

**MS PLASTIC WELDERS, L.L.C.**

**GENERAL TERMS AND CONDITIONS**  
**OF PURCHASE**

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**MS PLASTIC WELDERS, L.L.C.**  
**(“Buyer”)**

**GENERAL TERMS AND CONDITIONS OF PURCHASE**

**1. Scope and Acceptance.**

(a) Scope. These General Terms and Conditions of Purchase (“Terms”) automatically apply to and are a part of all written and oral purchase orders and amendments thereto and (collectively referred to as an “Order”). The Terms also automatically apply to and are a part of any request for quotation, blanket purchase order, release, purchase agreement, or similar document issued to Seller by Buyer. The term “purchase order” includes Seller’s forms of “Quantity Order” and “Purchase Order”. If both forms are used in a transaction the transaction shall be governed by the provisions of both forms. If there is a conflict between the forms those in the Purchase Order shall prevail. All goods and services (whether or not ancillary to a sale of goods) such as production and service parts, raw materials, equipment, tooling, engineering and design only, components, intermediate assemblies, work in process, and end products to be provided under an Order are included in the term “Goods.”

(b) Seller’s Acceptance. An Order is an offer by Buyer but not a firm offer and may be revoked prior to acceptance. An Order for which written confirmation is requested may be accepted only by returning a copy thereof signed by Seller within seven days of the date of the Order. However, Buyer may elect to consider Seller’s oral acceptance, Seller’s preparation to provide the Goods, or Seller’s delivery of the Goods, as an acceptance of an Order and its terms (and of no other terms) and enforce an Order.

(c) Buyer’s Acceptance. An Order does not constitute an acceptance by Buyer of any quotation or any proposal of Seller. Reference in an Order to any such quotation or proposal shall not constitute an addition to or a modification of any of the terms and conditions of an Order, except that a specific item of a quotation or proposal referenced and adopted by an Order may be included in an Order without adopting any other portion of the quotation or proposal. Unless specifically otherwise provided in writing by Buyer any reference to any offer to sell or proposal made by Seller is solely for the purpose of incorporating the description and specifications of goods and services contained in the offer to sell or proposal to the extent that the description and specifications do not conflict with the description and specifications contained in the Order.

(d) Inconsistent or Additional Seller Terms. Buyer objects to any additional or inconsistent terms in an Offer, acceptance, or other communication from Seller and only the Terms and any other terms set out in an Order shall be binding upon the parties. No objection to the Terms or reservation of rights by Seller shall be effective. **TERMS AND CONDITIONS IN AN ATTEMPTED ACKNOWLEDGMENT OF AN ORDER, OFFER OR OTHER SELLER DOCUMENT INCONSISTENT WITH OR IN ADDITION TO THE TERMS AND CONDITIONS OF AN ORDER ARE NOT BINDING UPON BUYER UNLESS SPECIFICALLY ACCEPTED BY BUYER IN WRITING, AND BUYER HEREBY OBJECTS THERETO.** If these Terms are inconsistent with the specific provisions of any Order, then the specific provisions of the Order will control. No course of performance or dealing by the parties shall be construed to waive, modify or otherwise adversely affect Buyer’s rights.

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

(f) Specific Goods and Letter of Intent. Issuance of an Order for specific Goods, such as product design or tooling for example, is not a commitment to issue an Order for other Goods such as production parts for example. Issuance of a letter of intent or other notice stating the Seller has been selected as the intended supplier of Goods does not obligate Buyer to issue an Order for such Goods or purchase such Goods, unless it specifically states otherwise.

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

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

## **2. Duration of Order**

(a) Initial Term. The "Initial Term" of the Order for production parts begins on the effective date shown on the Order and expires on the date stated therein, if any, and otherwise on January 1 of the next calendar year. If, for example, an Order is issued on July 1, the Initial Term will end on December 31 of the same year.

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

(c) Non-Renewal. Buyer may elect not to renew the Order by providing a written notice to the other party to that effect. Written notice of non-renewal must be given at least 30 days prior to the date the Initial Term or Renewal Term (as applicable) is scheduled to expire ("Renewal Date").

(d) Extended Term. Buyer, at its option, may extend the term of the Order for up to four months beyond the scheduled expiration date of the Initial Term or Renewal Term (as applicable) ("Extended Term"). If the Extended Term is elected, the Order will expire at the end of the Extended Term. Buyer will provide Seller with written notice of any Extended Term on or before the Renewal Date. The written notice will specify the Extended Term (up to four months) and include a non-binding volume projection of Buyer's needs. Prices in effect at the end of the Initial Term or Renewal Term and all other terms and conditions will remain in effect during the

Extended Term. If a transition period longer than the Extended Term is required, Buyer and Seller will negotiate in good faith the terms and conditions of any extension.

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

(a) Pricing and Invoices. Seller shall furnish the Goods at the prices in an Order. All prices are firm. All prices are in U.S. dollars and FOB destination (place of delivery). Seller warrants that the prices for the Goods are no less favorable than those extended by Seller during the term of an Order or during the 12 months immediately preceding an Order to any other customer of Seller for the same or similar goods in similar quantities. Buyer shall also receive the full benefit of all discounts, premiums and other favorable terms of payment customarily offered by Seller to its best customers. If Seller reduces its prices for the same or similar goods to below prices in an Order, Seller shall reduce the price to Buyer to the same price. Seller warrants that the price in an Order shall be complete, and no additional charges of any type, including current or increased costs of materials, labor, packaging, labeling, custom duties, taxes, storage, insurance, boxing and crating shall be added for any reason without Buyer's express written consent. Seller shall submit invoices, in duplicate, which include Seller's supplier number, date and number of Buyer's Order, Seller's tax identification number, the date, place, and quantity of each delivery, and other information requested by Buyer. All cash discounts shall be computed from the date of receipt by Buyer of a final correct invoice or receipt of the Goods, whichever occurs later. Cash discounts shall be based on the full amount of invoice, less freight charges and taxes if itemized separately on the invoice. Correct invoices must be received by Buyer at least ten days prior to the cash discount payment date. Delay in receiving correct invoices or Goods is considered good cause for withholding payment and shall extend the cash discount period. Buyer at its option may pay for Goods based upon its records of the receipt of Goods without invoicing by Seller. Seller shall supply a reasonable number of Goods for testing without charge.

(b) Payment. Buyer shall pay for Goods on a Net Settlement Basis for all of the accounts of Seller arising from the Orders and other agreements Seller has with Buyer. "Net Settlement Basis" means that, unless prohibited by law, Buyer may set off and recoup against Buyer's accounts payable to Seller any amounts which Buyer determines in commercial good faith Seller or any Seller Affiliate is liable to Buyer or any Affiliate of Buyer for, under any Order or other agreements between Seller or any Seller Affiliate and Buyer or any Buyer Affiliate. Buyer may do so without notice to Seller. An Affiliate is an entity which is a party, an entity controlled by a party or an entity which is under common control within an entity. "Control" means at least a 25% voting or management interest.

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

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

(e) Auditing and Indemnification. Buyer may at any reasonable time send its authorized representatives to examine all pertinent documents and materials in the possession or under the control of Seller relating to any of Seller's obligations under an Order or any payments requested by Seller pursuant to an Order. Seller shall maintain books and records relating to an Order for a period of four years after completion of final delivery of Goods pursuant to an Order. If any such audit discloses any inaccurate information, Seller shall indemnify, defend and hold harmless Buyer from and against any loss, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings, including but not limited to all audit attorney's fees and any other cost related thereto, plus interest at the legal rate for written contracts. Seller shall obtain from the subcontractors such audit rights for benefit of Buyer.

(f) Customs Invoice. If Goods will cross an international border, Seller shall provide a commercial customs invoice as required for customs clearance. The invoice shall be in English, or in the specific language of the destination country as directed by Buyer, and shall include: (i) contact names and phone numbers at Buyer and Seller who have knowledge of the transaction; (ii) Buyer Order number; (iii) Buyer Order line item; (iv) release number (in the case of a Blanket Order); (v) part number and detailed description of the merchandise; (vi) unit purchase price in currency of the transaction; (vii) quantity; (viii) INCOTERM and named location; (ix) country of origin of the Goods; (x) separate identification of all materials provided by Buyer to Seller for the production of Goods which are not included in the purchase price (e.g., consigned material, tooling, etc.); and Order number or other reference information for any consigned materials; and (xi) any discounts or rebates from the base price used in determining invoice value.

(g) Trade Agreements. If Goods will be delivered to a destination country having a trade preferential, customs union agreement, or customs program ("Trade Agreement") with Seller's country, Seller shall cooperate with Buyer to review eligibility of Goods for any special program for Buyer's benefit and provide Buyer required documentation (e.g., NAFTA Certificate, EUR1 Certificate, GSP Declaration, FAD or other Certificate of Origin) to support the applicable special customs programs (e.g., NAFTA, EEA, Cotonou Agreement, GSP, EU-Mexico FTA, EU/Mediterranean partnerships, etc.) to allow duty free or reduced duty entry of Goods into the destination country. Similarly, should any Trade Agreement or special customs program applicable to the scope of an Order exist at any time during its term and be of benefit to Buyer in Buyer's judgment, Seller shall cooperate with Buyer's efforts to realize any such available credits, including counter-trade or offset credit value, which may result from an Order, and Seller acknowledges that such credits and benefits shall inure solely to Buyer's benefit. Seller shall indemnify Buyer for any costs, fines, penalties or charges arising from Seller's inaccurate documentation or untimely cooperation. Seller shall immediately notify Buyer of any known documentation errors.

(h) Taxes. Seller's price includes all payroll and/or occupational taxes, any value-added tax that is not recoverable by Buyer and any other taxes, fees and/or duties applicable to the Goods purchased under an Order; provided, however, that any state and local sales, use, excise and/or privilege taxes, if applicable, will not be included in Seller's price but will be separately identified on Seller's invoice. If Seller is obligated by law to charge any value-added and/or similar tax to Buyer, Seller shall ensure that if such value-added and/or similar tax is applicable, it is invoiced to Buyer in accordance with applicable rules so as to allow Buyer to reclaim such value-added and/or similar tax from the appropriate government authority. Neither

party is responsible for taxes on the other party's income or the income of the other party's personnel or subcontractors. If Buyer is required by government regulation to withhold taxes for which Seller is responsible, Buyer shall deduct such withholding tax from payment to Seller and provide to Seller a valid tax receipt in Seller's name. If Seller is exempt from such withholding taxes as a result of a tax treaty or other regime, Seller shall provide to Buyer a valid tax treaty residency certificate or other tax exemption certificate at a minimum of 30 days prior to payment being due.

(i) Payment Start Date. Unless otherwise stated on the face of an Order, payment terms are due net 90 days from the Payment Start Date. The Payment Start Date is the later of: (i) the required date identified on the Order; (ii) the received date of the Goods in Buyer's receiving system; or (iii) the date of receipt of a valid invoice by Buyer. The received date of the Goods in Buyer's receiving system will occur: (x) in the case of Goods shipped directly to a Customer of Buyer ("Material Shipped Direct" or "MSD"), including balance of Goods sent to a non-Buyer/non-Customer facility in accordance with an Order to be incorporated into MSD, within 48 hours of Buyer being presented with a valid bill of lading confirming that the Goods have been shipped from Seller's facility, or in the case of services performed directly for a Customer of Buyer, within 48 hours of Buyer's receipt from its Customer of written certification of completion of the services; (y) in the case where Goods are shipped or services are provided directly to or at a non-Buyer/non-customer facility in accordance with an Order, within 48 hours of Buyer receiving notice from such third party that it has received the Goods or services; or (z) in the case where the Goods are shipped directly to Buyer or services are performed directly for Buyer, within 48 hours of Buyer's receipt of such Goods or services.

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

(a) Releases. If an Order is described as a "Blanket Order" or in some other manner which indicates Buyer's obligation to purchase is limited to those Goods and quantities in releases or other written delivery instructions from Buyer ("Blanket Order"), the quantities and delivery dates in the Order are not binding on Buyer, and Buyer's obligation to purchase the Goods is expressly contingent upon the issuance of a purchase order, release or other written delivery instructions ("Releases") by Buyer identifying the Goods and quantities to be purchased and providing delivery schedules and directions. All Orders for production services, materials, parts and components and for their corresponding service and replacement parts, are presumed to be Blanket Orders. As to such an Order, Seller shall not provide any services, fabricate or assemble any Goods, procure required materials, nor ship any Goods, except to the extent specifically authorized by the Order or by written Releases. Seller shall maintain at its expense and risk components, materials and finished Goods necessary to assure a continued supply of Goods at the latest design level. Subject to change by Buyer's Releases, Seller is authorized to fabricate and assemble up to four weeks of finished Goods inventory and acquire up to an additional eight weeks of component and materials inventory based on Seller's latest Releases. Releases may be modified by Buyer at any time to the extent not contrary to specific terms of the Order. Buyer shall be obligated only to purchase Goods and those components and materials fabricated or acquired by Seller in reliance on a Release that establishes a firm or fixed quantity. Notwithstanding anything to the contrary and when required by law for the enforcement of a Blanket Order, Buyer shall be obligated to purchase prototype Goods and Goods for manufacturing process testing at their cost of direct labor and materials. Buyer may temporarily suspend delivery or modify delivery dates for fixed or firm

quantities. Forecasts and planning advisories for any other periods are not Releases and may not be relied upon by Seller. Buyer may return shipments in excess of quantities released or ordered to Seller at Seller's expense for all packing, handling, sorting and transportation charges. Releases are included in the term "Order."

(b) Period. The obligation of Seller to sell under the prices and other terms of a Blanket Order continues during the period in which Buyer issues Releases. Buyer has and/or will rely upon Seller's obligations to sell under an Order. The inclusion in an Order of prices for periods beyond the term of any firm period of commitment in an Order obligates Seller to accept a new or renewed Order at such prices, but is not an implied extension of any commitment of Buyer to purchase. If an Order contains a specific period of validity, the obligation continues for the period covered by the Order and thereafter for a reasonable time at the prices in effect at the end of such period after written notice by Seller that it will no longer supply under such prices, so that Buyer may resource supply of the Goods.

(c) Seller's Obligations. A reference in a Blanket Order to a quantity is an estimate based upon information from Buyer's Customer and is not a guarantee of the quantity to be purchased. The inclusion of a reference to production Goods in an Order for tooling or other non-production Goods is to obtain a warranty of performance of the Goods to be produced with the non-production Goods, and is not an obligation for the issuance of an Order for any production Goods or for a particular quantity of production Goods. A reference in an Order to a minimum or maximum quantity of production Goods is a warranty by Seller of its commitment to maintain the indicated production levels, and is not a guarantee of a quantity of Goods to be ordered by Buyer.

(d) Quantities. Seller shall maintain a 100% on time delivery record based on Buyer's Releases. Seller is responsible for any charges incurred to meet Buyer's schedule. Seller shall maintain production and delivery capacity so that deliveries can be made in accordance with these schedules. Seller shall immediately inform Buyer if there is any risk of variation from the schedule and shall take all available measures to avoid such variations. Seller is aware that the actual need for the Goods is driven by the requirements of Buyer's Customer, and that Seller and Buyer must adopt a flexible approach to adjust to these requirements. If Seller delivers a quantity in excess of the authorized released quantity, Buyer shall not be responsible to take delivery of the excess and is entitled to return the excess at Seller's expense. Upon Buyer's request, Seller shall maintain a supply bank equal to 40 days of anticipated production demand based on Buyer's Releases in an outside warehouse at no cost to Buyer. This inventory shall be in place 60 days prior to the commencement of delivery of Goods for use in Buyer's production.

(e) Additional Compensation. As additional compensation to Seller for its supply obligations under this Section and the option of Buyer to purchase or not purchase, Buyer shall pay to Seller \$100.00 upon a demand from Seller made within 90 days after the termination of the issuance of Releases by Buyer.

(f) Consignment. At Buyer's request, Seller shall deliver to and store, at no cost to Buyer, in Buyer's designated warehouse(s), the inventory of critical service repair and replace parts for the Goods and/or a safety bank of the Goods as reasonably determined by Buyer. Buyer may, from time to time, utilize and make a withdrawal from the inventory on an as-needed basis. A Purchase Order and/or Contract shall be issued from time to time which indicates the

specific items, quantity, prices, ship to location, and delivery schedule for the Goods being ordered to replenish inventory consumed through Buyer's withdrawal. Buyer shall not be obligated to pay Seller for any Goods unless purchased by such Purchase Order. Under the consignment program, Buyer is not subject to any minimum order quantities or order amounts. Upon termination, Buyer may elect to withdraw and purchase any portion or all of the inventory and the remainder shall be promptly returned to Seller at no cost to Buyer. Seller may take an inventory count of the Goods a maximum of two times per contract year by providing Buyer with notice of such intent 30 days in advance. Seller shall provide the results of such count to Buyer within 15 days after completion. When a discrepancy in the inventory count occurs, Seller shall provide Buyer detailed documentation of shipments sent. If Buyer agrees that Goods are missing, Buyer shall be liable for the loss. If there is excess inventory, Seller shall pay or credit Buyer, at Buyer's option, the difference if the count reveals that Buyer previously paid for Goods included in the inventory.

**5. Directed Supplier Relationship.** If an Order derives from a supplier relationship between Seller and Buyer directed or required by a Customer ("Directing Customer"), Seller shall comply with all provisions of the Order plus the terms and conditions of the Directing Customer relating to the Goods. At Buyer's request, Seller shall negotiate performance, pricing, quality, warranty and other contract issues relating to the Goods with the Directing Customer to assure that the Directing Customer's requirements are adequately developed, described and met. Upon Seller's written request, Buyer shall pass through to Seller, subject to an appropriate mark-up for Buyer, those commercial terms which Seller negotiates with the Directing Customer regarding the Goods, provided such commercial terms are granted to Buyer. Seller is solely responsible to provide in writing all information relating to the Goods, including for example, the Goods' design and performance (as approved by the Directing Customer and Buyer), design for interface of the Goods with Buyer's products, testing data and reports, tooling requirements and timing, and other matters which could affect Buyer's use of the Goods and performance of its obligations to provide, directly or indirectly, products to the Directing Customer. Buyer may require Seller to comply with (i) the Directing Customer's terms and conditions of purchase as amended by Directing customer; and (ii) the Terms, and to the extent there is a conflict with an Order, Buyer may elect the provisions which apply. Seller shall participate in cost reduction programs of the Directing Customer with Buyer.

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

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

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

(c) Shipping Charges. All shipping, drayage, demurrage, storage, insurance, export and import duties, packing, and related charges shall be paid by Seller. If Buyer is

specifically responsible for such charges according to the terms of an Order, they shall be prepaid by Seller, and then billed to Buyer.

(d) Packaging. All Goods shall be suitably packed at Seller's cost to avoid damage, marked and shipped in accordance with the requirements of Buyer, if any, and of common carriers in a manner to secure the lowest transportation costs consistent with the required delivery schedules and to ensure the Goods arrive in good condition at the final destination. No additional charge shall be made to Buyer for packaging or shipping. All dunnage and packaging shall be marked if returnable and the address to which it is to be returned.

(e) Documentation. Packing slips identifying the Order number, release number and part number must accompany each shipment in an envelope marked "packing slip enclosed." Seller shall mark each package with an Order number, and where multiple packages comprise a single shipment, each package shall be shown on packing slips, bills of lading and invoices. If Buyer is obligated to pay for shipping, Seller shall pay for all extra charges incurred because of Seller's failure to follow Buyer's shipping instructions, including those related to delivery schedules, whether or not Seller's liability for general damages is limited under other provisions of an Order. Seller shall describe the Goods on the bill of lading or other shipping receipt and route shipments, in accordance with instructions issued by Buyer, if any.

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

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

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

(i) Compliance with Law. Seller shall provide all packaging, products, materials, and documentation in compliance with the law of all countries of shipment, routing and destination.

(j) Special Warnings. Prior to and with the shipment of Goods, Seller must furnish Buyer sufficient warnings and notice in writing (including appropriate labels on Goods, containers and packing) of any hazardous material which is an ingredient or a part of any of the Goods, together with such special handling instructions as may be necessary to advise carriers, Buyer, and their respective employees of how to exercise that measure of care and precaution which will best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the Goods, containers and packing shipped to Buyer.

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

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

(m) Suspension of Performance. Buyer may at any time, by notice to Seller, suspend performance of deliveries and Seller's other performance obligations for such time as it deems appropriate. Upon receiving notice of suspension, Seller shall promptly suspend deliveries and work to the extent specified, properly caring for and protecting all work in progress and materials, supplies and equipment Seller has on hand for performance. Upon Buyer's request, Seller shall promptly deliver to Buyer copies of outstanding purchase orders and subcontracts for materials, equipment and/or services related to performance of an Order, and shall take such action relative to such purchase orders and subcontracts as Buyer may direct. Buyer may at any time withdraw the suspension as to all or part of the suspended work by written notice specifying the effective date and scope of withdrawal. Seller shall resume diligent performance on the specified effective date of withdrawal. All claims for increase or decrease in the cost of or the time required for the performance of any work caused by suspension must be pursued pursuant to and consistent with the Section on "Changes" or they shall be deemed waived.

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

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

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

(c) Right to Possession. Buyer has the right to possession of all Goods at all times from the time the Goods are identified to the Order whether or not Seller is in default subject to Buyer's obligation to pay for the Goods upon obtaining possession. This right is separate and apart from any security interest.

**8. Changes**. Buyer reserves the right at any time to make changes in quantities, drawings, specifications, testing or quality control, packing, shipment, scope of work and other terms of an Order. The specifications shall include those in an Order and any statement of work or statement of requirements issued by Buyer or its Customer. Any purported change shall be binding

on Buyer only if made in a writing signed by Buyer. Any difference in price or time for performance necessarily resulting from such changes shall be adjusted and an amendment to the Order shall be provided by Buyer in writing, if Seller makes demand for such adjustments and delivers all supporting documentation within 10 days of receipt of Buyer's written notice of change or withdrawal of suspension. Time is of the essence for such demand. Notwithstanding anything to the contrary, the price shall be adjusted solely to compensate Seller for increased costs of materials and other direct production costs (excluding overhead and profit) necessarily incurred as a result of the changes, and the terms for performance shall be adjusted only for the period actually required to comply with the changes. Seller may not substitute materials or change the specifications of the Goods in any way without prior written authorization from Buyer. Seller shall diligently perform the Orders and all changes while its claim is being evaluated and during any period of dispute regarding requested adjustments.

**9. Quality, Development and Inspection**

(a) Quality Requirements. Seller shall, at Seller's cost, participate in any supplier quality and development programs and comply with all quality requirements and procedures specified by Buyer from time to time, including at a minimum, current versions of ISO-9001, QS-9000, TS-16949 and any other quality assurance standards required by Buyer. Buyer may inspect the Goods in process and Seller's facilities at reasonable times, but such inspection or approval shall not constitute acceptance of the Goods or a waiver to insist on strict performance. Seller shall design and manufacture the Goods to be suitable for installation and use in the product to be sold to the end user.

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

(c) Inspections. All Goods shall be received subject to right of inspection and rejection by Buyer and its "Customer" (which term includes, without limitation, Buyer's immediate customers, subsequent original equipment manufacturers and end-users). In order to access Seller's work quality, conformance with Buyer's specifications and compliance with this Order, upon reasonable notice by Buyer, all: (i) Goods, materials and services related in any way to the Goods (including without limitation raw materials, components, intermediate assemblies, work in process, tools and end products) shall be subject to inspection and test by Buyer and its Customer or representative at all times and places, including sites where the Goods are created or performed, whether they be at premises of Seller, Seller's suppliers or elsewhere; and (ii) of Seller's books and records relating to an Order shall be subject to inspection by Buyer. In the event that Seller desires to transfer any work under an Order to another site or make any material modification in its

manufacturing process or the procurement of materials related to the Goods, it shall first consult with and obtain the prior written consent of Buyer, which consent shall not be unreasonably withheld. Such consent by Buyer shall be subject to qualification of the new site under Buyer's supplier qualification standards. If any inspection, test, audit or similar oversight activity is made on Seller's or its suppliers' premises, Seller shall, without additional charge: (i) provide all reasonable access and assistance for the safety and convenience of the inspectors; and (ii) take all necessary precautions and implement appropriate safety procedures for the safety of Buyer's personnel while they are present on such premises. It is Seller's obligation to inspect all Goods for compliance with samples, specifications and other obligations of Seller with respect to the Goods prior to delivery. Buyer may rely on Seller's inspection obligations and is not required to inspect the Goods prior to use. In addition, Buyer and its Customer shall have a reasonable time, but not less than 14 days after delivery, to inspect delivered Goods prior to accepting the Goods. All Goods shall be subject to inspection and test by Buyer, Customers and federal and state governments, at all times and places to the extent practicable. If Buyer inspects Goods prior to use, Buyer may reject an entire shipment on the basis of sampling testing.

(d) Defective Goods. Defective Goods and Goods otherwise not in conformity with Buyer's specifications or an Order will be held pending Seller's instructions at Seller's risk and expense and, if Seller so directs, may be returned at Seller's expense; provided, if Seller fails to provide written instructions within seven days of notice, Buyer may return the Goods freight collect or otherwise dispose of them at Seller's expense. Goods returned as defective or nonconforming shall not be returned to Buyer and shall be replaced within 24 hours unless instructed otherwise by Buyer. Buyer has the option to reduce the quantity of Goods Buyer may be obligated to purchase. Payment for the Goods prior to inspection shall not constitute an acceptance thereof or waive Buyer's right to revoke acceptance. Acceptance, whether or not it has been revoked, shall not release Seller's responsibility for defects, non-conformities, warranty or other claims.

(e) Transfer of Production. If Seller desires to transfer any supply or work under an Order to another site or make any material modification in its manufacturing process or the procurement of material related to the Goods, Seller shall first consult with and obtain the prior written consent of Buyer and Customer. Such consent by Buyer and Customer shall be subject to qualification of the new site under Buyer's and Customer's supplier qualification standards.

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

(g) Process Control. Seller shall provide and maintain an inspection and process control system acceptable to Buyer and its Customer covering the Goods. Records of all manufacture, testing and inspection by Seller of the Goods shall be kept complete, separate and available to Buyer and its Customer during the performance of an Order and for such longer periods as may be specified in an Order, but not less than 10 years after the last delivery of the Goods to Buyer.

(h) Seller's Responsibilities. Buyer's failure to inspect, accept, reject or detect defects by inspection shall neither relieve Seller from responsibility for Goods that are not in accordance with an Order requirement nor impose liabilities on Buyer. Seller shall provide and maintain an inspection, testing and process control system acceptable to Buyer and its Customer covering the Goods to ensure compliance with an Order. Acceptance of such control systems by Buyer shall not alter the obligations and liability of Seller under an Order.

(i) Certification. If Seller is certified under ISO-9000, QS-9000, TS-16949 or any Customer quality program, Seller shall maintain such certification during the performance of any Order. If Seller is not so certified, Seller shall begin and continue the certification process under ISO-9000, QS-9000 and/or TS-16949 as selected by Buyer, in a diligent manner. Seller warrants that its performance of an Order shall be in compliance with the provisions of those supplemental sections of ISO-9000 (e.g., 9001, 9002, or 9003), and/or TS-16949 and ISO 14001 (Version 2005), applicable to the obligations of Seller under the Order, whether or not Seller is certified or registered under such standards.

(j) Defects and Correction. Seller shall provide Goods with zero percent defects. Seller shall maintain a capability process to meet the above requirements and maintain control of those processes. Seller shall be responsible for all costs resulting from the receipt of the defective Goods, including but are not limited to, containment, sorting, rework, scrap, returns to Seller, returns and fines from Buyer's Customer, value-added to the parts by Buyer, down time and transportation.

**10. Maintenance and Safe Use.** Seller shall provide with the Goods, in English and in writing, all information necessary (a) for the safe installation, use, maintenance and repair of the Goods and (b) to maximize the efficient use and useful life of the Goods. Prior to and with the shipment of the Goods, Seller shall furnish to Buyer sufficient warning and notice in writing (including material safety data sheets and appropriate labels on the Goods, containers and packing) of any hazardous material that is an ingredient or a part of any of the Goods, together with such special handling instructions as may be necessary to advise carriers, Buyer, Customers if applicable, and their respective employees, how to exercise that measure of care and precaution that will best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the Goods, containers and packing shipped to Buyer. If requested by Buyer, Seller shall promptly furnish to Buyer in such form and detail as Buyer may direct, in addition to standard material safety data sheets: (i) a list of all ingredients in the Goods; (ii) the amount of all ingredients; (iii) information concerning any changes in or additions to such ingredients; and (iv) other information required by International Material Data Systems.

**11. Electronic Data Interchange and Computer Secrets.**

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

(b) Network Connections. If Buyer's access to Seller's system or Seller's access to Buyer's system requires a network connection between Buyer's wide area network ("WAN") and Seller's WAN, Seller and Buyer shall take reasonable and customary precautions to prevent unauthorized access to or use of the network connection through their respective networks. Each party is responsible for the security of its own network. Neither party shall be liable to the other for unauthorized access to the network connection, so long as such party shall have taken reasonable and customary precautions to prevent such unauthorized access.

(c) No Virus. Neither Buyer nor Seller shall knowingly engage in creating or transmitting computer virus software or other programs which could contaminate or otherwise cause the malfunction of any system (e.g., viruses, trojan horses, trap doors, worms, etc.). When providing electronic materials (any electronic media method, including but not limited to diskette or CD-ROMs) to Buyer or Seller under these Terms, both parties shall exercise the same standard of care that it uses to safeguard against the transfer of known computer viruses or other system errors which could contaminate or otherwise cause the malfunction of its own computer system.

(d) No Disabling Features. Any electronic media tool, including but not limited to, diskettes, CD-ROMs, laptops, or any other form of software or hardware provided or used by Seller, shall be free from any virus, or any other system error that may contaminate or otherwise cause harm to Buyer's computer environment. Seller warrants that any software, and related documentation in electronic form, shall not contain, or result in the creation or insertion of, any disabling device (i.e., any virus, timer, clock, counter, time lock, time bomb, or other limiting design, instruction, or routine) that would erase data or programming, cause any Goods to become inoperable or otherwise incapable of being used in the full manner for which Goods were intended to be used, or cause any software or documentation, any portion thereof, or any other programs, hardware, equipment, or data to become inoperable or otherwise become incapable of being used in the full manner for which it was designed, intended, and created.

(e) No Limiting or Tracking Features. Seller warrants that any software and related documentation in electronic form, shall not contain any computer code that would: (a) disable the software or impair its use or operation in any way based on the elapsing of a period of time, the exceeding of an authorized number of copies, users, or other relevant metric, or the advancement to a particular date or other numeral (referred to as "time bombs", "time locks", or "drop dead" devices); (b) permit Seller or any third party to remotely, and without Buyer's knowledge or approval, access the software through a device such as those referred to as a "trap", "access code", or "trap door"; or (c) permit Seller or any third party to track, monitor, or otherwise report on the use or operation of such software.

(f) Seller's Liability. If such virus or other contaminant enters Buyer's computer environment, by or through Seller, Seller shall reimburse Buyer for all labor and materials costs incurred by Buyer to identify, contain and correct the effects of such virus. The hourly rate paid by Seller for the identification, containment and correction of the effects of such virus shall be at the prevailing hourly rate incurred by Buyer.

## **12. Confidentiality and Intellectual Property.**

(a) Confidentiality. At all times prior to, during and after an Order, Seller shall: (i) maintain the confidentiality of any information disclosed by Buyer or any of its Affiliates, Customers and contractors, any technical, process or economic information derived from drawings, specifications and other data furnished by Buyer in connection with an Order, whether or not identified as “confidential” upon disclosure (“Confidential Information”); (ii) not disclose or permit the disclosure of any Confidential Information to any person other than its employees or subcontractors for whom such knowledge is essential for performance of an Order; and (iii) not use Confidential Information except for performance of an Order. Seller shall immediately notify Buyer of any disclosure of any Confidential Information that is not permitted by these Terms or other misuse of any Confidential Information or breach of these Terms. Except as required for the efficient performance of an Order, Seller shall not: (x) use Confidential Information or make copies or permit copies to be made of Confidential Information without the prior written consent of Buyer; or (y) sell to any third party any Goods which are constructed with or incorporate Confidential Information obtained by Seller from reverse engineering of the Goods. If any copies of Confidential Information are made with prior consent, notice referring to the requirements of this Subsection shall be placed on the copies. Without limiting the direct liability of Seller’s employees and others who may have received Confidential Information directly or indirectly from Seller, Seller shall be responsible for the improper disclosure or other misuse of Confidential Information by Seller’s employees and others in privity with Seller, and Seller shall immediately take such steps as may be necessary to terminate any continuing improper disclosure or misuse by any of Seller’s employees and others of which Seller becomes aware. Buyer makes no representation or warranty of any kind, express or implied, with respect to any Confidential Information. Buyer may, at its sole discretion, elect at any time, by written notice to Seller, to terminate Seller’s further use of Confidential Information for any purpose. Upon receipt of such notice, Seller shall, and shall cause Seller’s employees and its subcontractors to, promptly cease all further use of Confidential Information, return to Buyer all physical materials containing Confidential Information, whether the materials were originally provided by Buyer or copied or otherwise prepared by Seller or any of Seller’s employees or contractors, and erase or otherwise destroy any Confidential Information kept by Seller or any of Seller’s employees or contractors in electronic or other non-physical form. Such termination by Buyer shall not affect Seller’s continuing obligations in this Subsection.

(b) Seller’s Non-Confidential Information. Any knowledge or information disclosed by Seller or on its behalf to Buyer, its affiliates or contractors, which in any way relates to an Order, shall not, unless otherwise specifically agreed to in writing by Buyer, be deemed confidential or proprietary information, and shall be acquired by Buyer, free from any restrictions (other than restrictions under valid patents), as part of the consideration for an Order, and Buyer may disclose such information.

(c) Indemnification. Seller at its expense shall defend, indemnify and hold harmless Buyer and its successors, assigns, Customers and users with respect to every claim that may be brought against Buyer or others that use the Goods, for any actual or alleged infringement of any present or future patent, copyright, industrial design right or other proprietary right based on Seller’s activity under an Order, or the manufacture, sale or use of the Goods: (i) alone; (ii) in combination by reason of their content, design or structure; or (iii) in combination in accordance with Seller’s recommendations. Seller shall investigate and defend or otherwise handle every such claim, and at Buyer’s request, assist Buyer in Buyer’s investigation, defense or handling of any such claim. Seller shall pay all expenses and damages or settlement amounts that Buyer and others

selling Buyer's products or using the Goods of an Order may sustain by reason of each such indemnified claim. If the use or sale of the Goods is enjoined, Seller shall, at its own expense and at Buyer's option, either: (x) procure the right to continue using the Goods; (y) replace same with a non-infringing equivalent; or (z) remove the Goods and refund the purchase price and the transportation and installation costs thereof. Seller's obligations shall apply even though Buyer furnishes all or any portion of the design and specifies all or any portion of the processing used by Seller.

(d) Work for Hire. Any Developments which are created by or on behalf of Seller in the performance of an Order, whether or not they may be protected by patent, copyright or otherwise, shall be work for hire and be the exclusive property of Buyer, and to the extent Developments cannot qualify as work for hire, Seller assigns all rights in such Developments to Buyer and shall execute such further documents as may be necessary to record or otherwise enforce Buyer's rights therein including patent, copyright, trademark or other intellectual property rights, and all related expenses shall be paid by Buyer.

(e) Seller's Duties and Disclosure Requirements. Seller shall promptly inform Buyer in writing of the full details of all inventions, discoveries, concepts, and all copyright material, ideas, information and improvements relating to the Goods or Buyer's business ("Developments"), whether patentable or not, including, but not limited to: hardware and apparatus, processes and methods, designs, formulae, computer programs and techniques, as well as any improvements and related knowledge, which Seller conceives, develops, makes, contributes to or reduces to practice (whether alone or jointly with others) while developing or supplying Goods. Seller shall grant, and hereby does grant an irrevocable, paid-up worldwide license to make, sell, use and exploit the Developments (with the right to sublicense) to Buyer or Buyer's designee, all Developments; all trademarks, copyrights and mask work rights in Developments; and all patent applications filed and patents granted on any Development, including those in foreign countries, necessary or convenient to the use, sale, or manufacture of the Goods, or any improvements or derivatives. Seller shall execute any papers and take such further actions as Buyer may consider necessary or helpful to obtain, maintain, defend and enforce patent, copyright, trademark or other intellectual property rights, and all related expenses shall be paid by Buyer.

(f) Disclosure Regarding Patents. Seller shall specifically identify in a writing delivered to Buyer prior to any shipment, all components, processes, tooling or equipment used in the production of the Goods that are subject to any patent of Seller or third party. Seller shall obtain from third parties for the benefit of Seller, Buyer and Buyer's subcontractors, any rights necessary to make, use and sell the Goods.

(g) Right to Sublicense. Seller grants to Buyer and any entity designated by Buyer and shall obtain from third parties for Buyer a permanent, paid-up, nonexclusive, worldwide license with a right to grant a sublicense to others, to make, have made, use, have used and sell the Goods or any improvements or derivatives thereof under any patents or intellectual property now or hereafter owned or controlled by Seller or third parties and used in the production of the Goods or necessary to make, use and sell in the Goods, including a license to any operating software incorporated into the Goods.

(h) Restrictions on Seller. Except for sale to Buyer, Seller shall not manufacture or sell any product which uses the design or product model numbers or other designation of the Goods sold under an Order or which is produced with the tooling used to produce the Goods.

(i) Upgrades; Software Escrow. Seller shall continue to provide support for any software or software programs incorporated into the Goods (the "Software"). If any of the Software is migrated or otherwise modified, converted or rewritten for use with a new or different operating system or database environment, Seller shall immediately (upon general release to Seller's business customers) make the Software available to Buyer, at no additional license fees or other charges for the acquisition of a license by Buyer for use of the Software. Upon request by Buyer, Seller shall deposit and continue to deposit in an escrow account with a third party the most current release of the source code for any Software.

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

**14. Warranties.**

(a) Express Warranties. Seller warrants and represents to Buyer that all Goods sold as new shall be: (i) merchantable; (ii) free from failure in the final product as sold to the end user for the periods of all Buyer's warranties to its Customer but not less than one year from the date of delivery as defined herein; (iii) free from all defects, including for example, design, workmanship and materials; (iv) fit for the particular purposes for which they are purchased; including the specified form, fit, function and performance as a component and in the component system, as a part of the final product subsystem, in the location within the final product specified by Buyer and in the environment in which the Goods are or reasonably may be expected to perform; (v) in strict compliance with the specifications, samples, drawings, designs, Seller's advertisements, statements on containers and labels, statements of work and requirements of Buyer and its Customers and other requirements (including performance specifications) approved or adopted by Buyer as of the date of delivery or such other date provided by Buyer in writing; (vi) in strict

compliance with all government requirements; (vii) composed of all new materials and components; (viii) produced and provided with the highest degree of care; (ix) furnished promptly; (x) produced by experienced and well trained personnel in a professional and workmanlike manner and in accordance with industry best practices; (xi) in conformity with all sales and other information provided by Seller orally or in writing; (xii) free of liens; and (xiii) to the satisfaction of Buyer and its Customers. If there is any conflict or overlap of warranty provision, the more demanding provision shall apply. Any attempt by Seller to limit, disclaim, or restrict any such warranties or any remedies of Buyer, by acknowledgement or otherwise, in accepting or performing an Order, shall be null, void, and ineffective without Buyer's prior written consent. Approvals by Buyer of Seller's design drawings, specifications, samples, etc., are to assist Seller without charge to Seller, but they do not replace, modify or cause Seller to share Buyer's responsibility and do not waive or limit any warranty of Seller. Buyer may assign Seller's warranties to Customers.

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

(c) Work Environment. Seller warrants that no child, prison, forced or involuntary labor shall be used by Seller or its subcontractors in the production of Goods. Seller and its subcontractors shall maintain a work place free from physical abuse and any practice in violation of local law. Seller and its subcontractors shall provide a healthy, safe work environment, wages and benefits as required by law, freedom of association and reasonable working conditions.

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

(e) Assignability. All warranties are assignable by Buyer to its Customers, end users and other third parties.

## **15. Liability, Indemnity, Insurance and Performance on Buyer's Premises.**

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

(b) 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 - \$10,000,000 single limit; automobile liability - bodily injury

\$5,000,000 per person and \$10,000,000 per occurrence; and property damage \$5,000,000. Seller shall maintain general liability and completed operations insurance in the amount of at least \$10,000,000 and waives subrogation against Buyer. All policies shall be issued by an insurer licensed to do business in the state, province, and country where Buyer shall use and sell the Goods. Liability coverage shall include products, completed operations and (if available) recall. Buyer shall be named as an additional insured under the policies. Seller shall furnish to Buyer a Certificate of Insurance completed by its insurance carrier(s) certifying that the required insurance coverages are in effect and will not be canceled or materially changed until 30 days after prior written notice has been delivered to Buyer. The certificate must set forth the amount of each coverage, number of policy, date of expiration and Buyer 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.

(c) Performance on Buyer's Premises. If Seller's performance under an Order involves operations by Seller on the premises of Buyer or one of its Customers, Seller shall take all necessary precautions to prevent the occurrence of any injury to persons or damage to property during the progress of such work, and except to the extent that any such injury or damage is due solely and directly to the negligence of Buyer or a third party, Seller shall defend and indemnify Buyer against any claim which may result in any way from any act or omission of Seller, its agents, employees or subcontractors arising under or related to an Order. The Buyer is not obligated to provide any tools, materials equipment or other personal property to enable Seller to perform on the premises of Buyer or one of its Customers. If Buyer does provide such personal property it shall be as bailor for the benefit of Seller AS-IS WHERE-IS. Any such permission may be withdrawn by Buyer at anytime. Supplier shall return all such personal property to the control of Buyer upon demand in the same condition as when bailed, reasonable wear and tear accepted. Seller shall have the sole responsibility for the selection, proper and safe use, and protection of such personal property. Seller shall defend and indemnify Buyer and its customer against all liabilities, claims or damages for injuries or damages to our person or property arising out of the selection, use and storage, and loss of such personal property.

**16. Termination for Other than Breach.** In addition to any other rights of Buyer to cancel or terminate an Order or any Releases, Buyer may at its option immediately terminate all of any part of an Order or any Releases, (a) the termination or reduction in Customer demand; (b) a change in Buyer's requirements; (c) for Seller's failure to remain competitive in price, quality, delivery, and technology whether or not such failure would be a default or breach by Seller; or (d) Buyer's convenience by giving at least 30 days' written notice to Seller. Seller shall cooperate with Buyer in any transfer of production or other performance to a new Supplier. Upon a termination under this Section, Buyer shall pay to Seller the following amounts without duplication: (x) the Order price for all conforming Goods which have been completed in accordance with an Order not previously paid; (y) the actual direct costs of protecting Buyer's property; and (z) the actual direct costs of work in process and raw materials reasonably incurred by Seller in furnishing the Goods under an Order or any Releases to the extent such costs are reasonable in amount and are properly allowable or apportionable, under generally accepted accounting principles, to the terminated portion of an Order or any Releases issued pursuant to an Order; less, however, the reasonable value

or cost (whichever is higher) of any Goods or materials subsequently used or sold by Seller with Buyer's written consent and of the cost of any damaged or destroyed Goods or materials. Notwithstanding the foregoing or any transfer to Buyer, Buyer shall not be liable to pay for finished Goods, work in process or raw materials obtained, fabricated or processed by Seller in amounts in excess of those authorized in Releases (if Releases are required or contemplated by an Order), for any undelivered Goods which are Seller's standard stock or which are readily marketable, or for any finished Goods which are not promptly delivered to Buyer after request by Buyer. Payments made under this Section shall not exceed the aggregate price payable by Buyer for finished Goods which would have been produced by Seller under Releases outstanding at the date of termination. Except as provided in this Section, Buyer shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, arising from termination of an Order, including for loss of anticipated profit, unabsorbed overhead, product development and engineering costs, facilities and equipment, rearrangement cost or rental, unamortized depreciation costs, general and administrative burden charges, or interest on claims. Within 60 days from the effective date of termination, Seller shall submit a comprehensive termination claim to Buyer with sufficient supporting data to permit Buyer's audit and shall thereafter promptly furnish such supplemental and supporting information as Buyer shall request. Buyer, however, shall have no obligation to Seller under this Section if Buyer terminates its purchase obligations under an Order or any Release for any reason other than for Buyer's convenience, except to the extent Buyer recovers from its Customer for amounts otherwise due to Seller from Buyer under this Section. Payment under this Section shall constitute the exclusive liability of Buyer if an Order is terminated by Buyer under this Section.

## **17. Security and Solvency.**

(a) Security Interest. Seller grants to Buyer a security interest ("Security Interest") in the materials, components, contracts, intellectual property, and all other property that are used in the acquisition, assembly, and manufacture of the Goods, including Required Tooling and Purchased Tooling and in the completed Goods ("Security") to secure Seller's return of any deposits and performance of other obligations of seller, and grants Buyer an irrevocable power of attorney coupled with an interest to execute and file appropriate financing statements evidencing the Security Interest and the interests of Buyer and its Customers in property furnished by them. The Security Interest attaches at the time the Security is identified to the Order. The Security secures the performance of Seller under the Order including the obligation of Seller to repay to Buyer all monies paid on the Order if Seller defaults under the Order. Seller shall cooperate with Buyer and provide documents reasonably requested by Buyer, to enable Buyer to perfect its Security Interest. All Security shall be marked, tagged, or otherwise identified by Seller as being subject to the Security Interest. Buyer may inspect the Security during Seller's normal business hours. Seller shall insure and maintain the Security for the benefit of Seller and Buyer.

(b) Seller's Financial Information. Upon request by Buyer, Seller shall promptly deliver to Buyer the following financial and other information:

(i) Upon receipt of the Order, Seller's financial statements for the two most recently ended fiscal years (audited, if available);

(ii) Within 90 days after the end of each fiscal year, Seller's financial statements for the most recently ended fiscal year (audited, if available);

(iii) Within 15 days after the end of each fiscal quarter, Seller's financial statements for the most recently ended fiscal year; and

(iv) Any other information that Buyer may reasonably require to demonstrate that Seller will be able to perform its obligations under the Order (including but not limited to production schedules, accounts receivable agings, accounts payable agings, and organizational charts).

All financial statements (including interim financial statements) delivered to Buyer under this Section:

(w) must be certified to Buyer by Seller's chief executive officer and chief financial officer unless they are audited financial statements;

(x) must include a balance sheet, income statement, and cash flow statement;

(y) must be prepared in accordance with generally accepted accounting principles consistently applied; and

(z) if Seller is a subsidiary or other business unit of another organization, must include financial statements (consolidated or combined) for the total organization and separate financial statements for the specific business unit.

(c) Seller's Solvency. Seller represents and warrants to Buyer as of the date of each Order (which representations and warranties shall be deemed repeated as of the date of Seller's acceptance of each Release under the Order and at the time of each delivery under the Order): (i) that it is solvent and is paying all debts as they become due; (ii) that it is in compliance with all loan covenants and other obligations; (iii) that all financial information provided by Seller to Buyer concerning Seller is true and accurate; (iv) that such financial information fairly represents Seller's financial condition; and (v) that all such financial statements of Seller have been prepared in accordance with generally accepted accounting principles, uniformly and consistently applied. Seller shall respond in writing within three business days to any written demand by Buyer for assurances (with supporting documentation) of the willingness and ability to perform Seller's obligations. Buyer may upon reasonable notice to Seller conduct a review of Seller's financial and business conditions. Seller shall provide to Buyer annually a written report from an independent financial reporting company acceptable to Seller evaluating Buyer's financial stability and ability to perform an Order. Seller shall provide full cooperation and access to all records and financial personnel to facilitate any such reviews.

(d) Buyer's Access to Facilities. On Seller's request, Buyer may designate a representative to be present in Seller's applicable facility to observe Seller's operations. If Buyer provides to Seller any accommodations (financial or other) that are necessary for Seller to fulfill its obligations under any Order, Seller shall reimburse Buyer for all costs, including attorneys' and other professionals' fees, incurred by Buyer in connection with such accommodation and

shall grant a right of access to Buyer to use Seller's premises, machinery, equipment and other property necessary for the production of Goods covered by such Order (and a lien to secure the access right) under an access and security agreement prepared by Buyer providing reasonable compensation to Seller.

(e) Seller's Insolvency. Seller shall pay all costs associated with a third party evaluation and report. Purchaser may immediately terminate or suspend each Order without any liability of Buyer to Seller except for payment of Goods previously delivered and in compliance with an Order upon the occurrence of any of the following or any other similar or comparable event: (i) insolvency of Seller; (ii) Seller's inability to promptly provide Buyer with adequate and reasonable assurance of Seller's financial capability to perform timely any of Seller's obligations under any Order; (iii) filing of a voluntary petition in bankruptcy by Seller; (iv) filing of an involuntary petition in bankruptcy against Seller; (v) appointment of a receiver or trustee for Seller; (vi) cessation of Seller's normal operations; or (vii) execution of an assignment for the benefit of creditors of Seller. Seller shall respond in writing within three business days to any written demand by Buyer for assurances of the willingness and ability to perform Seller's obligations.

## **18. Default and Remedies**

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

(b) Termination and Change of Control. Buyer may terminate an Order or Release, in whole or in part, upon written notice to Seller, if control of Seller changes. A change of control includes: (i) the sale, lease or exchange of a substantial portion of Seller's assets used for the production of the Goods; (ii) the sale or exchange of a controlling interest in the shares or other

ownership interests of Seller; or (iii) the execution of a voting or other agreement of control. Seller shall provide Buyer with written notices of a proposed and actual change of control at least ten days prior to the date the change of control is scheduled to occur and within ten days after the change of control has become effective. Buyer will have 30 days from the date the second notice from Seller is received within which to notify Seller if it decides to terminate the Order and the effective date of the termination, which will be no sooner than 30 days after the date the written notice of termination is sent.

(c) Alternative Remedies. If Seller's performance of its obligations, or if any of the Goods, are found at any time to be defective in design, material or workmanship, or otherwise not in conformity with the requirements of an Order, Buyer, in addition to such other rights, remedies and choices as it may have under an Order or by law, at its option and sole discretion may: (i) rescind or terminate the Order; (ii) reject and return such Goods at Seller's expense; (iii) require Seller to inspect the Goods and remove and replace nonconforming Goods with Goods that conform to an Order; and/or (iv) take any other action at Seller's cost which Buyer determines in its reasonable judgment is necessary to cure Seller's default and/or negotiate the effect of Seller's default. If Buyer elects option (iii) and Seller fails to promptly make the necessary inspection, removal and replacement, Buyer may at its option and Seller's cost, inspect and repair or replace the Goods. Buyer may take action based on one or more Sections of this Agreement as alternative and/or cumulative basis for its actions.

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

(e) Damages and Specific Performance. At Buyer's request, Seller will reimburse Buyer for all incidental, consequential and special damages caused by non-conforming Goods, including but not limited to, costs, expenses and losses incurred directly or indirectly by Buyer or its Customers: (i) in inspecting, sorting, repairing or replacing the non-conforming Goods; (ii) resulting from production interruptions; (iii) in conducting any Recall or other corrective service actions; or (iv) resulting from personal injury (including death) or property damage caused by the non-conforming Goods. Consequential damages include attorney and other professional fees incurred by Buyer. In any action brought by Buyer to enforce Seller's obligation to produce and deliver Goods under an Order, Buyer, at its option and in addition to any other remedies available, is entitled to specific performance of Seller's obligations under an Order.

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

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

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

(i) Limitation on Seller's Rights. Seller acknowledges that Buyer may supply to Customers the Goods in the form purchased from Seller or as a component of a system or other product sold to Customers. Seller's rights and remedies against Buyer shall be limited to the extent Buyer's rights against the Customers are limited.

(j) Continuation of Seller's Obligations. Termination of an Order or any Release by Buyer for any reason permitted by the Order does not affect Seller's obligations under the Order (i) as to Goods delivered or (ii) not directly dependent upon the delivery of Goods.

(k) Seller's Remedy. Money damages, as limited by these Terms and the 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 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.

(l) Disclaimer of Liability. UNDER NO CIRCUMSTANCES SHALL BUYER BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES.

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

(n) Remedial Work. If repair, sorting, inspection, or similar activities ("Remedial Work") is necessary for any rejected Goods, 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: (i) offset against the amounts otherwise due Seller for such rejected Goods; or (ii) 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 Goods, Seller is responsible for segregating and sorting any applicable Goods providing for transportation of the Goods, supervising the segregation and removal of the Goods, and other incidental activities, all at its sole cost. Remedial Work by Seller requires the prior written permission of Buyer and/or Buyer's Customer.

(o) Temporary Employees and Third Parties. Seller may only use temporary employees and/or a third party to perform remedial work with Buyer's prior written consent. At all times, such temporary employees and/or third parties shall be independent contractors of Seller, and not employees of Buyer. Temporary employees and third parties shall comply with all practices, policies, and procedures of Buyer or its Customer then in effect when on their premises to perform remedial work, and Buyer or its Customer may exercise supervisory control, but is not obligated to do so, to ensure compliance with such practices, policies and procedures. Unless Buyer or its Customers exercise their right to supervision, it is Seller's responsibility to supervise temporary employees and third parties performing work on their premises.

(p) Termination of Order. Termination or expiration of an Order does not release Seller from its obligations except as specifically stated in a termination or logically required by a termination or cancellation.

(q) Transition of Supply. In connection with Buyer's termination or non-renewal of this Order, or Buyer's other decision to source the Goods and/or the Services from any alternate supplier(s), Seller shall cooperate with Buyer in the transition of supply of the Goods, including the following: (a) Seller shall continue production and delivery of all Goods as ordered by Buyer, at the prices and other terms stated in an Order, without premium or other condition, during the entire period reasonably needed by Buyer to complete the transition to the alternate supplier(s), such that Seller's action or inaction causes no interruption in Buyer's ability to obtain the Goods as needed; (b) at no cost to Buyer, Seller shall promptly provide all requested information and documentation regarding and access to Seller's manufacturing process, including on-site inspections, bill-of-material data, tooling and process detail and samples of the Goods and components; and (c) subject to Seller's reasonable capacity constraints, Seller shall provide special overtime production, storage and/or management of extra inventory of the Goods, extraordinary packaging and transportation and other special services (collectively "Transition Support") as expressly requested by Buyer in writing. If the transition of supply occurs for reasons other than Buyer's default, Buyer shall, at the end of the transition period, pay the reasonable, actual cost of Transition Support as requested by Buyer and incurred by Seller, provided that Buyer has approved Seller's estimate of such costs prior to Seller incurring such costs.

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

(a) Furnished Property. Unless otherwise agreed in a writing signed by Buyer, all tooling, equipment or material of every description furnished to Seller by Buyer or its Customer, or acquired by Seller but paid for or to be paid for by Buyer or its Customer, and any materials affixed or attached thereto and replacement thereof (all of which constitutes "Furnished Property") shall be and remain exclusively the personal property of Buyer or its Customer and held as a bailment and in trust for the benefit of Buyer or its Customer. Seller shall sign separate agreements confirming the status of Furnished Property under these Terms if requested by Buyer. Seller shall install, maintain, repair, replace and return Furnished Property in good condition, reasonable wear and tear excepted, at Seller's cost. Seller shall pay all taxes assessed against the Furnished Property or for its use while in the possession or control of Seller, whether or not Buyer is required by law to pay such taxes. All Furnished Property must be maintained in a condition that is adequate for at least one year of production of Goods based on Buyer's forecasts and historical purchase levels.

Each individual item of Furnished Property (or its container) shall be plainly marked or otherwise adequately identified and permanently marked by Seller as the property of Buyer and the project on which it is used and shall be safely stored separate and apart from Seller's property. Seller shall maintain the character of Furnished Property as personal property. Seller shall not substitute any of its own property for use in place of Furnished Property and to the extent it does so, such property shall become Furnished Property. Seller shall not use or permit others to use Furnished Property except to fill Orders. Seller shall not, under any circumstance, sell or transfer any product or service produced with the Furnished Property except to Buyer. Seller shall arrange and pay for the packaging and transportation of the Furnished Property to and from the location or reimburse Buyer for such costs. Seller shall not move the Furnished Property from any location without the prior written consent of Buyer. Title to Furnished Property which is acquired by Seller and its contractors, and the components thereof, shall vest in Buyer upon their acquisition or production, even though the Furnished Property is not completed. Seller shall provide Buyer with written waivers of liens from all suppliers of Seller that produced or provided Furnished Property. All additions, attachments, accessories and repairs to the Furnished Property, and replacements thereof, shall be deemed part of the Furnished Property and shall become the exclusive property of Buyer or its Customer without payment. Seller accepts delivery of the Furnished Property "AS IS" and without any representation, warranty or duty from Buyer. Furnished Property while in Seller's custody or control shall be held at Seller's risk and shall be kept insured by Seller at Seller's expense under a fire and extended all risk policy in an amount equal to the replacement cost with loss payable to Buyer or its Customer as their interests may appear. Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such insurance shall be primary. Seller shall use Furnished Property in a careful and safe manner. Seller shall maintain a liability insurance policy and name Buyer as an additional insured. Furnished Property may be removed at any time by Buyer, at Buyer's written request, whether or not Buyer and Seller are engaged in litigation or other dispute, in which event Seller shall prepare Furnished Property for shipment and shall deliver it to Buyer or its Customer in the same or equal condition as originally received by Seller, reasonable wear and tear excepted, all at Seller's expense. All consumable Furnished Property not used in the manufacture of the Goods shall, as directed by Buyer, be returned to Buyer at Buyer's expense and, if not accounted for or returned, shall be paid for by Seller to Buyer at Buyer's cost. Seller shall have no right to retain possession of Furnished Property to secure payment of amounts owed or for any other reason, as a claim for damages is an adequate remedy. Seller waives any statutory or other rights to claim a lien.

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

(i) Status Reports. Seller shall submit to Buyer biweekly (or more frequently if requested by Buyer) status reports on the manufacture and/or acquisition of Purchased Tooling. Each status report shall set forth percentage of completion of Purchased Tooling, the status of each stage of manufacture, the scheduled arrival dates of components of Purchased Tooling, and estimated time for completion and delivery of the Purchased Tooling. Seller shall advise Buyer when Seller becomes aware of any event (including an actual or potential labor dispute) which may delay Seller's timely performance of an Order.

(ii) PSW. Upon completion of Purchased Tooling, Seller shall submit a Part Submission Warrant package (“PSW”), sample Goods manufactured with Purchased Tooling, and any other tangible and intangible items or information requested by Buyer. Upon approval by Buyer and its Customer, a written PSW approval shall be issued to Seller.

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

(iv) Marking. Seller shall permanently mark Purchased Tooling with the name of Buyer and/or Customer as directed by Buyer and the part number of the Goods it manufactures.

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

(vi) Express Trust. Payments made by Buyer for Purchased Tooling are expressly intended by Buyer to be held in express trust for the benefit of any toolmaker used by Seller to produce the Purchased Tooling. Seller shall hold these payments as trustee in express trust for the toolmaker. Seller acknowledges that the toolmaker is an intended third party beneficiary of the terms of this Section and that the toolmaker has the right to enforce the trust directly against Seller. Buyer has no obligation to Seller or the toolmaker under this Section other than payments to Seller under an Order. If a toolmaker brings an action against Seller for payment of the Purchased Tooling, Seller will not join Buyer in the action, and Seller shall defend and indemnify Buyer.

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

**20. Required Tooling**. Seller, at its own expense, shall furnish, keep in good condition, and replace when necessary all tooling, jigs, dies, gages, fixtures, molds, patterns and other personal property, whether or not they are Furnished Property or they are owned or leased by Seller, which are necessary for the production of non-defective Goods in accordance with an Order (“Required Tooling”). All Required Tooling must be maintained in a condition that is adequate for at least one year of production based on Buyer’s forecasts and historical production levels. The cost of changes to Required Tooling necessary to make design changes and specification changes to the Goods authorized by Buyer in writing shall be paid for by Seller unless otherwise provided in an Order. Buyer may inspect Required Tooling and Seller’s facilities during normal working hours upon reasonable notice to Seller. Seller may not relocate the Required Tooling without the prior written consent of Buyer. Seller shall advise Buyer of any required repair or replacement of Required Tooling and be responsible for obtaining any required PPAP. Seller shall insure Required

Tooling with fire and extended all risk coverage insurance for its replacement value and provide Buyer with certificates of insurance evidencing such coverage. Seller grants Buyer an irrevocable option to take possession of and good title to some or all of the Required Tooling (including leases thereof) as selected by Buyer, that is not Furnished Property and is specific for the production of Goods, upon tender to Seller of the book value thereof, less any amounts Buyer has previously paid to Seller in any manner for the cost of Required Tooling (e.g., by separate payment or by an allocated portion of the price of the Goods); provided, however, that this option shall not apply to any Required Tooling used to produce products that are standard stock of Seller. Seller shall deliver the Required Tooling to Buyer at Seller's or its sub-contractor's plant or other location specified by Buyer. Seller is responsible for labor and other costs of dismounting, dismantling, preparing for delivery and staging the Required Tooling for delivery. Seller shall cooperate with Buyer in removing the Required Tooling from the location of Seller or its subcontractor. Seller shall have no right to retain possession of Required Tooling to secure payment of amounts owed or for any other reason and Seller waives any common law or statutory lien rights, as a claim for damages (with any bond in the amount of the purchase price of tooling to be purchased as may be required by a court) is an adequate remedy. If the Required Tooling is not utilized to produce any parts for Buyer for a period of two years, Seller shall so notify Buyer and request instructions as to the disposition of the Required Tooling.

**21. Compliance with Laws.**

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

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

(c) Non-Segregated Facilities. Seller warrants that it is, and shall continue to be, in compliance with the requirements for non-segregated facilities set forth in 41 CFR Chapter 601.8 and any similar laws of the jurisdiction of production or destination of the Goods and is an equal opportunity employer.

(d) Controlled Substances. Seller warrants that each chemical substance constituting or contained in the Goods sold is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et. seq.) as amended, and any similar laws of the jurisdiction of production or destination of the Goods and that the Goods are not hazardous

under any state, provincial, or federal law of the jurisdiction of production or destination, except as clearly stated on the shipping and storage containers.

(e) Safety of Goods. Seller warrants that the Goods shall be in compliance with applicable sections of the Federal Consumer Product Safety Act (15 U.S.C. Sec. 2051 *et. seq.*) as amended, and the Federal Hazardous Substances Act (15 U.S.C. 1261 *et. seq.*) as amended, National Traffic and Motor Vehicle Safety Act, as amended, and lawful standards and regulations thereunder and any similar laws of the jurisdiction of production or destination of the Goods. Seller shall supply to Buyer material safety data sheets on all Goods to each location where the Goods are to be shipped with a prior shipment. Upon the request of Buyer, Seller shall provide Buyer with access to and copies of any other data, materials or other information, including any formulas or analyses, that: (i) relate to the Goods, their composition, any component or part of the Goods, or any materials or substances used in the Goods or in connection with their production; and (ii) are needed, as determined by the requestor, to enable compliance with any requirement of a government (either mandated or voluntarily agreed upon by Buyer or any of its Affiliates) relating to the hazardous, toxic or other content or nature of the Goods, or the ability to dispose of or recycle the Goods or any component, part or materials in the Goods. Seller shall comply with Buyer's and Customer's requirements relating to the use (or prohibition on use) of certain materials and substances in the Goods and shall utilize and comply with Buyer's reporting processes and requirements relating to any such data, materials or other information (such as the International Material Data System).

(f) Labor Standards. Seller warrants that the Goods produced in the United States shall be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended, including Section 12(a) thereof and Seller shall insert a certificate to that effect on all invoices submitted in connection with an Order. Seller warrants that the Goods produced outside the United States shall be produced in facilities that comply with local law and any safety, labor, and environmental standards adopted by Buyer.

(g) Industry Standards and Law. Seller warrants that it shall comply with all applicable industry standards and federal, state, provincial and local laws, rules, regulations and ordinances applicable to the Goods and performance of an Order in the jurisdiction of production or destination of the Goods.

(h) Vehicle Safety and Other Protective Laws. Seller warrants that it and the Goods shall comply with all federal, state and provincial statutes, rules and regulations directly or indirectly relating to the manufacture of vehicles, vehicle equipment, vehicle materials or vehicle supplies, as well as compliance with similar statutes and rules effective in North America, including, but not limited to: the North American Free Trade Agreement and the North American Free Trade Agreement Implementation Act, American Automobile Labeling Act, Section 329 of the Motor Vehicle and Cost Savings Act, as amended; Fastener Quality Act; the Hazardous Materials Transportation Act, as amended, as well as all laws and regulations related or applicable thereto (including, but not limited to, 49 C.F.R. Part 171 *et. seq.*); Title 48, Code of Federal Regulations, Section 52-219-8 (Utilization of Small Business Concerns), Section 52.225-11 (Restrictions on Certain Foreign Purchases), Section 52.222-21 (Prohibition of Segregated Facilities), Section 52.222-26 (Equal Opportunity), Section 52.222-35 (Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans), Section 52.222-36

(Affirmative Action for Workers with Disabilities), Section 52.222-37 (Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans), and Section 52.222-41 (Service Contract Act); the Federal Motor Vehicle Safety Standards and rules, regulations and procedures promulgated by the National Highway Traffic Safety Administration of the United States Department of Transportation under the Safety Acts, and rules, regulations and procedures promulgated by the National Institute of Standards and Technology of the Department of Commerce to implement the provisions of the Fastener Quality Act. Seller shall provide to Buyer originals or copies of the test reports and reports to government agencies related to the satisfaction of such legal requirements upon the earliest of their availability or the date required by law or Buyer.

(i) Export Laws. This Order and all items furnished by Buyer to Seller in connection herewith shall at all times be subject to the export control laws and regulations of the U.S. including, but not limited to, 10 CFR Part 810 and U.S. Export Administration Regulations. Seller warrants that no equipment, materials, services, technical data, technology, software or other technical information or assistance furnished by Buyer, or any product thereof, shall be exported or re-exported by Seller or its authorized transferees, if any, directly or indirectly, except to the consignee(s), if any, specified on this Order, unless in accordance with applicable U.S. export laws and regulations. Further, a Seller that is a non-U.S. company or citizen warrants that no such export or re-export will be made without the prior explicit authorization, in writing, of Buyer in accordance with U.S. export laws and regulations. The obligations in this Section shall survive any satisfaction, expiration, termination or discharge of any other contract obligations.

(j) European Union Law on Electronic Equipment. Seller warrants that the Goods and Seller shall comply with all applicable Directives of the European Union and implementing legislation as to all Orders involving Goods which Seller has reason to know will be used in production of final products to be sold within the European Union. Seller represents, warrants, certifies and covenants that, except as specifically listed on the face of an Order or in an applicable addendum, none of the Goods supplied under an Order are electrical or electronic equipment under EU Directive 2002/96/EC (27 January 2003) (the "WEEE Directive"), as amended, or any other electrical or electronic equipment take-back requirement of a jurisdiction in which Buyer informs Seller the Goods are likely to be sold, or in which Seller otherwise has knowledge that sale will likely occur. For any Goods specifically listed on the face of an Order or in such addendum as electrical or electronic equipment that are covered by the WEEE Directive, as amended, or other applicable electrical or electronic equipment take-back requirement and purchased by Buyer hereunder, Seller agrees to: (i) assume responsibility for taking back such Goods in the future upon the request of Buyer and treating or otherwise managing them in accordance with the requirements of the WEEE Directive and applicable national implementing legislation or other applicable electrical or electronic equipment take-back requirements; and (ii) take back as of the date of the Order any used Goods currently owned by Buyer of the same class of such Goods purchased by Buyer hereunder up to the number of new units being purchased by Buyer or to arrange with a third party to do so in accordance with all applicable requirements. Seller will not charge Buyer any additional amounts, and no additional payments will be due from Buyer for Seller's agreement to undertake these responsibilities.

(k) Minority Certifications. Seller shall maintain any minority and other favored group certifications existing at the time an Order is issued and advise Buyer in writing of

changes to or loss of such certifications. Seller shall provide to Buyer small and/or minority (including women) owned business utilization and demographic data upon request and Seller shall comply with Buyer's programs to increase the value-added by small and minority-owned businesses, to the extent not prohibited by law.

(l) Anti-Dumping and Countervailing Duties. Seller warrants that all sales made under an Order shall be made in circumstances that will not give rise to the imposition of new anti-dumping or countervailing duties under United States law (19 U.S.C. Sec. 1671 *et. seq.*), European Union (Council Regulation (EC) No. 384/96 of December 22, 1995, Commission Decision No. 2277/96/ECSC of November 28, 1996), similar laws in such jurisdictions or the law of any other country to which the Goods may be exported. To the fullest extent permitted by law, Seller shall indemnify, defend and hold Buyer harmless from and against any costs or expenses (including any countervailing duties which may be imposed and, to the extent permitted by law, any preliminary dumping duties that may be imposed) arising out of or in connection with any breach of this warranty. If countervailing or anti-dumping duties are imposed that cannot be readily recovered from Seller, Buyer may terminate an Order with no further liability of any nature whatsoever to Seller. If any jurisdiction imposes punitive or other additional tariffs on Goods subject to an Order in connection with a trade dispute or as a remedy in an "escape clause" action or for any other reason, Buyer may, at its option, treat such increase in duties as a condition of force majeure.

(m) Seller's Import Duties. If Goods are to be delivered DDP (INCOTERMS 2000) or under other terms requiring Seller to deliver with duty paid to the destination country, Seller warrants that Buyer will not be a party to the importation of the Goods, that the transaction(s) represented by an Order will be consummated after importation, and that Seller will neither cause nor permit Buyer's name to be shown as "importer of record" on any customs declaration. Seller also warrants that it has Non-Resident importation rights, if necessary, into the destination country with knowledge of the necessary import laws. If Seller is the importer of record into the United States for any Goods, including any component parts thereof, associated with an Order, Seller shall provide Buyer required documentation for Duty Drawback purposes which includes, but is not limited to, Customs Form 7552 entitled "Certificate of Delivery" properly executed as well as customs Form 7501 "Entry Summary" and a copy of Seller's Invoice.

**22. Non-Assignment and Subcontracting.** Assignment of an Order or any interest therein, or any payment due or to become due to Seller, without the prior written consent of Buyer, shall be void and not binding on Buyer. Seller may not subcontract any part of an Order without the prior written consent of Buyer. Buyer shall not be obligated to any subcontractor for the product or services of any subcontractor whether or not Buyer has consented to or designated a subcontractor. Approval of a subcontractor is not a release or waiver of any obligation of Seller or right of Buyer. Seller is responsible for all actions or inactions of any subcontractor and shall bind its subcontractors for the benefit of Seller and Buyer to perform its obligations under these terms. If Seller subcontracts any part of the work outside the country of purchase, Seller shall be responsible for customs formalities and clearances to the country of Order placement, unless the Order states otherwise and Buyer may direct the contract of carriage. Seller shall agree with Buyer on a mutually acceptable customs broker, but Seller shall in no way be relieved from its responsibilities for customs formalities and clearances, including the actions of the selected customs broker.

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

**24. Audit Rights.** Seller shall maintain general Records relating to an Order for a period of four years after completion of final delivery of Goods pursuant to that Order. Records of all manufacture, testing and inspection by Seller of the Goods shall be kept complete, separate and available to Buyer and its Customer during the performance of an Order and for such longer periods as may be specified in the Order, but not less than ten years after the last delivery of the Goods to Buyer. Buyer or its authorized agents and representatives shall have the right at any time during normal business hours of Seller and without prior notice to audit Records. In the event any such audit shall disclose an overpayment to Seller, Seller shall pay Buyer, within 14 days after receipt of notice from Buyer, the amount of such overpayment together with interest at the prime rate then charged by Buyer's bank plus 4% and Seller shall reimburse Buyer for the cost of such audit. Seller shall obtain from the subcontractors such audit rights for benefit of Buyer.

**25. Indemnification.** Seller at its expense shall defend, indemnify and hold harmless Buyer and its successors, assigns, and Customers and their respective employees, agents, contractors or representatives (collectively "Indemnified Parties") with respect to any claim, demand, action, suit, cause of action, assessment or reassessment, charge, judgment, debt, liability, expense, cost, damage, including for damages to property and personal injury, or loss, contingent or otherwise, including loss of value, reasonable professional fees, including fees of legal counsel, and all costs incurred in investigating or pursuing any of the foregoing, or in any proceeding relating to any of the foregoing (collectively a "Claim") that may be brought against an Indemnified Party directly or indirectly related to:

(a) any actual or alleged infringement of any present or future patent, copyright, industrial design right or other proprietary right based on Seller's activity under an Order, or the manufacture, sale or use of the Goods: (i) alone; (ii) in combination by reason of their content, design or structure; or (iii) in combination in accordance with Seller's recommendations, even if Buyer furnishes all or any portion of the design and specifies all or any portion of the processing used by Seller;

(b) the condition, labeling, engineering, use, sale, storage, design, manufacture, safety, etc., of the Goods whether or not incorporated in another product, if the damages claimed were not caused solely by Buyer or other third party;

(c) any act or omission of Seller, its agents, employees or subcontractors arising under or related to an Order, including Seller's provision of inaccurate documentation or failure to provide timely cooperation;

(d) any injury to persons or damage to property during the progress of work by Seller on the premises of Buyer or one of its Customers, except to the extent that any such injury or damage is due solely and directly to the negligence of Buyer or the Customer;

- (e) any failure of Goods supplied by Seller to conform to Seller's warranties, including all expenses and costs of any Recall arising from such non-conformance;
- (f) the selection, installation, use, possession, storage or repair of Furnished Property by or on behalf of Seller;
- (g) payment of toolmakers for Purchased Tooling;
- (h) any allegations of improper or illegal dispositions of the Goods, except for grossly negligent dispositions by Buyer;
- (i) any countervailing duties or other customs related taxes or penalties which may be imposed and, to the extent permitted by law, any preliminary dumping duties that may be imposed on the sale of Goods under an Order; and
- (j) any lien by subcontractor of Seller or any lower tier subcontractor under it.

Seller waives the application of the doctrine of comparative negligence and other doctrines that may otherwise allocate the liability covered by Seller's indemnity. Except as otherwise specifically provided for in these Terms, Seller shall investigate and defend or otherwise handle every such Claim, and at Buyer's request, assist Buyer in Buyer's investigation, defense or handling of any such Claim. Seller shall pay all expenses and damages or settlement amounts that an Indemnified Party may sustain by reason of each such Claim. If Claim is brought under (a) and the use or sale of the Goods is enjoined, Seller shall, at its own expense and at Buyer's option, either: (i) procure the right to continue using the Goods; (ii) replace same with a non-infringing equivalent; or (iii) remove the Goods and refund the purchase price and the transportation and installation costs thereof.

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

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

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

(b) Customs Forms. Upon request and where applicable, Seller shall provide Buyer U.S. Customs Form 7543 entitled "Certificate of Delivery" (or its replacement) properly executed. Upon request, Seller shall furnish promptly all documents required for customs drawback purposes, properly completed in accordance with government regulations applicable thereto. Unless otherwise stated herein, all customs drawback will be credited to Buyer.

(c) 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.

(d) Duties and Drawback Rights. The price for Goods includes all related export and import customs duties and import drawback rights, if any, including rights developed by substitution and rights that may be acquired from Seller's supplier(s) that Seller can transfer to Buyer.

## **28. Applicable Law, Jurisdiction, Waiver of Liens and Sovereignty.**

(a) Applicable Law and Jurisdiction. An Order shall be governed by, construed under and enforced under the laws of Michigan, other than its rules on conflicts of law. The parties adopt the law governing sales of goods in such jurisdiction at the time of an Order as the law governing the sale of goods hereunder, including the Uniform Commercial Code ("UCC"). The Convention on the International Sales of Goods shall not apply. The parties consent to the exclusive jurisdiction and the convenience of the courts of Michigan, including the Circuit Court for any county in which Buyer has an administrative office, to resolve any issues arising under or related to an Order or the furnishing of Goods by Seller to Buyer. If Seller does not maintain a registered agent or office in the United States, Buyer hereby irrevocably appoints the Secretary to State of the state whose law applies and/or CT Corporation as Seller's agent to receive process in any proceeding arising under or related to the Agreement. If a claim arises under or related to an Order or the furnishing of Goods by Seller to Buyer, by or against Seller, which is related to a similar claim by or against Seller in another jurisdiction or in an arbitration, Seller irrevocably consents on the request of Buyer to the resolution of such claims arising under or related to the Order or the furnishing of Goods by Seller to Buyer by or against Seller in such jurisdiction or arbitration proceeding, which shall be binding on the parties and enforceable in a court of record.

(b) Liens. Seller warrants that no lien shall be filed by Seller or anyone claiming under or through Seller against Buyer, the Goods, the Furnished Property, the site for delivery or installation of the Goods, or Buyer's Customer, for materials, labor, services, equipment or goods furnished as part of the Goods or Furnished Property. Seller waives any right it may have pertaining to, and agrees not to file or otherwise assert or prosecute or suffer or permit, any mechanic's, materialman's, or other type of liens to be filed or continued against any property of Buyer. Seller shall insert the prior sentence in any lower tier subcontract or purchase order for labor, equipment or materials furnished. If any such lien shall be filed by Seller's direct

subcontractor, or any of its lower tier subcontractors, Seller shall take any and all steps necessary for the immediate release and discharge of such lien, in the manner required by applicable law, upon demand by Buyer. Seller shall secure and furnish to Buyer and its Customer, upon request, a waiver of lien from each subcontractor under it.

(c) Commercial Activity; Absence of Immunity. Seller represents it is subject to civil and commercial law with respect to its obligations under the Order to which it is a party, and the making and performance by it of the Order constitute private and commercial acts rather than public or governmental acts. Seller represents it and its respective properties are not entitled to immunity on the grounds of sovereignty or otherwise from the jurisdiction of any court or from any action, suit, set-off or proceeding, execution, or service of process in connection therewith, arising under the Order.

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

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

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

all employees and agents of Seller; “gift or benefit” includes money, goods, services, discounts, favors and the like in any form but excluding items with a value of \$25.00 or less; “supplier” includes prospective, current and past suppliers; and “favoritism” means partiality in promoting the interest of Seller over that of other suppliers. 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, non-discrimination and non-harassment policies of Buyer.

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

**33. Entire Agreement and Modifications.** An Order (including these Terms) is intended by the parties as a complete and exclusive statement of the terms of their agreement. It supersedes all prior agreements, written or oral. No course of prior dealings between the parties and no usage of the trade may be used by Seller to supplement or explain any term used in an Order. All modifications must be in a writing signed by Seller and Buyer, except as otherwise provided in an Order.

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

**35. Relationship of Parties.** Seller and Buyer are independent contracting parties and nothing in an Order shall make either party the agent, joint venturer or legal representative of the other for any purpose whatsoever, or grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Although third parties may be referenced, there are no third party beneficiaries to an Order, except as specifically provided.

**36. Severability.** If any term of an Order is invalid or unenforceable under any statute, regulation, ordinance, or any other rule of law, such term shall be reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of an Order shall remain in full force and effect. Any declaration of unenforceability of a provision hereof shall be as narrow as possible and shall not void an Order or any other provision.

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

**38. Personal Data.**

(a) Definitions. “Personal Data” includes any information relating to an identified or identifiable natural person; “Buyer Personal Data” includes any Personal Data obtained by Seller from Buyer; and “Processing” includes any operation or set of operations performed upon Personal data, such as collection, recording, organization, storage, adaptation or alteration, retrieval,

accessing, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

(b) Accessibility. Seller, including its officers, directors, employees and/or agents, shall view and Process Buyer Personal Data only on a need-to-know basis and only to the extent necessary to perform this Order or to carry out Buyer's further written instructions.

(c) Security. Seller shall use reasonable technical and organizational measures to ensure the security and confidentiality of Personal Data in order to prevent, among other things, accidental, unauthorized or unlawful destruction, modification, disclosure, access or loss. Seller shall immediately inform Buyer of any Security Breach involving Buyer Personal Data, the type of data that was the subject of the Security Breach, the identity of each affected person and any other information Buyer may request concerning such affected persons and the details of the breach, as soon as such information can be collected or otherwise becomes available. "Security Breach" means any event involving an actual, potential or threatened compromise of the security, confidentiality or integrity of the Personal Data. Seller shall take action immediately, at its own expense, to investigate the Security Breach and to identify, prevent and mitigate the effects of any such Security Breach and to carry out any recovery necessary to remedy the impact. Buyer must first approve the content of any filings, communications, notices, press releases or reports related to any Security Breach ("Notices") prior to any publication or communication thereof to any third party. Seller also agrees to bear any cost or loss Buyer may incur as a result of the Security Breach, including without limitation, the cost of Notices.

(d) Termination of Order. Upon termination of an Order, for whatever reason, Seller shall stop the Processing of Buyer Personal Data, unless instructed otherwise by Buyer, and these undertakings shall remain in force until such time as Seller no longer possesses Buyer Personal Data.

(e) Seller Personal Data. Buyer may require Seller to provide certain Personal Data such as the name, address, telephone number and e-mail address of Seller's representatives in transactions ("Seller Personal Data") and Buyer and its Affiliates and its or their contractors may store such data in databases located and accessible globally by their personnel and use it for purposes reasonably related to the performance of this Order, including supplier and payment administration. Seller shall comply with all legal requirements associated with transferring any Seller Personal Data to Buyer. Buyer will be the Controller of this data for legal purposes and shall not share Seller Personal Data beyond Buyer, its Affiliates and its or their contractors, and use reasonable technical and organizational measures to ensure that Seller Personal Data is processed in conformity with applicable data protection laws. "Controller" shall mean the legal entity which alone or jointly with others determines the purposes and means of the processing of Personal Data. By written notice to Buyer, Seller may obtain a copy of the Seller Personal Data and submit updates and corrections to it.