall not, thereafter, waive any other terms, conditions, rights, remedies, breaches or defaults, whether of the same or a similar type or not.

### **27.3 Severability**

If any provision of this Contract, or portion of any provision, is declared or found to be unenforceable, the balance of this Contract or such provision shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof. In particular, if any interest rate provided for herein is higher than that permitted by applicable law it shall automatically be amended to the highest legal rate.

### **27.4 Survival**

The obligations, representations, warranties, and covenants of Seller under this Contract and each Purchase Order that, by their nature, are intended or reasonably expected to survive the expiration or termination of this Contract, and/or each Purchase Order shall survive the expiration or termination of this Contract and each Purchase Order created hereunder.

### **27.5 Interpretation**

No provision of the Contract shall be construed against Buyer as the drafting Party. Section headings are for convenience or reference only, and do not affect the meaning of the Contract.

### **27.6 No Publicity**

Seller shall not advertise, publish, market or disclose to any third party (including any clients, customers, vendors or suppliers of Buyer) in any manner any information relating to any projects or business of Buyer, including mentioning, disclosing using or implying the name of Buyer, Buyer's trademarks or trade names, or any of Buyer's projects, developments, clients, customers, vendors, suppliers, personnel or contractors, or the existence of any Contracts or these Terms, in each case without the Buyer's prior written consent.

## **27.7 Relationship of Parties**

Seller and Buyer are independent contracting parties and nothing in this Contract shall make either party the employee, agent or legal representative of the other for any purpose. This Contract does not grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Seller shall be solely responsible for all employment and income taxes, insurance premiums, charges and other expenses it incurs in connection with its performance of the Contract, except as expressly provided in a written agreement signed by Buyer. 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 subcontractors.

## **27.8 Conflict of Interest**

Seller represents and warrants that its performance of this Contract shall not in any way conflict with any continuing interests or obligations of Seller or its employees or contractors. Seller further warrants that while the Contract is in effect, Seller and those of its employees and contractors participating in the performance of the Contract shall refrain from any activities which could reasonably be expected to present a conflict of interest with respect to Seller's relationship with Buyer or its performance of the Contract.

## **27.9 Modification**

No alteration, amendment, waiver, cancellation or any other change in any term or condition of the Contract shall be valid or binding on either party unless the same has been agreed to in writing by Buyer.

## **27.10 Notices**

Any notice required or permitted to be given by either party under this Agreement shall be in writing and personally delivered or sent by commercial courier service (e.g., Fed Ex) to the other party at its address set forth in the Contract or such other address as may from time to time be supplied by the Parties, and shall be effective only upon receipt by Buyer in the form set forth in this Section 27.10.

## **27.11 No Third Party Beneficiaries**

Unless otherwise expressly provided for herein, no provisions this Contract are intended or shall be construed to confer upon or give to any person or entity other than Buyer and Seller any rights, remedies or other benefits under or by reason of the Contract; provided that the Indemnitees shall be third party beneficiaries of Section 27.1 with rights of enforcement thereunder.

<END>