

**Usui International Corporation**  
**Terms and Conditions of Purchase**  
**Last revised October 1 , 2018**

These Terms apply when referenced by Usui International Corporation ("Buyer") purchase order or other documentation.

**1. Offer; Acceptance; Terms of the Order:** (a) Each purchase order or purchase order revision issued by Buyer ("Order") is an offer to the seller identified in the Order ("Seller") by Buyer for the purchase of goods and/or services (collectively, "Supplies") and includes and is governed by these Terms and Conditions of Purchase ("Terms"). The Order also includes any provisions incorporated by reference pursuant to Section 1(b) below. The Order does not constitute an acceptance of any offer or proposal made by Seller, and the Order, when accepted, supersedes all prior agreements, purchase orders, quotations, proposals and other communications regarding the Supplies covered by the Order, except that a prior agreement signed by authorized representatives of both parties (such as an award letter, statement of work or non-disclosure agreement -- but not prior purchase orders for the same parts and vehicle program) will continue to apply to the extent not directly in conflict with the Order. Any reference in an Order to any offer or proposal made by Seller is solely to incorporate the description or specifications of Supplies in the prior offer or proposal, but only to the extent that the description or specifications do not conflict with the description and specifications in the Order. Seller's written acceptance of an Order, Seller's commencement of any work under an Order or any other conduct by Seller that recognizes the existence of a contract with respect to the subject matter of the Order constitutes Seller's acceptance of the Order, including the Terms only. **Each Order is limited to and conditional upon Seller's acceptance of the Order including the Terms, exclusively.** Any additional or different terms and conditions proposed by Seller, whether in Seller's quotation/proposal, acknowledgement, invoice or otherwise, are unacceptable to Buyer, are expressly rejected by Buyer, and will not become part of an Order, but shall not operate as a rejection of the Order if Seller accepts Buyer's offer by commencement of work, shipment of the Supplies, or by other means acceptable to Buyer, in which case the Order shall be deemed accepted by Seller without any additional or different terms or variations whatsoever. THE TERMS OF THE AGREEMENT ARE EXCLUSIVE. Any modification of these Terms must be expressly stated in the Order or made in the manner required under Section 39. The Terms are available on at [www.usuiusa.com/potermis](http://www.usuiusa.com/potermis). SELLER SPECIFICALLY WAIVES ANY REQUIREMENT FOR SIGNED ACCEPTANCE OF AN ORDER, AND SELLER AND BUYER EACH WAIVE ANY DEFENSE TO THE VALIDITY AND ENFORCEABILITY OF THE ORDER ARISING FROM ELECTRONIC SUBMISSION OF THE ORDER TO SELLER AND SELLER'S ACCEPTANCE OF THE ORDER IN ACCORDANCE WITH THIS CLAUSE 1.

(b) The following documents are incorporated into and shall be a part of the Order: (i) any supply agreement between Buyer and Seller signed by authorized representatives of Buyer and Seller; (ii) Material Authorization Releases (as defined in Section 4(b) below); (iii) applicable prints and specifications for Supplies; (iv) Buyer's policies, as revised by Buyer from time to time; (iv) any written agreement between Buyer and Seller signed by authorized representatives of Buyer and Seller which provides that it is part of the Order, and (v) Customer Purchase Order terms and conditions as provided in the Order (including Section 17(a) below). As used herein, the term "Buyer's policies" includes any statement of work applicable to the Supplies, as well as quality assurance / control, logistics, packaging, delivery, environmental and other standards / guidelines / policies as set forth in the Order (including without limitation these Terms), and including but not limited to amendments or modifications as may be implemented by Buyer during the term of the Order – copies of which may be obtained by contacting Buyer's assigned purchasing representative

(c) These Terms apply to all Orders, including those with Sellers that Buyer's Customer has directed, recommended, requested, suggested or otherwise identified to Buyer as a source of the Supplies.

(d) No exception to, deviation from, or waiver of these Terms shall be valid and binding on Buyer unless specified on the face of a purchase order or purchase order amendment issued by Buyer or made in a signed writing by Buyer's authorized representative.

**2. Time Period of Order:** Subject to Buyer's termination rights, the agreement formed by the Order is binding on the parties for the length of the applicable Original Equipment Manufacturer ("OEM") vehicle program production life (including model refreshes and program extensions as determined by the applicable OEM customer) ("Term"), and both Buyer and Seller acknowledge the risk of the vehicle program production life being cancelled or extended by the OEM. If the Supplies are not utilized by Buyer for the production of automotive parts or systems, the agreement formed by the Order will be binding for one year from the date the Order is transmitted to Seller. In such case, subject to Buyer's termination rights, the Order will automatically renew for successive one-year periods after the initial term unless Seller provides written notice at least 180 days prior to the end of the current term of its desire that the Order not be renewed. Notwithstanding the foregoing, if an expiration date is stated in an Order or related agreement signed by Buyer, the Term of the Order will continue until that date. Unless specifically waived in writing by an authorized representative of Buyer or unless Buyer removes Tooling from Seller necessary for the production of service and replacement parts, Seller's obligations with respect to service and replacement parts will survive the termination or expiration of the Order for any reason.

**3. Invoicing; Pricing; Taxes:** (a) The stated price of Supplies set forth in the Order includes storage, handling, packaging, freight, insurance, transportation, and all other expenses, costs and charges of Seller, and no surcharges, premiums or other additional charges of any type shall be added without Buyer's express written consent. Prices are not subject to increase, unless specifically stated in the Order, and Seller assumes the risk of any event or cause affecting prices, including without limitation, foreign exchange rate changes, increases in raw material costs, inflation, increases in labor and other production and supply costs, and any other event which impacts the price or availability of materials or supplies.

(b) All invoices under an Order must reference the purchase order number, amendment or release number, Buyer's part number, Seller's part number where applicable, quantity of pieces in the shipment, number of cartons or containers in the shipment, Seller's name and number, bill of lading number and other information required by Buyer. All correspondence must include the purchase order number. If requested by Buyer, all invoices under the Order must be accompanied by the Seller's sworn statement indicating the status of payments to Seller's subcontractors and suppliers as of the date of invoice, and, if requested by Buyer, all invoices must be accompanied by lien waivers, in form satisfactory to Buyer, executed by Seller and Seller's subcontractors and suppliers. No invoice may reference any term separate from or different than the Order including these Terms. Buyer reserves the right to return incorrect invoices or related documents.

(c) Payment will be made against correct invoices and documentation provided to Buyer in compliance with these Terms, subject to adjustments, set-offs, discrepancies and other unresolved issues.

(d) The stated price set forth in an Order also includes all applicable taxes, excises, duties and other governmental impositions, except for any value added tax (VAT) imposed by a non-USA jurisdiction, which must be shown separately on Seller's invoice for each shipment, and Buyer is not liable for any business activity taxes, payroll taxes or taxes on Seller's income or assets. Seller shall be responsible for all federal, state, and local taxes levied on or assessed with respect to the manufacture, transportation and sale of the Supplies. As owner of the Tooling, Buyer (or, if applicable, Buyer's Customer) shall be entitled to all federal and state income and franchise tax credits applicable to such tooling investment.

(e) Seller shall indemnify and hold Buyer harmless for Seller's failure to pay any wages, benefits, taxes or other compensation or amounts owed by Seller on account of the Supplies.

(f) Seller represents and warrants that at all times during the Term of the Order, the Supplies are and will remain competitive in terms of price and related commercial terms and conditions, as well as in terms of technology, quality, delivery and service, with substantially similar goods and services and competitive alternatives available to Buyer or Buyer's customers from other suppliers.

(g) Seller represents and warrants to Buyer that Seller will fully disclose to Buyer, and give Buyer the full and sole benefit of (unless otherwise expressly agreed by Buyer following disclosure thereof by Seller), any and all discounts, refunds, rebates, credits, allowances or other financial or related incentives or payments of any kind to be provided or agreed to be provided by Seller (or any affiliate thereof) to any direct or indirect customer of Buyer (or any affiliate of such customer) and relating in any way to, and/or based on or determined, in whole or in part, with reference to Buyer's purchases of Supplies from Seller under the Purchase Order.

#### **4. Quantity; Delivery:**

(a) Quantities listed in an Order as estimated or forecast or for planning purposes are Buyer's best estimate of the quantities of Supplies it might purchase from Seller for the related time period(s). Seller acknowledges that any estimates or forecasts of production quantities or program durations, whether from Buyer or the Customer, are subject to change from time to time, with or without notice to Seller, and shall not be binding upon Buyer. Unless otherwise expressly stated in the Order, Buyer makes no representation, warranty, guaranty or commitment of any kind or nature, whether express or implied, to Seller in respect of Buyer's quantitative requirements for the Supplies or the term of supply of the Supplies.

(b) (1) Unless otherwise expressly stated in the Order or other agreement signed by an authorized representative of Buyer, if no other quantity is stated on the face of the Order or if the quantity is blank or specifies the quantity as zero, "blanket", "blanket order", "as released", "as scheduled", "as directed", "subject to Buyer's production releases", or similar terms, then subject to terms and conditions of the Order including these Terms, Buyer shall purchase from Seller, and Seller will supply to Buyer, one hundred percent (100%) of Buyer's requirements for Supplies in such quantities as identified by Buyer as firm orders in material authorization releases, manifests, broadcasts or similar releases ("Material Authorization Releases") that are transmitted to Seller during the Term of the Order, and Seller shall deliver such quantities on such dates and times at the price and on the other terms specified in the Order. All references herein to an "Order" shall include any related Material Authorization Releases, and such material Authorization Releases are not independent contracts. Buyer's requirements are based on and determined by the needs and related orders of Buyer's customer(s) for Buyer's products incorporating or using Supplies hereunder for use in the applicable OEM vehicle program, and such needs and related orders may change from time to time. If the Order covers services, Buyer is required to purchase such services to the extent expressly stated in a Statement of Work signed by Buyer. Buyer may require Seller to participate in electronic data interchange or similar inventory management program, at Seller's expense, for notification of Material Authorization Releases, shipping confirmations and other information. (2) Lead times for Supplies, as and to the extent set forth in an Order, should be considered by the Buyer in all of Buyer's requirements. Unless otherwise expressly stated in the Order or other agreement signed by an authorized representative of Buyer, Seller shall organize its production operations and inventory to be able to meet variations of up to +/- 20% with less than the lead time(s) stated in the Order, without any change in price. Variations of more than +/- 20%, made with less than applicable lead times may be addressed under Section 10 below. Seller acknowledges and agrees to accept the risk associated with lead times of various raw materials and/or components and Supplies if they are beyond those provided in the Order and authorized Material Authorization Releases. (3) Seller must have a tooling and production plan in place that will enable Seller to supply Buyer's peak daily, weekly and annual requirements for the Supplies, including service parts, and Seller capacity as stated in an Order will be based on such tooling and production plan. In the event that Buyer's peak requirements exceed Seller's capacity as stated in the Order, Buyer and Seller will, upon the request of either party, discuss what, if any, additional capital investments, together with expenses directly related to such increased demands, are reasonably required by Seller, and what changes in price or tooling are reasonably required, for Seller to continue to meet such peak requirements. Buyer will have the right to verify all claims regarding additional capital investment and the sole discretion to determine whether to accept applicable changes or to source peak requirements beyond Seller's capacity stated in the Order elsewhere. No changes to the Order or these Terms, other than changes in price or tooling requests directly tied to the need for additional capital investments mutually agreed between Seller and Buyer pursuant to this Section 4(b)(3), are contemplated in this Section 4(b)(3).

(c) Time and quantities are of the essence under an Order. Seller agrees to 100% on-time delivery of the quantities and at the times specified by Buyer, as set forth in an Order and related Material Authorization Releases. Failure to meet agreed delivery and quantities shall be considered a breach of the Order, and Seller shall pay to Buyer any damages or expenses imposed upon or incurred by Buyer. Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which entitles Seller to modify the price for Supplies covered by the Order. Buyer is not obligated to accept early deliveries, late deliveries, partial deliveries or excess deliveries or to make payment for Supplies delivered to Buyer that are in excess of quantities specified in Buyer's delivery schedules. Unless otherwise agreed in writing by Buyer, the risk of loss passes from Seller to Buyer upon delivery to Buyer's transportation carrier (or if shipment is by Seller or common carrier, then upon delivery to Buyer's designated facility), but title passes to Buyer only upon acceptance by Buyer at Buyer's facility where the Supplies are to be used. Seller will comply, in all respects, with Buyer's delivery and logistics requirements, as amended or updated from time to time. As and to the extent directed by Buyer, Seller will electronically communicate with Buyer in a secure (encrypted) manner designated by Buyer with respect to all supply chain communications relating to an Order, including, without limitation, receiving production schedules and sending advance shipping notices to Buyer.

(d) In order to assure the timely delivery of Supplies, Seller will, upon written request by Buyer's authorized purchasing representative, manufacture goods in excess of Buyer's current Orders to serve as a reserve for shipment, at such inventory reserve level as may be set by Buyer from time to time, to meet Buyer's requirements and to meet any unforeseen delays due to any reason whatsoever. Until such Supplies are purchased by Buyer from Seller, the same shall remain the property of Seller and shall be held by Seller at its sole risk and expense.

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

**5. Premium Freight; Related Costs:** (a) If Seller's acts or omission result in or are likely to result in Seller's failure to meet applicable delivery requirements and Buyer requires a more expeditious method of transportation for the goods than the transportation method originally specified by Buyer, Seller will be solely responsible for all costs and expenses associated with such expedited shipments. Seller pays any costs incurred by Buyer, including costs charged by Buyer's Customer(s) to Buyer, as a result of Seller's failure to comply with shipping or delivery requirements. (b) Buyer is not liable for premium freight costs, unless specifically agreed to in advance, in writing, by Buyer.

**6. Packaging; Marking; Shipping; Disclosure; Special Warnings or Instructions:** (a) Seller agrees to: (i) properly pack, mark and ship Supplies in accordance with the requirements of Buyer (as amended or updated from time to time), the involved carriers and laws and regulations of the country of manufacture, the country of destination and any country in which the Supplies will be transported, including, without limitation, laws and regulations governing the handling and transportation of dangerous goods or hazardous materials, (ii) route the shipments in accordance with Buyer's instructions and the terms and conditions of the related Order, (iii) provide papers with each shipment showing the Buyer's Order number, amendment or release number, Buyer's part number, Seller's part number (where applicable), number of pieces in the shipment, number of containers in the shipment, Seller's name and number, and the bill of lading number, (iv) promptly forward the original bill of lading or other shipment documents for each shipment in accordance with Buyer's instructions and carrier requirements; and (e) include on bills of lading or other shipping documents the correct classification of the Supplies.

(b) Seller will promptly provide Buyer with the following information in the form requested: (i) a list of all ingredients and materials in Supplies, (ii) the amount of all ingredients and materials, and (iii) information concerning any changes in or additions to the ingredients and materials.

(c) Before and at the time the Supplies are shipped, Seller will give Buyer sufficient warning in writing (including, without limitation, appropriate labels on all Supplies, containers and packing, together with disposal and recycling instructions, material safety data sheets and certificates of analysis) of any

dangerous, hazardous or restricted material that is an ingredient or part of the Supplies, together with any special handling instructions that are needed to advise carriers, Buyer and their employees how to take measures to prevent bodily injury or property damage while handling, transporting, processing, using or disposing of the Supplies, containers and packing. Seller agrees to comply with all federal, state, provincial and local laws and regulations pertaining to product content and warning labels, including without limitation, the U.S. Toxic Substances Control Act and European Union Directive 2000/53/EC. Upon Buyer's request, Seller will certify to Buyer in writing the origin of any ingredients or materials in the Supplies. Seller will promptly provide, in writing, any information regarding the Supplies requested by Buyer so that Buyer and/or Buyer's Customer(s) may comply in a timely manner with reporting requirements under applicable law with respect to consumer protection, "conflict minerals" or similar materials or ingredients, if any.

(d) Seller will reimburse Buyer for any liabilities, expenses and costs incurred as a result of improper packing, marking, routing, shipping or any other noncompliance with the requirements of this Section 6.

(e) In no event will shipping documents attached to or contained in the shipment display pricing information or any of Buyer's proprietary information.

(f) In the event that no packing requirements are provided by Buyer, Seller will pack the Supplies in accordance with the applicable Automotive Industry Action Group (AIAG) packing requirement.

**7. Inspection; Non-Conforming Goods/Services; Audit:** (a) Buyer may enter Seller's facility to inspect the facility, Supplies, materials, and any of Buyer's property relating to an Order. Buyer's inspection of Supplies, whether during manufacture, prior to delivery or within a reasonable time after delivery, does not constitute acceptance of any work-in-process or finished goods. Buyer is not required to perform inspections of Supplies, and Seller waives and requirement that Buyer conduct such inspections. Buyer's acceptance, inspection or failure to inspect does not relieve Seller of any of its responsibilities or warranties. Nothing in an Order releases Seller from the obligation of testing, inspection and quality control. In addition to other remedies available to Buyer, (i) Seller agrees to authorize return, at Seller's risk and expense at full invoice price, plus transportation charges, within one (1) working day of Buyer's notification and to replace defective Supplies as Buyer deems necessary, and/or (ii) Buyer may have corrected at any time prior to shipment from Buyer's plant Supplies that fail to meet the requirements of an Order, and (iii) Seller will reimburse Buyer for all reasonable expenses that result from any rejection or correction of defective Supplies. Seller will develop and document corrective actions within a commercially reasonable period after receipt of a defective sample and will take whatever measures necessary to correct the defect. Payment for nonconforming Supplies is not an acceptance, does not limit or impair Buyer's right to assert any legal or equitable remedy, and does not relieve Seller's responsibility for latent defects. Upon reasonable notice to Seller, either Buyer or Buyer's Customer may conduct a routine audit at Seller's production facility for the purpose of quality, cost or delivery verification. Seller will ensure that the terms of its contracts with subcontractors provide Buyer and its Customers with all of the rights specified in this Section and related Section 45 (Disposal of Scrap).

(b) During the term of an Order and for at least three (3) years following the later of: the last delivery of the Supplies; the date of the final payment to Seller under the Order; or the expiration of any applicable warranty periods for the Supplies or of any applicable governmental or industry required retention periods, Seller grants Buyer access to Seller's premises and all pertinent information including without limitation documents, data, records and other materials, and Buyer has the right at any reasonable time to send authorized representatives, for the purpose of auditing Seller's compliance with the terms of the Order (including, without limitation, charges under the Order) or inspecting or conducting an inventory of finished goods, work-in-process, raw materials, any of Buyer's Property and all work or other items to be provided pursuant to the Order located at Seller's premises or otherwise in the possession of or under the control of Seller. Seller shall cooperate with Buyer so as to facilitate Buyer's audit, including, without limitation, by segregating and promptly producing such records as Buyer may reasonably request. During the foregoing period, Seller will retain all pertinent documents, data, records and other materials pertaining to the foregoing. If a review/audit shows Seller's noncompliance with the Order, Seller will reimburse Buyer for any price discrepancy or other loss caused by its noncompliance, together with interest at an annual rate of 12% (or, if less, the maximum rate permitted by law) plus the cost of the review/audit. Any such audit or

inspection conducted by Buyer or its representatives will not constitute acceptance of any Supplies or other goods (whether in progress or finished), relieve Seller of any liability under the Order or prejudice any rights or remedies available to Buyer.

**8. Supplied Materials:** (a) Under an Order, Buyer, with Seller's concurrence, may supply Seller, directly or indirectly, with parts, materials or components, including raw material, work in process or component parts for use by Seller in Supplies ("Supplied Materials"). The consideration if any to be furnished by Seller for such Supplied Materials shall be established by agreement of the parties. If the Supplied Materials are not purchased by Seller, they shall be treated as "Consigned Materials" hereunder.

(b) Any Consigned Materials are Buyer Property, as defined in Section 26 and subject, as applicable, to the requirements of Section 26 and Section 42(f) relating to Buyer Property. Consigned Parts will remain Buyer's Property even if they are transferred by Seller to a third party (unless otherwise agreed by an authorized representative of Buyer in writing). Seller shall have sole and complete responsibility for Consigned Materials following delivery by Buyer -- subject to a work loss allowance of 0.5% (or such other amount as designated in an Order) of the total of Consigned Materials processed by Seller each month. Seller will notify Buyer on a monthly basis of Seller's inventory of Consigned Materials. In case the difference reported by Seller and confirmed by the Buyer is higher than the applicable work loss allowance, the Seller shall pay Buyer the total cost of the missing Consigned Material including without limitation freight, packaging, taxes, duties, overhead, replacement cost and other damages associated with Seller's loss of Consigned Materials.

(c) All Supplied Materials received by Seller from any person, including Buyer, will be inspected and processed in compliance with the Order and these Terms (including without limitation Sections 7 and 12) and Buyer's instructions to Seller and applicable specifications for Supplies. In addition, Seller will give Buyer prompt notice of any nonconformity of the Supplied Materials or the delivery thereof to Seller which has a high rate of recurrence, impairs or may impair Seller's ability to meet its delivery schedules or comply with applicable specifications for Supplies, affects Supplies' safety or is otherwise serious in the opinion of Seller. If the Supplied Materials are furnished by person(s) under agreement with the Buyer, Seller will follow up Buyer's instructions concerning the Supplied Materials subsequent to such notice.

(d) Seller will not substitute any other property for Supplied Materials and will not sell, use or permit use of the Supplied Materials for any purpose except the furnishing of Supplies to Buyer.

(e) Seller will store, inspect and process (and keep records thereof) the Supplied Materials in such manner as may be requested by Buyer in order for Buyer to take full advantage of any provisions of any customs or duty laws or regulations under which Buyer may be entitled to drawbacks, refunds or other benefits.

**9. Payment:** Payment shall be made as set forth in the Order. If not otherwise specified, Buyer's payment will be made on day 25 of the month following the month of the later of delivery of the Supplies under the Order and receipt by Buyer of a conforming invoice covering such Supplies ("Net 25 Prox"). (In the case of services, delivery means the completion of the services.) Buyer may withhold payment pending receipt of evidence, in the form and detail requested by Buyer, of the absence of any liens, encumbrances or claims on Supplies provided under the Order. Payment will be made in the currency expressly stated in the Order; if no such currency is noted, payment will be made in U.S. Dollars. Payment will be made by mailing on or before the due date unless otherwise expressly agreed by Buyer.

**10. Changes:** (a) Buyer reserves the right at any time by written notice to Seller to make changes, or to cause Seller to make changes, to drawings, designs, specifications, materials, sub-suppliers, samples or descriptions of Supplies, and/or to time and place of delivery or method of transportation. Buyer also reserves the right to otherwise change the scope of the work covered by an Order, including work with respect to such matters as inspection, testing or quality control. Buyer may also direct the supply of raw materials from itself or from third parties. Buyer and Seller will promptly discuss, reasonably and in good faith, any pricing adjustments (up or down) to be made in connection with such changes. Notwithstanding

any such discussions, Seller will promptly implement such changes as directed by Buyer without delay. In the event that Buyer and Seller are unable to reach agreement on any pricing adjustments to be made in connection with such changes, any difference in price or time for performance resulting from such changes will be equitably adjusted by Buyer based on a fair cost assessment, after receipt of documentation in such form and detail as Buyer may direct. In order for Seller to request a reasonable difference in price or time for performance as a result of a change, Seller must notify Buyer of its request in writing within ten (10) days after receiving notice of a change. If Seller's claim includes any cost for property made obsolete as a result of the change, the claim must be supported by releases (or other forms of authorization) provided by Buyer authorizing Seller to procure or manufacture the property, and Buyer may prescribe the manner in which such property will be disposed. Buyer can request additional documentation from Seller relating to the need for a different price or time for performance, and Buyer has the right to verify all claims or requests hereunder by auditing relevant records, facilities, work or materials of Seller. If Seller does not provide timely notice to Buyer that a requested change may result in a difference in price or time for performance, Buyer's requested change will not affect the price or time for performance.

(b) Seller will not make any change in the Supplies, including, without limitation, design, drawings, specifications, materials, processing, packing, marking, shipping, or date or place of delivery except at Buyer's written instruction or with Buyer's written approval. The foregoing restriction applies, among other matters, to any proposed change in the sourcing, or in the nature, type or quality of any services, raw materials or goods used by Seller or its suppliers in connection with the Order, or in the place or manner of manufacture or processing of raw materials or components used in the Supplies, or of any Supplies themselves, or in the fit, form, function, appearance or performance of any Supplies covered by the Order. Any of the foregoing changes by Seller in relation to any Order or to the Supplies covered by the Order without the prior approval of Buyer's authorized representative shall constitute a breach of the Order. If Buyer agrees, in Buyer's discretion, to implement any change(s) proposed by Seller, the agreement between the parties with respect to such changes will be made in accordance with Section 39 (Entire Agreement; Modifications) below.

#### **11. Warranties:**

(a) Seller expressly warrants and guarantees to Buyer, to Buyer's successors, assigns and Customers, and to users of Buyer's products, that all Supplies delivered or provided to Buyer and any special tools, dies, jigs, fixtures, patterns, machinery and equipment, that are obtained at Buyer's expense for the performance of an Order and/or are or become the property of Buyer (including the Buyer's Property as defined in Section 26) will: (i) be world-class, competitive Supplies in terms of price, quality, delivery and technology, and conform to the specifications, standards, drawings, samples, descriptions, designs and revisions as furnished, specified or approved by Buyer, (ii) conform to all applicable laws, orders, regulations or standards in countries where Supplies or vehicles or other products incorporating Supplies are to be sold, including without limitation the National Traffic and Motor Vehicle Safety Act, the federal motor vehicle safety standards and the European Union Directive 2000/53/EC, (iii) be merchantable and free of defects in design (to the extent Seller or any of its subcontractors or suppliers designed or participated in the design of the Supplies in whole or in part, even if the design has been approved by Buyer), materials and workmanship, (iv) be selected, designed (to the extent Seller or any of its subcontractors or suppliers designed or participated in the design of the Supplies in whole or in part, even if the design has been approved by Buyer), manufactured or assembled by Seller based upon Buyer's intended use and be fit and sufficient for the purposes intended by Buyer, and (v) be free of all liens, claims and encumbrances whatsoever. Seller further expressly warrants that, unless otherwise expressly stated in the Order, the Supplies are manufactured entirely with new materials and none of the Supplies is, in whole or any part, governmental or commercial surplus or used, remanufactured, reconditioned or of such age or condition so as to impair its fitness, usefulness or safety. Notwithstanding Section 11(b) below, the Seller also expressly warrants that the Supplies covered by an Order will not at any time (including after expiration or termination of the Order) pose an unreasonable risk to consumer or vehicle safety. The warranties set forth in an Order (including these Terms) are in addition to those available to Buyer by law. For all Supplies, Seller further warrants that its work will be performed in a professional and workmanlike manner, consistent with all standards and specifications agreed on with Buyer and otherwise consistent with industry standards, and that the Supplies are free from latent defects or conditions that would give rise

to a defect regardless of whether the defect or condition was known or discoverable during the warranty period. These warranties are intended to provide Buyer with protection from any and all warranty claims brought against Buyer by its Customer, including Customer-required warranties relating to the Supplies or any products into which such Supplies are incorporated. All such Customer-required warranties are incorporated herein by reference.

(b) Unless otherwise set forth in an Order, the duration of each warranty provided by Seller to Buyer for the Supplies will end on the later of (i) the date of expiration of any warranty period provided by applicable law for the Supplies, (ii) expiration of any warranty (applicable to Supplies) provided by Buyer's Customer(s) for the vehicle into which the Supplies are incorporated, (iii) the expiration of any specific warranty period or performance standard provided in any document incorporated by reference in an Order, including in the applicable specifications or quality standards of Buyer or Buyer's Customer(s), or (iv) in the event that Buyer or any direct or indirect Customer(s) of Buyer voluntarily or pursuant to a government mandate, makes an offer to owners of vehicles (or other finished products) on which the Supplies, or any parts, components, or systems incorporating the Supplies, are installed to provide remedial action or to address a defect or condition that relates to motor vehicle safety or the failure of a vehicle to comply with any applicable law, safety standard or guideline, whether in connection with a recall campaign or other customer satisfaction or corrective service action ("Remedial Action"), the expiration of such period of time as may be dictated by Buyer's direct or indirect Customer or the federal, state, local or foreign government where the Supplies are used or provided, and Seller shall fully comply (among other matters) with the requirements under Section 17(a). The Buyer may change a new vehicle warranty or any warranty offered by it covering the Supplies. If the change is made after a production Order has been issued, the Buyer will promptly notify the Seller of the change.

(c) For all services, Seller further warrants that its work will be performed in a professional and workmanlike manner, consistent with all standards and specifications agreed on with Buyer and otherwise consistent with industry standards.

(d) Seller will immediately notify Buyer in writing if and at such time as it becomes aware of any ingredient, component, design or defect in Supplies that is or may become harmful to persons or property, or that the Supplies are or may not be fit or sufficient for the purpose intended.

(e) Buyer's approval of any design, drawing, material, process or specifications will not relieve Seller of its warranties.

(f) The following communications shall each constitute notice of a breach of warranty under the Order: (i) any communication specifying a defect, default, claim of defect or other problem or quality issue of the Supplies provided under the Order; (ii) any communication to Seller claiming that the Supplies are in breach of any warranty or that Seller is in default under the Order; and (iii) a termination notice from Buyer under Section 19. Any such claim by Buyer of breach may only be rescinded in writing by Buyer.

(g) To mitigate its damages, Buyer may fully defend any claim from any Customer that any Supplies supplied by Seller are defective, in breach of warranty, or otherwise did not meet applicable legal or contractual requirements because such Customer may attempt to hold Buyer responsible for problems caused in whole or in part by Seller. Seller and Purchaser agree that this defense is in the interest of both Seller and Buyer. Seller hereby waives the right to argue that the fact that Buyer took any such position in any way limits Buyer's right to assert a claim against Seller by Buyer for breach of warranty, contribution, indemnification or other claim that may arise from or be related to the subject matter of any of the foregoing.

**12. Supplier Quality and Development; PPAP; Parts Identification** (a) Seller will conform to the quality control and other standards and inspection systems as established by Buyer and Buyer's direct or indirect Customer(s), including without limitation quality control policies (such as ISO 9001:2008 or ISO / TS 16949:2009 quality certification and ISO 14001 environmental certification including registration, as updated from time to time), in relation to quality control, quality certification, health and safety certifications and environmental certification including registration. (b) Seller will also participate in supplier quality and development programs of Buyer and in any applicable warranty sharing programs / agreements of Buyer,

and Seller will promote continuous improvement in the quality of goods and Seller's manufacturing and logistics processes. (c) Seller agrees to meet the full requirements of industry Production Part Approval Processes (PPAP) as specified by Buyer and (as applicable) Buyer's Customer(s) and agrees to present this information to Buyer upon request, at the level requested. (d) All Supplies that are a completed part shall permanently bear Buyer's part number and name or code name, Seller's part number and Seller's date of manufacture unless otherwise agreed by Buyer in writing. Unless and to the extent otherwise expressly provided in an Order, Seller is responsible for all lower-tier providers of goods or services, and Seller must maintain adequate development, validation, launch and ongoing supervision to assure all Supplies provided to Buyer conform to all applicable warranties and other provisions of the Order.

**13. Remedies:** The rights and remedies reserved to Buyer in an Order are cumulative with and additional to all other rights and remedies of Buyer under applicable law or in equity. Buyer is entitled to specific performance and injunctive relief as provided in Section 35(d) below and to recover from Seller any and all damages, including, without limitation, any direct, indirect, incidental and consequential damages caused or required in the reasonable judgment of Buyer or Buyer's Customer(s) by Seller's nonconforming Supplies or any other breach of Seller's obligations under an Order, including but not limited to costs, expenses and losses incurred or suffered directly or indirectly by Buyer or its Customer(s): (a) in inspecting, sorting, testing, handling, reworking, repairing or replacing the nonconforming Supplies or nonconforming deliveries, (b) resulting from production interruptions, (c) conducting recall campaigns, customer field service actions or other corrective service actions, or (d) resulting from personal injury (including death) and/or property damage. Buyer's damages include attorneys' fees and other professional fees, settlements and judgments incurred by Buyer and other costs associated with Buyer's administrative time, labor and materials. If requested by Buyer, Seller will enter into a separate agreement for the administration and processing of warranty charge-backs for nonconforming Supplies, and will participate in and comply with any warranty reduction or related programs of Buyer or (to the extent directed by Buyer) Buyer's Customer(s) that relate to the Supplies. Notwithstanding anything to the contrary contained in any Order, Buyer does not release any claim against Seller that is based in whole or in part on any fraud or duress in connection with the Order or any breach or anticipatory breach of the Order or any other Order between Buyer and Seller (even if that Order relates to other Supplies).

**14. Indemnification:** (a) To the fullest extent permitted by law, (i) Seller hereby assumes the entire, sole responsibility for any injury to person, including death, or damage to property of any kind or nature caused by, resulting from or in connection with the furnishing of Supplies by Seller, its subcontractors, officers, agents, or employees; (ii) Buyer shall not be responsible for any injury to person or damage to property resulting from use, misuse or failure of any apparatus furnished to Seller by Buyer, and the use of any such apparatus by Seller shall constitute acceptance by Seller of all responsibility for any claims for such injury or damage; and (iii) Seller will defend, indemnify and hold harmless Buyer, Buyer's Customers (both direct and indirect, including manufacturers of vehicles in which Supplies are incorporated), and dealers and users of the products sold by Buyer (or the vehicles in which they are incorporated), including their respective agents, customers, invitees, subsidiaries, affiliates, successors and assigns, against any and all claims, damages, losses, liabilities, and expenses (including actual attorneys' fees and other professional fees, settlements and judgments) arising out of or resulting in any way from any defective Supplies, or from any negligent or wrongful act or omission of Seller, or Seller's agents, employees or subcontractors, or any breach or failure by Seller to comply with any of Seller's representations or other terms and conditions of an Order (including any part of these Terms) -- including without limitation the cost of recall campaigns, customer field service actions or other corrective service actions that, in Buyer's reasonable judgment, are required because of nonconformities in some or all of the Supplies provided by Seller hereunder. Seller's obligation to defend and indemnify under this Section will apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise except for claims that arise as a result of the sole negligence of Buyer. Buyer has the right to be represented by and actively participate through its own counsel in the defense and resolution of any indemnification matters, at Seller's expense. The indemnification obligations of Seller set forth in this Agreement, including this Section, are independent of and in addition to any insurance and warranty obligations of Seller.

(b) If Seller or Seller's subcontractor performs any work on Buyer's or Buyer's Customer's premises or utilizes the property of Buyer or Buyer's Customer, whether on or off Buyer's or Buyer's Customer's

premises: (i) Seller will examine the premises to determine whether they are safe for the requested services and will advise Buyer promptly of any situation it deems to be unsafe; (ii) Seller's and Seller's subcontractor's employees, contractors and agents will comply with all regulations that apply to the premises and may be removed from Buyer's premises at Buyer's discretion; (iii) Seller's and Seller's subcontractor's employees, contractors and agents will not possess, use, sell, transfer or be under the influence of alcohol or unauthorized, illegal or controlled drugs or substances on the premises; and (iv) to the fullest extent permitted by law, Seller in all cases (in addition to Seller's subcontractor, as applicable) will indemnify and hold Buyer and Buyer's Customer (and their respective officers, directors, employees, agents, successors and assigns) harmless from and against any and all liability claims, demands or expenses (including actual attorney's fees and other professional fees, settlements and judgments) for damages to the property of or personal injuries (including death to Buyer, Buyer's Customer(s), or Seller or their respective employees, subcontractors or agents or any other person or entity if the claims arise from or in connection with Seller's or Seller's subcontractor's work on the premises or Seller's or Seller's subcontractor's use of Buyer's or Buyer's Customer's property, except for any liability, claim or demand arising out of the sole negligence of Buyer.

**15. Insurance:** Seller will obtain and maintain, at Seller's expense, the insurance coverage listed below, or in additional amounts and coverages as may be reasonably requested by Buyer or (to the extent directed by Buyer) Buyer's Customer(s), in each case naming Buyer and its affiliates and Customer(s) (as applicable) as loss payees and as "additional insureds". Such insurance shall be obtained and maintained from companies listed in the then-current "Best's Insurance Guide" as possessing a minimum policy holders rating of "A-" (excellent) and a financial category no lower than "IX". Seller will furnish to Buyer a certificate showing compliance with this requirement or certified copies of all insurance policies within ten (10) days of Buyer's written request. The certificate will provide that Buyer (and, if applicable, Buyer's Customers) will receive thirty (30) days prior written notice from the insurer of any termination or reduction in the amount or scope of coverage. The existence of insurance does not release Seller of its obligations or liabilities under an Order. Minimum coverage is as follows:

<u>Coverage</u>	<u>Limits of Liability</u>
Workers compensation	Statutory
Employer's liability	US\$100,000 / each accident, disease policy limit, disease each employee
Comprehensive general liability insurance, including contractual liability coverage	US\$5,000,000 / each occurrence general aggregate, products & completed operations aggregate
Comprehensive automobile liability insurance	US\$1,000,000 / each occurrence combined single limit
Business interruption insurance	As specified by Buyer

**16. Compliance with Laws; Related Matters:** Seller, and any Supplies supplied by Seller, will comply with all applicable laws, including rules, regulations, orders, conventions, ordinances and standards, that relate to the contents, source of contents, manufacture, labeling, transportation, importation, exportation, licensing, approval, certification or purchase or sale of the Supplies, including without limitation laws relating to environmental matters, the handling and transportation of dangerous goods or hazardous materials, data protection and privacy, hiring, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety, conflict minerals and motor vehicle safety, as well as applicable anti-corruption laws including without limitation the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act, as amended from time to time, and that neither it nor any of its subcontractors, vendors, agents or other associated third parties will engage in any form of commercial bribery, directly or indirectly provide or offer to provide, anything of value to or for the benefit of, any official or employee of a governmental authority or of any government-owned, government-controlled or government-affiliated entity to obtain or retain any contract, business opportunity or other business benefit, or to influence any act or decision of that person in his/her official capacity. Each Order incorporates by reference all clauses required by these laws. All materials used by Seller in the Supplies or in their manufacture shall satisfy current governmental and

safety constraints on restricted, toxic and hazardous materials as well as environmental, electrical and electromagnetic considerations that apply to the country of manufacture, sale or destination. At Buyer's request, Seller will certify in writing Seller's compliance with the foregoing. Seller will indemnify Buyer against and hold Buyer harmless from any liability claims, demands or expenses (including attorney's fees and other professional fees, settlements and judgments) relating to Seller's noncompliance. Seller and its employees will abide by applicable ethics policies of Buyer and its Customers, or Seller's own equivalent ethics policy.

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

(b) In the event that a Customer files or has filed against it a petition in bankruptcy or insolvency and, in the course of such proceeding and in connection with actual or threatened termination (by rejection or otherwise) by the Customer of its contract(s) with Buyer or contracts relating to Supplies purchased by Buyer from Seller, Buyer permits a reduction in the price(s) paid to Buyer for products incorporating the Supplies, the price paid to Seller for the Supplies from and after the date of such reduction will be automatically adjusted proportionally by the same percentage as the price paid to Buyer by its direct Customer and the Order will otherwise remain in effect without modification.

(c) If Buyer's direct or indirect Customer directed, recommended, requested, suggested or otherwise identified Seller as the source from which Buyer is to obtain the Supplies ("Directed Supply Relationship"), then notwithstanding the particular payment terms otherwise applicable to the Order or anything to the contrary in the Order: (i) in no event will Seller have a right to receive payment from Buyer for the Supplies except following, and in proportion to, Buyer's actual receipt of payment from its Customer for the Supplies or, as applicable, the goods in which the Supplies are incorporated, (ii) any lengthening of Customer's payment terms to Buyer will automatically lengthen the payment terms as between Buyer and Seller by the same amount of time, and Buyer may, at its option and on notice to Seller, otherwise revise its payment terms for Supplies to take into account any other change in the payment terms of Buyer's Customer for the Supplies under the Order; (iii) within three (3) business days of any change in price, specifications or other terms negotiated or proposed between Seller and Buyer's direct or indirect Customer, Seller shall notify Buyer in writing and immediately adjust its invoices to reflect any price reduction, provided that no change will be binding on Buyer without Buyer's specific written consent, and (iv) (without limiting any other rights and remedies of Buyer) Seller will indemnify and hold harmless Buyer from any liabilities, claims, demands, losses, damages, costs and expenses (including without limitation attorneys' fees and other professional fees) incurred by Buyer arising from or relating to the Supplies supplied by Seller and/or the Directed Supply Relationship, and including without limitation any charges or set-offs (including without limitation interim field service action cost recovery debits) taken by Customer against Buyer by reason of alleged defects in Supplies, even if such set-offs by Customer are before final determination of (and subject to adjustment based upon) whether and to what extent defects in Supplies were a cause of the related remedial action undertaken and related costs/damages incurred by Customer. In the event that any requirement imposed by any Order on Seller is found to be unenforceable or a gap otherwise exists or is created in the terms applicable to any Order through operation of law, conflict in terms or otherwise, the

parties agree that the corresponding requirement of Customer(s) shall be applicable to and binding on Seller for the benefit of Buyer. Seller acknowledges that it is familiar with the automotive industry and the applicable terms of Customer(s) that would apply in such event.

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

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

(c) Seller agrees that if Seller experiences any delivery or operational problems, Buyer may, but is not required to, designate a representative to be present in Seller's applicable facility to observe Seller's operations. Seller agrees that if Buyer provides to Seller any accommodations (financial or other) that are necessary for Seller to fulfill its obligations under an Order, Seller will reimburse Buyer for all costs, including attorneys' and other professionals' fees, incurred by Buyer in connection with such accommodation and will grant access to Buyer to use Seller's premises and machinery, equipment, and other property necessary for the production of the Supplies covered by the Order. Notwithstanding anything contained in this Section 18 to the contrary, financial information provided by Seller to Buyer hereunder pursuant to a Directed Supply Relationship may be provided to the Customer if Seller fails to provide Buyer with adequate reasonable assurance of Seller's financial capability to perform any of Seller's obligations under the Order on a timely basis.

**19. Termination for Breach or Nonperformance; Seller's Assurance of Performance:** (a) Buyer may terminate all or any part of an Order, or any other Order or agreement between Buyer or Buyer's affiliate(s) and Seller or Seller's affiliate(s), without liability to Seller and Seller's affiliate(s): (1) if Seller: (A) repudiates, breaches or threatens to breach any of the terms of the Order (including, without limitation, Seller's warranties, or Seller's obligations under Section 3(f) above or Section 32 below), (B) fails to perform or threatens not to perform services or deliver Supplies as specified by Buyer, or (C) fails to make progress or to meet reasonable quality requirements so as to endanger timely and proper completion or delivery of Supplies -- and does not correct the failure or breach within ten (10) days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from Buyer specifying the failure or breach; or (2) if Seller or Seller's affiliate repudiates, breaches or threatens to breach any of the terms of any other Order or agreement between Buyer or Buyer's affiliate(s) and Seller or Seller's affiliate(s). Seller shall notify Buyer within ten (10) days after entering into any negotiations that could lead to any

proposed transfer or assignment within the scope of Section 32 (see subsection 19(a)(1)(A) above); upon Seller's request, Buyer will enter into an appropriate nondisclosure agreement related to information disclosed to Buyer in relation to such transaction.

(b) Seller may terminate the Order only for non-payment of the purchase price for Supplies which are thirty (30) or more days past due and material in amount, and then only if: (1) Seller first provides Buyer written notice specifying the amounts past due (including the relevant Order and invoice numbers and date) and Seller's intent to terminate the Order if the past due amount is not paid; and (2) Buyer, within sixty (60) days of such notice, does not either: (A) pay the past due amounts, or (B) notify Seller that the amounts claimed to be unpaid are disputed by Buyer. Seller may not terminate or cancel the Order for any reason except as permitted under this Section. Seller may not suspend performance of the Order for any reason.

(c) In the event that Buyer has reasonable grounds for insecurity with respect to Seller's continued performance under an Order, Buyer may, in writing, demand adequate assurance of such performance from Seller. After receipt of such demand, Seller's failure, with a reasonable period of time under the circumstances (not to exceed 20 days or such shorter period as required by Buyer's Customer(s)), to provide assurances adequate under the circumstances (as determined by Buyer in its reasonable discretion) will be deemed a breach of the Order by Seller.

**20. Termination:** (a) In addition to any other rights of Buyer to cancel or terminate an Order, Buyer may, at its option, upon at least thirty (30) days' written notice, or, if applicable, such shorter period as may be required by Buyer's Customer, and in its sole discretion, terminate all or any part of an Order at any time and for any reason, and notwithstanding the existence of any event of force majeure under Section 22 below. If, after termination by Buyer pursuant to Section 18, 19 and/or 22, it is determined that such termination was not authorized thereunder, the rights and obligations of Buyer and Seller will be the same as if the termination were for convenience pursuant to this Section 20(a).

(b) Upon receipt of and consistent with such notice of such termination, and unless otherwise directed by Buyer, Seller will: (i) terminate promptly all work under the Order on the effective date of termination, (ii) transfer title and deliver to Buyer the finished Supplies, the work in process, and the parts and materials which Seller reasonably produced or acquired according to the quantities ordered by Buyer and in accordance with the terms and conditions of the Order and which Seller cannot use in producing goods for itself or for others, (iii) verify and settle any claims by subcontractors for actual costs incurred directly and made unrecoverable by the termination and ensure the recovery of materials in subcontractor's possession, (iv) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest until disposal instruction from Buyer has been received, and (v) upon Buyer's reasonable request, cooperate with Buyer in transferring the production of Supplies to a different supplier, including as described in Section 21.

(c) Upon termination by Buyer under this Section 20, Buyer will be obligated to pay Seller only the following: (i) the Order price for all finished Supplies in the quantities ordered by Buyer that conform to the requirements of the Order and for which Seller has not been paid, (ii) Seller's reasonable actual cost of work-in-process and the parts and materials transferred to Buyer in accordance with subsection (b)(ii) above, (iii) Seller's reasonable actual costs of settling regarding its obligations to subcontractors required under the Order, to the extent directly caused by termination, but limited to the amount of any firm quantities of Supplies and raw materials / components specified in related Material Releases issued by Buyer and then outstanding; (iv) Seller's reasonable actual cost of carrying out its obligation under subsection (b)(iv), and (v), if applicable, amounts due in connection with Transition Support under Section 21. Notwithstanding any provision to the contrary, Buyer shall have no obligation for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, tooling, facilities and equipment rearrangement costs or rental, unamortized capital or depreciation costs, finished goods, work-in-process or raw materials that Seller fabricates or procures in amounts that exceed those authorized in the Material Authorization Releases, or general administrative burden charges from termination of the Order, unless otherwise expressly agreed to in writing by Buyer in a separate Order issued by Buyer.

(d) Buyer's obligation upon termination under this Section 20 shall not exceed the obligation Buyer would have had to Seller in the absence of termination.

(e) Seller will furnish to Buyer, within one (1) month after the date of termination under this Section 20 (or such shorter period as may be required by Buyer's Customer), its termination claim, which shall consist exclusively of the items of Buyer's obligation to Seller that are listed in subsection 20(c) above. Buyer may audit Seller's records before or after payment to verify amounts requested in Seller's termination claim.

(f) Buyer will not have any obligation under subsections 20(a), (c), (d) or (e) above if Buyer terminates Buyer's obligations under the Order because of a default or breach by Seller, and any termination shall be without prejudice to any claims which Buyer may have against Seller.

**21. Transition of Supply:** (a) The Buyer and Seller acknowledge and agree that, where the Supplies represent materials or components that will be incorporated into or used in the production of Supplies that will be incorporated into motor vehicles, any disruption in the supply of Supplies would materially and irreparably harm Buyer and Buyer's customers and that any resourcing of the Supplies by Buyer to an alternative source would require significant time, effort, cost and resources. Accordingly, in the event the Order expires or is terminated by either party, in whole or in part, for any reason, or Buyer's other decision to change to an alternate source of Supplies (including but not limited to a Buyer-owned or -operated facility) ("alternative supplier"), Seller will cooperate in the transition of supply, including the following (collectively, "Transition Support"): (i) Seller will continue production and delivery of all Supplies as ordered by Buyer, at the prices and other terms stated in the Order, without premium or other condition, during the entire period reasonably needed by Buyer to complete the transition to the alternative supplier(s) (including, at Buyer's request, providing a sufficient bank of Supplies), such that Seller's action or inaction causes no interruption in Buyer's ability to obtain Supplies as needed; (ii) at no cost to Buyer, Seller will (A) 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 Supplies and components; (B) will provide all notices necessary or desirable for Buyer to resource the Order to an alternative supplier; (C) when requested by Buyer, will return to Buyer all Buyer's Property in as good condition as when received by Seller (reasonable wear and tear excepted; and (D) will comply, and cause Seller's subcontractors to comply, with Seller's obligations relating to Seller's Proprietary Rights and Seller's Property under the Order including these Terms (see, e.g., Sections 24 and Section 27) and with comparable subcontractor obligations (see Section 43 below), as applicable, and (iii) subject to Seller's reasonable capacity constraints, Seller will provide special overtime production, storage and/or management of extra inventory of Supplies, extraordinary packaging and transportation and other special services as expressly requested by Buyer in writing.

(b) If the transition occurs for reasons other than Seller's termination or breach, Buyer will, at the end of the transition period, pay the reasonable, actual cost of Transition Support as requested and incurred, provided that Seller has advised Buyer prior to incurring such amounts of its estimate of such costs. If the parties disagree on the cost of Transition Support, Buyer will pay the agreed portion to Seller and pay the disputed portion into third-party escrow for disbursement by arbitration in accordance with the provisions of Section 35.

(c) Seller acknowledges that the terms of this Section 21 are reasonable under the circumstances and that if Seller asserts or claims that Seller may terminate the Order at will for any reason prior to the expiration of the Term, or asserts a claim that Seller may terminate this agreement for material breach by Buyer (notwithstanding Section 19(b) above), Seller will nonetheless perform its obligations under this Section 21, including its supply obligations in subsection 21(a) above, except in the case where Seller's termination of the Order is based on Buyer's material breach of the Order as finally determined by a court of competent jurisdiction following notice to Buyer and Buyer's reasonable opportunity to cure.

**22. Force Majeure; Protection Against Supply Interruptions:** (a) Any delay or failure of either party to perform its obligations under an Order shall be excused to the extent that it is caused directly by an event or occurrence beyond the reasonable control of such party and without such party's fault or negligence (a

“force majeure event”). By way of example, this includes, if applicable, restrictions, prohibitions, priorities or allocations imposed by or actions taken by any governmental authority (whether valid or invalid), embargoes, fires, floods, windstorms, earthquakes, severe weather, explosions, riots, natural disasters, wars, sabotage, or court injunction or order. Seller's inability to perform as a result of, or delays caused by, Seller's insolvency or lack of financial resources is deemed to be within Seller's control. Notwithstanding anything to the contrary herein, the change in cost or inability to obtain power, materials, components, labor, equipment or transportation based on market conditions, supplier actions, contract disputes or any labor strike or other labor disruption applicable to Seller or any of its subcontractors or suppliers, will not excuse Seller's performance (under theories of force majeure, commercial impracticability or otherwise), and Seller assumes these risks. Written notice of such delay (including the anticipated duration of the delay) must be given to the other party as soon as possible after the occurrence (but no more than ten (10) days after). Seller will use all diligent efforts to ensure that the effects of any force majeure event are minimized and, as promptly as possible, resume full performance under an Order. During any force majeure event affecting Seller's performance, Buyer may, at its option (i) purchase Supplies from other sources and reduce its schedules to Seller by such quantities, without liability to Seller, (ii) ask Seller to deliver to Buyer at Buyer's expense all finished goods, work in process and parts and materials produced or acquired for work under this Order, and/or (iii) require Seller to provide Supplies from other sources in quantities and at a time requested by Buyer at the price set forth in this Order. If Buyer requests in writing, Seller shall, within five (5) days of Buyer's request, provide adequate assurance that the delay in Seller's performance resulting from a force majeure event will not exceed thirty (30) days. If the delay lasts more than 30 days or Seller does not provide such adequate assurances, Buyer may immediately terminate the Order without liability to Seller, and without prejudice to Buyer's other remedies under this Order or applicable law. If, due to forces beyond its control, Buyer determines to alter Buyer's delivery schedule to delay delivery: (x) the provisions of this Section (rather than Section 10) will control; (y) Seller will hold any such delayed Supplies at the direction of Buyer and will deliver them when the cause affecting the delay has been removed; and (z) Buyer will be responsible only for Seller's direct additional costs (excluding interest on the purchase price) incurred in holding the Supplies or delaying performance at Buyer's request.

(b) Seller will, at Seller's expense, take such actions as are necessary or appropriate to ensure the uninterrupted supply of Supplies to Buyer for not less than thirty (30) days (or such longer period as Buyer's Customer(s) may require) during any foreseeable or anticipated event or circumstance, the occurrence of which could interrupt or delay Buyer's production or Seller's performance under an Order, including, without limitation, any labor disruption, whether or not resulting from the expiration of Seller's labor contracts. This subsection shall not constitute a waiver of and is without prejudice to, any and all of Buyer's other rights and remedies under an Order or applicable law, each of which are hereby reserved.

**23. Technical Information Disclosed to Buyer:** (a) Unless otherwise agreed to in writing in a separate confidentiality or nondisclosure agreement signed by an authorized representative of the Buyer: (i) no technical or other information disclosed in any manner at any time by Seller, or Seller's contractors, to Buyer, Buyer's affiliates or Buyer's Customers, will be treated as confidential, and (ii) Seller agrees not to assert any claim (other than a claim for patent infringement) against Buyer, Buyer's affiliates, Buyer's Customers or their respective suppliers, with respect to any technical or other information that Seller, or Seller's contractors, have disclosed or may disclose to Buyer, Buyer's affiliates or Buyer's Customers, in connection with the Supplies or an Order. (b) Seller may not release or disclose Buyer's Property to any third party without the express written permission of Buyer.

**24. Technology**

(a) All information, materials, inventions, and intellectual property (including without limitation Tooling) created, developed or acquired by or on behalf of Seller, along with all intellectual property rights relating thereto, paid for or to be paid for by Buyer (either through direct payment and/or by designated amortization in the piece price), are the sole and exclusive property of Buyer. Seller will promptly disclose in an acceptable form and assign to Buyer all such information, materials, inventions, and intellectual property. Seller will cause its employees to perform any act, including without limitation, executing and delivering any papers necessary to enable Buyer to confirm Buyer's title to the foregoing and to seek intellectual property protection throughout the world. To the extent that any works of authorship (including,

without limitation, software) are created by or on behalf of Seller and are paid for or to be paid for by Buyer under the Order, such works shall be considered "work made for hire". To the extent that such works do not qualify as "work made for hire," Seller hereby assigns to Buyer all right, title, and interest in all copyrights and moral rights therein.

(b) Seller acknowledges and agrees that Buyer, Buyer's affiliates and Buyer's dealers, customers, subcontractors and designees) have the worldwide, irrevocable right to repair, reconstruct, remanufacture, re-flash, rebuild and relocate, and to have repaired, reconstructed, remanufactured, re-flashed, rebuilt or relocated, Supplies delivered under an Order without payment of any royalty or other compensation to Seller.

(c) Seller hereby grants Buyer, and Buyer's present and future affiliates, an irrevocable, non-exclusive, worldwide, royalty-free, paid-up, license, including the right to sublicense, under any and all proprietary rights controlled by Seller or its affiliates, including, without limitation, any patent, copyright, moral, industrial design right, trademark, technical information, know-how or other proprietary right) ("Seller Proprietary Rights"): (i) in the event that this Agreement is terminated by Buyer under Sections 18, 19 or 22, and/or (ii) in the event that Seller for any reason (including without limitation requirements imposed on Buyer by Buyer's Customer) is unable to satisfy the quality, quantity, delivery or related requirements of Buyer for Supplies under the Order and/or additional orders (including, for example and without limitation, in the event of force majeure, or increased demand due to volume requirements for a corrective field service action/recall, or by reason of Seller's insolvency, or in the event of a required change or expansion in relation to the country(ies) of manufacture or delivery): (A) to make, have made, use, sell, offer to sell, and import the Supplies, (B) to copy, modify, use, distribute, publicly display/perform, prepare derivative works of, reproduce in the case of a mask work, and import or distribute in the case of a semiconductor chip product in which a mask work is embodied, any copyrighted or copyrightable portions of such Seller Proprietary Rights relating in any way to Supplies, and (C) to do all other things and exercise all other rights in the Seller Proprietary Rights necessary or useful to avoid, remedy and mitigate, as Buyer reasonably determines to be appropriate, all or any portion of any consequences to Buyer, and to any direct and indirect customers of Buyer, arising from any situation under subparagraphs (i) or (ii) above. Seller shall also cooperate with Buyer in the exercise of such license including providing, without restriction on use, reproduction or disclosure, all information and data deemed necessary by Buyer. At no additional cost, Seller hereby grants Buyer an irrevocable, nonexclusive, worldwide license under Seller Proprietary Rights that is necessary or incident to the reasonably intended use or application of the Supplies. Rights under this Section 24(c) are intended to be subject to 11 USC Section 365(n), and are supplementary to any other rights of Buyer under existing Orders and other agreements with Seller.

(d) All Supplies or other deliverables provided under an Order (including, for example, computer programs, technical specifications, documentation and manuals), shall be original to Seller and shall not incorporate, or infringe upon, any intellectual property rights (including, without limitation, copyright, patent, trade secret, mask work or trademark rights) of any third party, unless otherwise expressly agreed to in writing by Buyer. Seller agrees: (i) to investigate, defend, hold harmless and indemnify Buyer, its affiliates, successors, assigns, customers and users of the Supplies against any suit, claim or action for actual or alleged infringement of any proprietary right (including any patent, trademark, copyright, moral, industrial design right or other proprietary right or misuse or misappropriation of trade secret) and against any resulting damages or expenses (including attorney's and other professional fees, royalties, settlements and judgments) arising in any way in relation to sale or use of Supplies covered by the Order (including without limitation their manufacture, purchase, use and/or sale), including such claims where Seller has provided only part of Supplies (and Seller expressly waives any claim against Buyer, as well as Buyer's affiliates and successors, that such infringement arose out of compliance with Buyer's, or Buyer's affiliates', successors', dealers' or customers' specifications or direction), (ii) to waive any claim against Buyer or Buyer's Customer(s), including any hold harmless or similar claim, in any way related to a third-party claim asserted against Seller or Buyer or Buyer's Customer(s) for infringement of any proprietary right (including any patent, trademark, copyright, moral, industrial design right or other proprietary right or misuse or misappropriation of trade secret), including claims arising out of specifications furnished by Buyer, and (iii) that if the sale or use of the Supplies is enjoined or, in Buyer's sole judgment, is likely to be enjoined, Seller will, at Buyer's election and Seller's sole expense, procure for Buyer the right to continue using the Supplies,

replace the same with equivalent non-infringing goods or modify such Supplies so they become non-infringing.

**25. Service and Replacement Parts:** So that Buyer can satisfy the current model service and replacement parts requirements of itself or its Customers, Seller agrees to supply Buyer with Supplies at the price(s) set forth in this Order plus any actual cost differential for packaging and logistics costs. If the Supplies are systems or modules, Seller agrees to sell each component or part at price(s) that will not, in the aggregate, exceed the system or module price specified in this Order, less assembly costs, plus any actual cost differential for packaging and logistics costs. After Buyer completes its purchases for its Customers' current model requirements, Seller will sell such Supplies, component parts and materials to Buyer or Buyer's designee in order to fulfill Buyer's past model service and replacement parts requirements for the longer of (i) a period of fifteen (15) years after Buyer terminates volume production of the Supplies, or (ii) the relevant Customer's requirements with respect to such service parts, at the following prices: (a) for the first five years after the end of volume production, at the stated price of Supplies set forth in the Order, plus any actual cost differential for packaging and logistics; and (b) beginning five (5) years after the end of volume production, at the stated price of Supplies set forth in the Order, plus any actual cost differentials for packaging and logistics and to take account of appropriately documented cost changes due to raw materials and set up. At Buyer's request, Seller will make service literature and other materials available at no additional charge to support Buyer's service part sales activities. Seller will keep tools and dies available and at operational conditions to fulfill all service parts requirements by the Buyer for at least 15 years after the end of volume production (or, if longer, the time period required by Buyer's Customer), and Seller will be responsible for developing the same commitments and agreements with its own suppliers.

**26. Buyer's Property; Warranty Disclaimer; Confidentiality**

(a) All information and materials (including, for example, Tooling, packaging, documents, standards, specifications, jigs, dies, returnable containers, samples, raw materials, components or other supplies, and including whether or not the foregoing are in any way modified, altered or processed, and including any accessions, appurtenances, modifications, repairs, refurbishments and replacements thereof) furnished by Buyer, either directly or indirectly, to Seller to perform an Order, along with any and all Supplies, Tooling, deliverables, data, inventions and intellectual property rights under Section 24(a), shall be and remain the sole and exclusive property of Buyer (or, as applicable in the case of certain Tooling, Buyer's Customer) (collectively "Buyer's Property"), and all right, title and interest in Buyer's Property will remain with Buyer, subject only to the limited right of possession granted to Buyer under this Section and Section 42(f) (regarding Tooling). Buyer will, at any time, have the right to immediate possession of Buyer's Property, on Buyer's demand. Any and all Supplies or other goods manufactured by Seller with the use of Buyer's Property may not be used for Seller's own use or manufactured or provided (or offered to be manufactured or provided) to third parties without Buyer's express written authorization. Seller acknowledges and agrees that Buyer's Property may be covered by one or more patents, patent applications or copyrights owned by Buyer. To the extent any intellectual property rights owned by or licensed to Seller are embodied in, or is otherwise necessary for the intended use of, any Buyer's Property, Seller hereby grants to Buyer a fully paid, irrevocable, non-exclusive, worldwide, perpetual to the maximum extent permitted by law, royalty-free license, with the right to grant sublicenses as necessary for any use of Buyer's Property, to use such intellectual property rights

(b) Buyer does not guarantee the accuracy of, or the availability or suitability of, Buyer's Property. Seller agrees carefully to check and approve, for example, all tooling, dies or materials supplied by Buyer prior to using it. Seller assumes all risk of death or injury to persons or damage to property arising from the use of Buyer's Property. BUYER WILL HAVE NO LIABILITY TO SELLER OR TO ANYONE CLAIMING BY OR THROUGH SELLER FOR ANY INCIDENTAL OR CONSEQUENTIAL OR OTHER DAMAGES OF ANY KIND WHATSOEVER RELATING TO BUYER'S PROPERTY. BUYER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE BUYER'S PROPERTY, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND SELLER WAIVES, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, ALL CLAIMS OF NEGLIGENCE AND STRICT LIABILITY.

(c) The provisions of Section 42(f) below, relating to Tooling, also apply to Buyer's Property which is not Tooling and are incorporated here by reference.

(d) Seller acknowledges that Buyer's Property includes proprietary information, regardless of whether such information is marked or identified as confidential, and is delivered to Seller on a confidential basis for the purpose of performing the Order only. All terms of the Order are deemed proprietary information of Buyer. Seller will disclose Buyer's Property within Seller's organization only to those employees who have a need to know in order to fulfill Seller's obligations hereunder and who have agreed to keep the Buyer's Property confidential, and will prevent any such Buyer's Property from being divulged to third persons not employed by Seller without the prior written consent of Buyer, including having recipients acknowledge the proprietary status of such Buyer's Property and agree to similar restrictions. These obligations will survive termination of the Order and will continue for a period of three (3) years thereafter, or for as long as the Buyer's Property remains a trade secret, whichever is longer. Notwithstanding anything to the contrary in an Order, any confidentiality or non-disclosure agreement between the parties that predates the Order will remain in effect except as expressly modified by the Order, and to the extent of a conflict between the express terms of such an agreement relating to Buyer's proprietary information and this Section 26(d), the terms of that agreement will control with respect to Buyer's proprietary information.

**27. Seller's Property:** Seller, at its expense, will furnish, keep in good working condition capable of producing Supplies meeting all applicable specifications, and replace when necessary, all machinery, equipment, tools, jigs, dies, gauges, fixtures, molds, patterns, and items other than Buyer's Property that are necessary for the production of Supplies ("Seller's Property"). Seller will insure Seller's Property with coverage for all losses for its replacement value. If Seller uses Seller's Property to produce goods or services, similar to Supplies, for other Customers, including aftermarket Customers, such goods or services shall not incorporate any of Buyer's Property, intellectual property, logos, trademarks, tradenames or part numbers. Seller shall not disclose or imply in its marketing efforts that these goods or services are equivalent to those purchased by Buyer. Seller grants to Buyer an irrevocable option to take possession of and title to Seller's Property that is special for or configured for the production of Supplies under an Order upon payment to Seller of its net book value less any amounts that Buyer has previously paid to Seller for the cost of these items, and less any amounts otherwise owing to Buyer by Seller. This option does not apply to Seller's Property used to produce goods that are the standard stock of Seller or if a substantial quantity of like goods are being sold by Seller to others. Upon the request of Buyer from time to time, Seller shall promptly provide Buyer with a then-current list of Seller's Property that is special for, or configured for, the production of Supplies under an Order, including the individual and aggregate net book value of the listed items of Seller's Property.

**28. Customs; Export Controls; Sanctions Compliance; Related Matters:** Credits or benefits resulting from an Order, including trade credits, export credits, or the refund of duties, taxes or fees, belong to Buyer. Seller will timely and accurately provide all information and certificates (including NAFTA Certificates of Origin) necessary to permit Buyer (or Buyer's Customers) to receive these benefits or credits, as well as to fulfill Seller's import, and where required by an Order, export customs related obligations, origin marking or labeling requirements, and local content origin requirements. Seller agrees to comply with all applicable export control and sanctions laws and regulations of the United States of America, of member States of the European Union, and any other relevant country (the "Export Control Laws"). Seller will not violate, and will not cause Buyer to violate, any Export control Laws (e.g., by transshipping goods through or supplying goods or services from sanctioned countries.) Export licenses or authorizations necessary for the export of Supplies are Seller's responsibility unless otherwise indicated in the Order, in which case Seller will provide the information necessary to enable Buyer to obtain the licenses or authorizations. Seller will promptly notify Buyer in writing of any material or components used by Seller in filling the Order that Seller purchases in a country other than the country in which the Supplies are delivered. Seller will furnish any documentation and information necessary to establish the country of origin or to comply with the applicable country's rules of origin requirements. Seller will promptly advise Buyer of any material or components imported into the country of origin and any duty included in the Supplies' purchase price. If Supplies are manufactured in a country other than the country in which Supplies are delivered, Seller will mark Supplies "Made in (country of origin)." Seller will provide to Buyer and the appropriate

governmental agency the documentation necessary to determine the admissibility and the effect of entry of Supplies into the country in which Supplies are delivered. Seller warrants that any information that is supplied to Buyer about the import or export of Supplies is true and that all sales covered by the Order will be made at not less than fair value under the anti-dumping laws of the countries to which the Supplies are exported. Seller will assure compliance with the recommendations or requirements of all applicable Authorized Economic Operator (AEO), governmental security/ anti-terrorism and enhanced boarder release programs (including without limitation the United States Bureau of Customs and Border Protection's Customs-Trade Partnership Against Terrorism ("C-TPAT"), the Canada Border Services Agency's Partners in Protection initiative, and the Administration General de Aduanas de Mexico's Neuvo Esquema Empresa Certificada (NEEC) program). Upon request by Buyer, or the appropriate Customs Authority, Seller will certify in writing its compliance with the foregoing.

**29. Set-Off; Recoupment:** In addition to any right of setoff or recoupment provided by law, all amounts due to Seller will be considered net of indebtedness of Seller and its affiliates or subsidiaries to Buyer and its affiliates or subsidiaries. Buyer will have the right to set off against or to recoup from any payment or other obligation owed to Seller, in whole or in part, any amounts due to Buyer or its affiliates or subsidiaries from Seller or its affiliates or subsidiaries. Buyer will provide Seller with a statement describing any offset or recoupment taken by Buyer.

**30. No Advertising:** Seller shall not, without first obtaining Buyer's written consent (and, if applicable, the written consent of Buyer's Customer(s)), in any manner (a) advertise, publish or disclose to third parties (other than to Seller's professional advisors on a need-to-know basis) in any manner the fact that Seller has contracted to furnish Buyer the Supplies covered by an Order; (b) use any trademarks or trade names or logos or confidential information of Buyer (or Buyer's Customer(s)) in Seller's advertising or promotional materials; or (c) use trademarks, trade names or confidential information of Buyer (or Buyer's Customer(s)) in any form of electronic communication such as web sites (internal or external), blogs or other types of postings. .

**31. Relationship of Parties:** Seller and Buyer are independent contracting parties and nothing in an Order will make either party the agent or legal representative of the other for any purpose. An Order does not grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Seller will be solely responsible for all employment and income taxes, insurance premiums, charges and other expenses it incurs in connection with its performance of an Order, except as expressly provided in a written agreement signed by Buyer. All employees and agents of Seller or its respective contractors are employees or agents solely of Seller or such contractors, and not of Buyer, and are not entitled to employee benefits or other rights accorded to Buyer's employees. Buyer is not responsible for any obligation with respect to employees or agents of Seller or its contractors.

**32. Non-Assignment:** (a) In addition to and without limiting Section 19(d) above, Seller may not transfer, assign or delegate, in whole or in part, any of its rights or obligations under an Order (including, without limitation, any right of payment), whether directly or indirectly, by merger, acquisition or contribution to a joint venture, without Buyer's prior written consent. In the event of any approved assignment or delegation authorized by Buyer, Seller retains all responsibility for Supplies, including, without limitation, all related warranties and claims, unless otherwise expressly agreed in writing by Buyer. (b) With Buyer's prior written consent, Seller may make an assignment of receivables due or to become due to a single financial institution; provided, however, that any such assignment shall be subject to set-off or other proper method of enforcing any claims that Buyer may have under Section 29 of this Order. (c) Buyer will have the right to assign or delegate (including without limitation by subcontract) any right or duty under an Order to any third party upon notice to Seller with or without consent, and Buyer may enter or offer to enter into a transaction that includes a sale of its assets used in connection with the purchase of Supplies under the Order, or any merger, sale or exchange of stock or other equity interests, in any case to any affiliated entity or other third party without the need for approval by Seller.

**33. Suppliers with Particular Needs:** Buyer encourages Seller to use suppliers with particular needs. A supplier with particular needs is a business, which meets one or more of the following conditions: (a) a small business, as defined in Title 15, Section 632 of the United States Code and related regulations; (b) a

small business owned and controlled by socially disadvantaged individuals (at least 51% of the business owned and controlled by one or more socially and economically disadvantaged individuals and the management and daily business operations are controlled by one or more such individuals); and (c) a business that is at least 51% owned by a woman or women who also control and operate the business. Upon Buyer's request, Seller will inform Buyer on an annual basis the percentage, based on a dollar value, of the content of the Supplies provided by suppliers with particular needs as well as the basis for claiming that such content was provided by a supplier with particular needs.

**34. Basic Working Conditions:** Seller represents that neither it nor any of its subcontractors or suppliers or other associated third parties will utilize child, slave, prisoner or any other form of forced or involuntary labor, regardless of its form or engage in abusive employment or corrupt business practices, in the supply of Supplies under an Order. Seller further represents when it delivers the Supplies that it has complied with the requirements of this Section. Buyer may retain an independent third party, or request Seller to retain one reasonably acceptable to Buyer, to: (a) audit the Seller's compliance with this Section 34 and (b) provide Seller and Buyer with written certification of Seller's compliance, including areas for potential improvement. Seller will bear the cost of any third-party audit and certification under this Section 34, regardless of which party retained the auditor. Buyer, at its option, may accept an audit or certification by Seller in lieu of a third-party certification. For purposes of this Section 34, the temporary assignment of employees of one party to the facilities operated by the other party will not affect the status or change the employment relationship of the assigned employees.

**35. Governing Law; Jurisdiction; Arbitration:** (a) Each Order and any claims relating to Supplies provided or to be provided under such Order will be governed by the laws of the State of Michigan and the United States excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980), as amended, and any conflict of laws provisions that would require application of another choice of law.

(b) Subject to Section 35(c) regarding arbitration, (i) any litigation on contractual claims arising from this Order may be brought by Buyer in any court(s) having jurisdiction over Seller or, at Buyer's option, in court(s) having jurisdiction over Buyer's headquarters -- namely, the Michigan state courts for Wayne County, Michigan or the United States District Court for the Eastern District of Michigan, in which event Seller consents to jurisdiction and service of process in accordance with applicable procedures, and (ii) any actions or proceedings by Seller against Buyer shall be brought by Seller only in the Michigan state courts for Wayne County, Michigan or the United States District Court for the Eastern District of Michigan. Buyer and Seller hereby consent to such jurisdictions and service of process in accordance with applicable procedures.

(c) The arbitration provisions of this Section 35 will be governed by the United States Federal Arbitration Act. At Buyer's option, exercised by written notice any time before or within 30 days following the service of process in a legal action, any dispute regarding the Supplies, the Order, the validity of the Order or any of these Terms, or any other matter between the parties (other than requests for injunctive relief) will be resolved by binding arbitration, conducted in the English language, as follows: (i) the arbitration will be conducted under the commercial arbitration rules of the American Arbitration Association (AAA) and under Rules 26 through 37 of the U.S. Federal Rules of Civil Procedure, (ii) if the parties cannot agree on a location within thirty (30) days of either party's request for arbitration, the arbitration will be conducted in Wayne County, Michigan, and (iii) the arbitrator will be selected from an AAA list using the AAA-recommended selection method. Each party will bear equally the costs and expenses of AAA and the arbitrator, and each party will bear its own costs and expenses -- provided, however, (1) that the failure by one party to pay its share of the arbitration fees constitutes a waiver of such party's claim or defense in the arbitration, and (2) that the arbitrator may award attorneys' fees and costs to the substantially prevailing party. In no event will any party be awarded punitive or exemplary damages. All arbitration proceedings shall be confidential, except to the extent that disclosure is necessary to enforce an arbitration award in a court of competent jurisdiction or is required by Buyer's Customer(s). The arbitration award shall be final and binding upon the parties, and enforceable in any court of competent jurisdiction.

(d) Seller acknowledges that a breach of its obligations under an Order, including without limitation Seller's obligation to supply Supplies in accordance with the Order or to transfer Buyer's Property or other bailed property to Buyer in accordance with the Order, would cause irreparable damage to Buyer, including without limitation damage to Buyer's relationship with its customers, suppliers, labor, lenders and prospective future customers, the exact amount of which would be difficult to ascertain, and that the remedies at law and monetary damages for any such breach would be inadequate. Accordingly, in the event of any action taken or threatened by Seller hereunder that, if taken, would constitute a breach of Seller's obligations under the Order, Buyer and its successors and assigns are entitled to specific performance and temporary, preliminary and permanent injunctive relief in connection with any action to enforce an Order, without the posting of any bond or other security, in addition to any other remedies Buyer may have for damages or otherwise. Seller may not take any action or position inconsistent with this acknowledgement, and Buyer will be entitled to recover its costs and expenses (including incidental and consequential damages, court costs, and attorneys' and other professional fees) arising out of the enforcement of this paragraph.

**36. Severability:** If any term of an Order is invalid or unenforceable under any applicable law or regulation, the term will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such applicable law or regulation. The remaining provisions of the Order will remain in full force and effect.

**37. Survival:** The obligations of Seller to Buyer survive termination of this Order, except as otherwise provided in this Order. Among other matters, unless specifically waived in writing by an authorized representative of Buyer, Seller's obligations with respect to service and replacement parts will survive the termination or expiration of the Order.

**38. Waiver of Jury Trial:** BUYER AND SELLER ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH OF BUYER AND SELLER, AFTER CONSULTING (OR HAVING THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO ANY ORDER OR OTHER DOCUMENT PERTAINING TO ANY ORDER.

**39. Entire Agreement; Modifications; No Implied Waiver:** (a) Except as described in Section 1, an Order, together with any attachments, exhibits, supplements, or other terms of Buyer specifically referenced in the Order, constitutes the entire agreement between Seller and Buyer with respect to the matters contained in the Order and supersedes all prior oral or written representations and agreements. An Order may only be modified (i) by a written amendment physically signed by authorized representatives of each party, or (ii) by a revision to the Order issued by Buyer on Buyer's purchase order form through Buyer's standard purchasing protocol and accepted by Seller as provided in Section 1, or (iii), in the case of changes within the scope of Section 10, by a purchase order revision issued by Buyer or by specific conditions described in the Order. In the event of a direct conflict, (A) an agreement signed by authorized representatives of Buyer and Seller (and forming a part of the Order under Section 1 above) takes precedence over other terms with respect to such direct conflict, and (B) terms on the face of a purchase order or purchase order amendment issued through Buyer's standard purchasing protocol (and forming a part of the Order under Section 1 above) take precedence over these Terms with respect to such direct conflict. Any clerical errors contained in the Order are subject to correction by Buyer.

(b) Buyer may modify these Terms with respect to future Orders and Order amendments at any time by posting revised Terms to its internet web site as listed in Section 1 or at such other internet web site as is specified in writing by Buyer to Seller, and such revised Terms will apply to all Orders and Order amendments issued thereafter. It is the responsibility of Seller to review and obtain a copy of the current version of the Terms. The Terms that are applicable to the Order or Order amendment shall be the version of the Terms that is in effect on the date of the Order or the Order amendment applicable to the Order, whichever date is later.

(c) The failure of either party at any time to require performance by the other party of any provision of an Order will in no way affect the right to require performance at any later time, nor will the waiver of either party of a breach of any provision of an Order constitute a waiver of any later breach of the same or any other provision of an Order.

**40. Conflict of Interest:** Seller represents and warrants that its performance of the Order will not in any way conflict with any continuing interests or obligations of Seller or its employees or contractors. Seller further warrants that while the Order is in effect, Seller and those of its employees and contractors participating in the performance of the Order will refrain from any activities which could reasonably be expected to present a conflict of interest with respect to Seller's relationship with Buyer or its performance of the Order, including without limitation, the provision of (or attempts to provide) Supplies directly to Customers without Buyer's express written consent.

**41. Sales Tax Exemption:** Buyer certifies that Supplies purchased under an Order and identified as industrial processing are eligible for state and federal sales tax exemption under the federal identification number indicated on the face of the Order or otherwise provided by Buyer.

**42. Tooling**

(a) Tooling as used in these Terms includes all prototype and production tools, equipment, dies, fixtures, jigs, gauges, castings, molds, patterns, related software, returnable containers, specifications, embodiments and all intellectual property embodied therein, paid for or to be paid for or otherwise furnished by Buyer (or Buyer's Customer) (with all accessions, appurtenances, modifications, repairs, refurbishments, and replacements to the Tooling) and is included in Buyer's Property. Tooling also includes, as applicable, Seller's Property of any of the foregoing types for which Buyer has an option to purchase under Section 27 above, unless the context of this Section 42 requires otherwise.

(b) Unless an Order is issued on a fixed-price basis, the price of the Tooling will not exceed the lowest of: (a) the maximum amount reimbursable specified on the Order; (b) the Seller's actual verified costs of acquiring the Tooling from a toolmaker without markup; or (c) the Seller's actual verified costs of fabrication of the Tooling (subject to applicable Buyer's guidelines). Buyer shall have access to Seller's premises, prior or subsequent to any payment, to inspect work performed and to verify charges submitted by Seller against an Order or amendment. Seller further agrees to retain all cost records for a period of two (2) years after receiving final payment of the charges.

(c) Notwithstanding any other provision of these Terms, and except as otherwise expressly agreed in writing, where Buyer is entitled to receive reimbursement or other payment from a Customer for Supplies to be provided by Seller to Buyer under an Order that constitute tooling or capital equipment, Seller shall be entitled to receive payment under the Order for such tooling or capital equipment only after and to the extent of, and in proportion to, Buyer's actual receipt of such reimbursement or other payment from the Customer.

(d) The Buyer becomes the sole owner of all Tooling as soon as it is fabricated or acquired by the Seller. Seller acknowledges and agrees that the Buyer takes title to the Tooling even if the Seller has not yet been paid for the Tooling. The Seller has no property or other rights in the Tooling. The Seller has no power to transfer any rights or grant a security interest in the Tooling to a third party. The Seller waives any objection to the Buyer's repossession and removal of the Tooling for any or no reason, including bankruptcy or insolvency proceedings. Seller waives, to the extent permitted by law, any lien or other rights that Seller might otherwise have on any Tooling, including, without limitation, molder's and builder's liens.

(e) To the extent permitted by applicable law, any payments made by Buyer for Tooling are expressly intended by Buyer to be held in trust for the benefit of any subcontractor(s) used by Seller to produce the Tooling that are covered by such payments and Seller agrees to hold such payments as trustee in express trust for such subcontractor(s) until Seller has paid the subcontractor(s) in full for the Tooling. Seller acknowledges and agrees that such subcontractor is an intended third party beneficiary of the terms of this Section 42(e) relating to the express trust and as such, such tooling subcontractor shall have the

right to enforce these terms of this Section 42(e) directly against Seller in subcontractor's own name. Seller agrees that Buyer has no obligation to Seller or Seller's tooling subcontractor under this Section other than making the payment to Seller in accordance with a Tooling order. In the event Seller's subcontractor brings an action against Seller under this Section, Seller agrees that it will not join Buyer in any such action.

(f) Tooling will be held by Seller or by a third party, to the extent that Seller has transferred possession of Tooling to a third party, on a bailment basis, as a bailee-at-will. Seller bears the risk of loss of and damage to Tooling. Tooling shall be housed, maintained, repaired and replaced by Seller at Seller's expense in good working condition capable of producing Supplies or other goods meeting all applicable specifications, shall not be used by Seller for any purpose other than the performance of an Order, shall be deemed to be personalty, shall be conspicuously marked by Seller as the property of Buyer (or if applicable and as directed by Buyer, as the property of Buyer's Customer), shall not be commingled with the property of Seller or with that of a third person, and shall not be moved from Seller's premises without Buyer's approval. Seller shall insure Tooling with coverage for all losses for its replacement value. Buyer shall have the right at any time to enter Seller's premises to inspect Tooling and Seller's records regarding Tooling. Only Buyer (and, if applicable and directed by Buyer, Buyer's Customer) has any right, title or interest in Tooling, except for Seller's limited right, subject to Buyer's unfettered discretion, to use Tooling in the manufacture of Supplies. Buyer and its affiliates shall have the right to take immediate possession of Tooling at any time without payment of any kind. Seller agrees to cooperate with Buyer if Buyer elects to take possession of Tooling. Likewise, effective immediately upon written notice to Seller, without further notice or court hearings, Buyer has the right to enter the premises of Seller and take possession of all of Tooling. Seller expressly waives any right to additional notice or process and agrees to provide Buyer or its nominee(s) with immediate access to Tooling. Seller grants to Buyer a limited and irrevocable power of attorney, coupled with an interest, to execute and record on Seller's behalf any notice or financing statements with respect to Tooling that Buyer determines are reasonably necessary to reflect Buyer's interest (and, if applicable, the interest of Buyer's Customer) in Tooling. At Buyer's request, Tooling shall be immediately released to Buyer or delivered by Seller to Buyer either (i) FCA transport equipment at Seller's plant, properly packed and marked in accordance with the requirements of Buyer's selected carrier (Incoterms 2010), or (ii) to any location designated by Buyer, in which case Buyer will pay Seller the reasonable costs of delivery. Seller waives, to the fullest extent permitted by law, any liens, claims, encumbrances, interests or other rights that Seller might otherwise have or assert on or with respect to any of Tooling, including but not limited to molder's and builder's liens. Seller agrees that in the event of such failure or threatened failure for any reason, and in addition to any other remedy to which Buyer may be entitled, Buyer shall be entitled to institute and prosecute proceedings in a court to obtain temporary and/or permanent injunctive or other equitable relief to enforce any provision hereof without necessity of posting bond or proof of actual injury or damage.

(g) If the Buyer issues an Order for Tooling, the Seller will design and fabricate, rework, or acquire Tooling that fully conforms to the specifications and other requirements of the Buyer. The Tooling must be capable of producing the appropriate volume projections for the Supplies during the life of the part as well as satisfying the requirements for Service and Replacement Parts under Section 25. The Tooling may not contain or be marked in any manner with the name of any person or entity other than the Buyer (or if applicable and as directed by Buyer, with the name of Buyer's Customer),

(h) The Buyer, at any time, including prior to payment, may ask the Seller to provide status reports on the construction or acquisition of the Tooling. Each status report will identify the Tooling, identify any subcontractors working on the Tooling, state the percentage of completion of the Tooling, and state the percentage of sunk costs already expended. The Tooling is subject to inspection by Buyer at any time during normal business hours.

(i) If, at any time, the Seller believes that the Tooling might not be completed by the completion date specified in the Order (or at the time required consistent with any other order, for example relating to Supplies to be produced using the Tooling), the Seller will notify the Buyer as soon as practicable. Sending this notice will not relieve the Seller of either its obligation to complete the Tooling on the completion date or its liability for any additional costs incurred by the Seller or the Buyer as a result of any delay.

(j) The Seller, at its own expense, will manufacture the requisite number of sample Supplies or other goods using the Tooling in order to successfully complete the Buyer's approval process, and this shall be done in sufficient time to permit subsequent correction by Seller of any faults or defects before the completion date specified in the Order. Prior to shipment, Seller, at Seller's expense, shall inspect samples manufactured from the Tooling to be supplied hereunder and shall certify results in the manner requested by Buyer. Unless otherwise stated in the Order, the Seller has no claim for payment for Tooling until the Buyer has approved the Tooling.

(k) The Seller's warranties for Tooling are the warranties for Supplies under this Agreement, including Section 11. Buyer expressly disclaims liability for damage to persons or property, resulting from the use of the Tooling, and Buyer's warranty disclaimers and the limitation of liability under Section 26(b) for Buyer's Property are applicable to Tooling.

(l) If all or part of the fabrication, modification, repair or refurbishment of the Tooling will be subcontracted to a third-party toolmaker, the Seller will: (a) inform and obtain the approval of the Buyer in advance; (b) inform the toolmaker in writing that it is a bailee-at-will, through the Seller, of Tooling owned by the Buyer; (c) obtain a written agreement from the subcontractor to be bound by these Terms and make Buyer a third party beneficiary to such agreement and (d) be solely responsible for payments to the toolmaker. The Seller will defend and indemnify the Buyer for all costs incurred (including actual fees for attorneys, consultants and experts) in connection with any claim that challenges the Buyer's sole right, title and interest in the Tooling, or right to possession of the Tooling, brought by any third party, including toolmakers, subcontractors, and lending institutions.

(m) The Seller will at its expense: (i) use the Tooling in compliance with all applicable laws, regulations, orders, and standards; and (ii) maintain the Tooling, including its repair or replacement, in the condition necessary to produce the Supplies in accordance with any and all standards, specifications or instructions furnished by Buyer and be responsible for all wear and tear.

(n) In the event the Seller fails to comply with any of the requirements of an Order, and the Buyer determines that it is necessary to either take possession of the Tooling or have it relocated, the Seller will provide the Buyer or its designees with any technical information for the Tooling requested by the Buyer or its designees that is required for the relocation, installation, assembly, maintenance, certification, or use of the Tooling.

(o) Nothing herein contained or capable of being inferred from any possession of Tooling by Seller shall obligate Buyer in any way to purchase Supplies or goods from Seller or to create any defense in favor of Seller, whether by setoff, contract, or otherwise, to any demand by Buyer for possession of the Tooling.

(p) The term "Supplies" as defined in Section 1 of these Terms includes, without limitation, any Tooling ordered by Buyer under an Order. These Terms in their entirety apply to the purchase of Tooling subject to an Order – provided that in the event of a conflict between this Section 42 (which relates solely to Tooling) and any other portion of these Terms, the conflict in relation to Tooling shall be resolved by giving effect to this Section 42, and by giving effect to the other provisions of these terms to the fullest extent possible consistent with giving effect to this Section 42.

**43. Subcontracts:** Seller will inform Buyer in writing of any third parties to whom Seller proposes to subcontract any of the work required under an Order, specifying in detail the work proposed to be subcontracted to such third party, and Seller will not subcontract any of its obligations under an Order without the prior written consent of Buyer. Any such consent of Buyer will not release Seller from, or limit, any of Seller's obligations under an Order. Seller will ensure that the terms of its contracts with subcontractors cause Seller's subcontractors to provide, to and for the benefit of Buyer and its Customers, all of the rights and licenses and benefits specified in the Order (including but not limited to those set forth in Sections 2, 7, 10 -18, 21, 23 - 40, and 42-45). Seller warrants and guarantees that any such subcontractor's performance will satisfy all requirements applicable to Seller under the related Order.

**44. Claims by Seller:** Any legal action by Seller under any Order must be commenced no later than (1) year after the breach or other event giving rise to Seller's claim occurs, or Seller becomes aware of the existence (or facts and circumstances giving rise to the existence) of such claim whichever occurs first.

**45. Disposal of Scrap:** Any Supplies, Tooling, goods, assemblies, subassemblies of materials related to an Order which are disposed of by Seller in any manner other than through a sale to Buyer under the terms of the Order (including without limitation Supplies determined to be or rejected as nonconforming or that become obsolete or surplus) are scrap ("Scrap") and must be mutilated or otherwise rendered unusable for anything other than material content. If the Scrap is the subject of a cancellation claim, mutilation must occur only after audit inspection and receipt of disposal instructions from Buyer. Buyer has the right to examine all pertinent documents, data and other information relating to the mutilation of any and all Scrap. In addition, Buyer has the right to visually inspect and audit any facility or process relating to the mutilation of Scrap. Seller must retain all relevant documents, data and other written information relating to its obligations to mutilate Scrap under the Order for at least four (4) years following the later of last delivery of the Supplies or final payment under the Order, and such documents, data and written information will be made available to Buyer upon Buyer's request.

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

**47. Duty to Inform and Notify:** Seller will promptly notify Buyer in writing of any of the following events or occurrences, or any facts or circumstances reasonably likely to give rise to any of the following events or occurrences: (a) any failure by Seller to perform any of its obligations under an Order (including without limitation these Terms); (b) any delay in delivery of Supplies under an Order; (c) any defects or quality problems relating to the Supplies covered by an Order; (d) any changes in Seller's corporate structure or organization (including direct or indirect change in control or ownership of Seller); (e) any deficiency in Buyer specifications, samples, prototypes or test results relating to an Order; (f) any failure by Seller, or its subcontractors or common carriers, to comply with applicable laws and regulations, including, without limitation, with respect to transportation of goods under an Order; (g) the occurrence of any event described in Section 18(b) or Seller becomes aware of events or circumstances likely to give rise to any such events; or (h) any change in Seller's authorized representatives, insurance coverage or professional certifications (e.g., ISO 9001).