

## RESRG AUTOMOTIVE

### NORTH AMERICA PRODUCTION PURCHASING TERMS AND CONDITIONS

#### 1. Governing Provisions, Offer and Acceptance

- 1.1 Each Purchase Order provided by Buyer to Seller incorporating these Terms and Conditions (the "**Purchase Order**") is an offer or counteroffer by Buyer, or its applicable Affiliate (as defined below) identified on the Purchase Order ("**Buyer**") to purchase the products and/or services (collectively, the "**Products**") described in the Purchase Order in accordance with these Terms and Conditions (these "**Terms**"). A Purchase Order is not a confirmation or acceptance of any offer made by Seller; and acceptance of this offer is expressly made conditional on Seller's assent to these Terms and the other provisions contained in the Purchase Order.
- 1.2 Each Purchase Order, including these Terms, shall be deemed accepted by Seller's shipment of Products, performance of services, commencement of work, written acknowledgment, or any other conduct of Seller that recognizes the existence of a contract pertaining to the subject matter hereof. Additionally, each Purchase Order shall be deemed accepted five (5) business days after Buyer delivers the Purchase Order to Seller, if Seller fails to object in writing to the Purchase Order within such timeframe.
- 1.3 Seller's terms and conditions of sale or other deviating, conflicting or supplementary terms and conditions shall not become part of the supply relationship, not even if Seller refers to them and Buyer does not expressly object to them, unless they have been expressly recognized by Buyer in writing. The same applies in particular if Buyer accepts Products without reservation in the knowledge that Seller's terms and conditions of sale conflict with, supplement or deviate from these Terms. Buyer hereby objects to any additional or different terms contained in any of Seller's quotation, acknowledgment, invoice or other documents. No such additional or different terms will be of any force or effect.
- 1.4 These Terms, and together with the Purchase Order and any additional documents incorporated by reference therein (together, the "**Agreement**") collectively constitute the entire agreement between the parties on the subject of the transaction described herein and therein, superseding all prior written and oral communications and negotiations.
- 1.5 In the event that the Products described in these Terms are delivered or rendered directly to Buyer by a company affiliated with Seller ("**Seller's Affiliate(s)**"), and a contractual relationship arises between Seller's Affiliate and Buyer, the provisions agreed in these Terms shall also apply to Seller's Affiliate, unless other written agreements exist between Seller's Affiliate and Buyer. Seller assures Buyer that it has the necessary power of representation for the aforementioned provision.
- 1.6 Buyer also includes any company affiliated with Buyer ("**Buyer's Affiliate(s)**") that uses these Terms as a basis when placing Purchase Orders with Seller. Buyer and Seller agree that Buyer's Affiliates are entitled to invoke these Terms, and Seller must grant these Terms to Buyer's Affiliates.
- 1.7 For the purposes of these Terms, "**Affiliate**" means any entity that directly or indirectly: (i) controls a party, (ii) is controlled by a party, or (iii) is under common control with a party. For the purposes of this definition, "**control**" means the direct or indirect ownership of more than 50% of the voting rights or share capital of an entity,

or the power to direct or cause the direction of the management and policies of an entity, whether through ownership, by contract, or otherwise.

## **2. Capacity, Quantity**

- 2.1 Unless the Purchase Order is for a fixed quantity, or specifies a different percentage, the quantity applicable to each Purchase Order, shall be one hundred percent (100%) of Buyer's requirements for the Products for the applicable program. Seller is obligated to provide Products to Buyer in the quantity specified in any firm release issued by Buyer ("**Release**").
- 2.2 Seller shall ensure sufficient production and delivery capacities of its suppliers and, in order to secure its pre-material requirements, shall transmit the necessary requirements of Buyer to its suppliers. Unless prohibited by law, Seller must prioritize the delivery of the Products to Buyer. In the event of any capacity shortages, prioritized delivery to Buyer must take place.
- 2.3 A Release will specify a firm quantity of Products ("**Production Release Period**") and/or may specify a firm quantity of raw materials/components ("**Material Release Period**") that Buyer will be responsible for in the event of termination of the Agreement. Releases may include Forecasts (as defined in Section 2.5), but Releases are only binding upon Buyer for, and Buyer will have no obligation or liability beyond, the Production Release Period and Material Release Period specified in the Release. The Production Release Period determines the firm quantities for which Buyer is obligated to accept and pay for the Products. The Material Release Period determines the quantities of the call-off for which Buyer must pay the proven costs for the purchase of the raw materials/components, as far as the raw materials/components can demonstrably not be used by Seller for other purposes within a reasonable period of time. Buyer is also entitled to demand the delivery of these raw materials/components. Seller acknowledges and agrees to accept the risk associated with the lead times of the various components if they are beyond the production and material release period. The Material Release Period and Production Release Period begins with the date of creation of the Release and is valid – until a new Release is received – progressively on a daily basis for the specified period.
- 2.4 Unless otherwise specified or indicated in the Release, the Production Release Period will be four (4) weeks and the Material Release Period six (6) weeks.
- 2.5 From time to time and in connection with quotations, requisitions, Releases and/or Purchase Orders, Buyer may provide Seller with estimates, forecasts or projections of its future volume or quantity requirements for the Products and/or the term of a program ("**Forecasts**"). Unlike the Production Release Period and Material Release Period in the Release for a firm quantity of Products and raw materials/components, Forecasts are not binding on Buyer. Seller acknowledges that Forecasts, like any other forward-looking estimates, are based on a number of economic and business factors, variables and assumptions, some or all of which may change over time, and may or may not be accurate at the time they were made or at any later time. Buyer makes no representation, warranty, guaranty or commitment of any kind or nature, express or implied, regarding any Forecasts or other estimate or projection provided to Seller, including as to its accuracy or completeness. Seller accepts that Forecasts may not be accurate and that actual volume or duration could be less than or greater than the Forecasts.

### **3. Duration**

- 3.1 Unless stated otherwise on the face of the Purchase Order, the duration of the Agreement shall be the life of the program(s) into which the Products ultimately are incorporated, including any extensions or renewals thereof, plus applicable service and replacement parts requirements of Buyer's customers. In addition, Buyer may, in its sole discretion and upon written notice to Seller, extend the duration of the Agreement for the life of any successor and/or derivative program(s) for which Buyer wishes to use the Products. Buyer and Seller acknowledge, however, that this Section does not affect or otherwise change Buyer's rights of termination set forth herein.
- 3.2 If, at the end of the term of the Agreement - irrespective of whether the non-binding Forecast specified therein has been reached - Buyer has entered into negotiations with Seller on a follow-up agreement and if the parties are unable to reach an agreement on the prices by the end of the then current term of the Agreement, the parties hereby agree that the terms of the expiring Agreement shall continue to apply until an agreement has been reached on the follow-up agreement, but for no longer than twelve (12) months after the end of the then current term of the Agreement. In this case, each party may demand negotiations on a price adjustment in the event of cost changes that were not foreseeable when the Agreement was concluded.
- 3.3 Upon the expiration or termination of the Agreement, Seller shall cooperate with Buyer and provide all reasonably requested support and information required by Buyer to facilitate Buyer's sourcing of the Products to a replacement supplier.

### **4. Shipping, Packing, Ownership, and Risk of Loss**

- 4.1 Unless otherwise stated in the relevant valid Purchase Order, all Products will be delivered DDP Buyer's facility, as that term is defined in *Incoterms* ®2020.
- 4.2 All Products will be suitably packed in such a way as to reasonably ensure their survival in mint condition and shipped in accordance with the shipping instructions specified herein and otherwise in accordance with the requirements of common carriers. Packing slips must be included with all shipments and the Purchase Order number, and Buyer's part number if applicable must be shown on each item, packing slip, and invoice. No further charges shall be made to Buyer for boxing, packing, crating, or carting unless separately itemized in the relevant Purchase Order or the Agreement.
- 4.3 Title to the Products shall pass from Seller to Buyer upon delivery.
- 4.4 Regardless of the shipping term, all risk that the ordered Products damaged in transit will be upon Seller until conforming Products have been actually received, inspected and accepted by Buyer. Seller will be liable to Buyer for any loss or damage resulting from Seller's failure to act so as to provide adequate protection during shipment. Any additional expenses, charges, or claims incurred as a result of deviation from the specified route, noncompliance with other shipping instructions, or improper description of the shipment in shipping documents will be the responsibility of Seller.

### **5. Delivery Dates and Delivery Delays, Procurement Responsibility**

- 5.1 Seller will deliver the Products in the quantities and within the time (which is of the essence) set forth in the Purchase Order or the applicable Releases furnished by Buyer.
- 5.2 Seller recognizes that the Products will be supplied just-in-time with, or as part of, products manufactured or supplied by Buyer to its customers and that any delay in supply of Products to such customers may expose Buyer to considerable expense,

including a production standstill. Seller is therefore obligated to take all measures to avert a delay. If Seller knows or has reasonable grounds to suspect that the delivery is likely to be, or will be, delayed, it shall inform Buyer immediately in writing, providing information as to the expected length of the delay and the reason for the delay. Seller will make shipment by the most expeditious available method of transportation, and any additional cost of such shipment will be borne by Seller. Failure of Buyer to insist upon strict performance or the acceptance of delayed deliveries by Buyer will not constitute a waiver of any of the assertion of claims for compensation.

- 5.3 Failure of Seller to comply with such requirements will entitle Buyer, in addition to any other legal rights or remedies, to cancel any Release and/or terminate the Agreement and be relieved of all liability for any undelivered portion.
- 5.4 Buyer does not have to accept premature deliveries, excess deliveries or partial deliveries that have not been agreed upon. Seller bears the risk of loss for Products delivered before the delivery date. Buyer is entitled to return excess deliveries at Seller's expense; Seller must bear all packaging, processing, sorting and transport costs. Buyer is entitled to store all Products or excess deliveries of Products delivered before the agreed delivery date at Seller's risk and expense until the due delivery date.

## **6. Documentation**

- 6.1 Packing slips (which shall accompany the Products), shipping documents, Advanced Shipping Notices (“ASN”), SIDs (system identifiers), and bills of lading, shall be mailed and/or sent electronically on the shipment date, and must show the Purchase Order number, Purchase Order date, Seller, and item and reference numbers of Products, and, in the case of partial delivery, the outstanding balance remaining to be delivered.
- 6.2 Value of the Products shall not be declared on shipments F.O.B. point of origin. For each international shipment, Seller shall include a customs valuation invoice (using the value set forth in the Purchase Order), with a master packing slip and shall furnish all other required export/import documents. Export and trade credits shall belong to Buyer. Seller shall furnish: (i) all documents required to obtain export credits and customs drawbacks; (ii) certificates of origin of the materials and Products provided and the value added in each country; (iii) all North American Free Trade Agreement, American Automobile Labeling Act and other related documents; (iv) all required export licenses or authorizations; and (v) any other documents requested by Buyer or any of its customers.
- 6.3 Seller warrants that the contents of such documents shall be true and accurate. Seller shall indemnify Buyer for any damages, including but not limited to duties, interest and penalties, arising from a false or inaccurate statement.

## **7. Notification of Defects, Inspection, Acceptance, and Rejection**

- 7.1 Notwithstanding prior inspections, all Products are subject to final inspection and approval at Buyer's plant or other place designated by Buyer and, notwithstanding any payment that may be made, no Products are deemed accepted until such final inspection and approval.
- 7.2 Buyer shall have the right (but not the obligation) to inspect, review and test all Products purchased hereunder (and work in progress relating thereto), special tooling, materials and workmanship at any place and at any reasonable time and from time to time before, during or after manufacture and delivery. If any inspection or test is to be made on the premises of Seller, Seller without additional charge will provide all

reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. If Buyer deems further measures necessary due to the inspection, Seller is obligated to immediately draw up an action plan, implement it promptly at its own expense and inform Buyer of the progress and final implementation. Buyer (including its employees) will treat all confidential information obtained during the inspection as confidential in accordance with Section 22.

- 7.3 An inspection or test shall not be deemed acceptance, nor shall it release Seller from the fulfillment of any express or implied condition of the Agreement. In the case of development work or the start of serial production, Buyer's approval does not release Seller from its product liability or breach of warranty.
- 7.4 Seller shall carry out an inspection of the Products and shall maintain a record of all inspections for a period of fifteen (15) years after the end of production. Buyer shall be entitled to inspect and make copies of such records and documents.

## **8. Warranties**

- 8.1 If Buyer experiences any breaches of any warranty, Buyer shall have the right, in addition to exercising all other rights and remedies Buyer may have under the Uniform Commercial Code and any other applicable statutes or law, to take the following actions, at Buyer's option: (i) retain the defective Products in whole or in part with an appropriate adjustment in the price for the Products; (ii) require Seller to repair or replace the defective Products in whole or in part at Seller's sole expense, including all shipping, transportation, and installation costs; (iii) correct or replace the defective Products with similar items and recover the total cost relating thereto from Seller, including but not limited to the cost of Product recalls and the scrapping of finished goods the Products are incorporated into; or (iv) reject the defective Products. If Seller fails after reasonable notice to use its best efforts and promptly repair or replace non-conforming Products, Buyer may repair or replace the defective Products and charge all related costs to Seller without voiding the warranties herein and without Buyer waiving any other rights or remedies. Further, Buyer will be reimbursed by Seller for all of its costs and expenses in connection with the storage, handling, packing and/or transporting of any such defective or otherwise nonconforming Products, and Seller assumes all risk of loss or damage in transit to Products returned by Buyer pursuant hereto.
- 8.2 **"Warranty Period"** shall mean the time period beginning on the day of first use of the Products by Buyer or acceptance by Buyer, whichever occurs later, and continuing until the later of: (i) 60 months; (ii) the period specified in the Purchase Order; (iii) the period of time provided by Buyer to its customers, (iv) the period provided under applicable law; or (v) if the Products are utilized for new vehicles, the same period as the new vehicle warranty period offered to retail purchasers in any country in which the vehicle incorporating the Products is sold. Seller may contact Buyer's representative for information regarding those countries in which vehicles incorporating the Products will be sold.
- 8.3 In addition to Seller's customer warranties, any express warranties set forth in the Agreement, any statutory warranties or any warranties implied by law, Seller expressly warrants that all of the Products provided under the Agreement and all other Purchase Orders: (i) do not, and are not claimed to, violate any patent, trademark, copyright, or any other intellectual property right of a third party and may be properly imported into the United States or any other country where Buyer is located; (ii) shall strictly conform with all specifications, drawings, statements on containers or labels, descriptions and samples furnished to or by Buyer (even if the design has been approved of by Buyer), and all applicable industry standards, laws and regulations in force in countries where

such Products or vehicles equipped with such Products are to be sold; (iii) shall be free from defects in design, material and workmanship (latent or otherwise) and shall be new and of the highest quality; (iv) shall be free and clear of all liens, claims or other encumbrances, and that Seller is conveying good title to Buyer; (v) shall be merchantable, of good material and workmanship, and safe, fit and sufficient for the particular purposes intended by Buyer which purposes Seller acknowledges are known to it; (vi) shall be adequately contained, packaged, marked and labelled; (vii) in the case of services, all services performed on behalf of Buyer shall be performed in competent, workmanlike manner; (viii) the Products shall be manufactured in accordance with all applicable laws, regulations, industry standards or other standards, labelling, transporting, licensing approval or certification requirements in the countries where the Products will be sold or used; and (ix) Seller has complied with QS 9000, ISO 14001, IATF 16949, PPAP, APQP, and the various OEM End of Life Vehicle (“ELV”), VDA Volume 2 "Securing the Quality of Deliveries, Production Process and Product Approval" in its currently applicable version, reporting and other requirements (together referred to as the “**Quality Requirements and Procedures**”), in fulfilling the Agreement and all other Purchase Orders. All warranties shall survive inspection, test, delivery, acceptance, use and payment by Buyer and shall inure to the benefit of Buyer, its successors, assigns, customers, and the users of Buyer’s goods and services. These warranties may not be limited or disclaimed.

- 8.4 Any tests and validations only represent additional minimum requirements and not a final acceptance of the quality of the Products. Compliance with these minimum requirements does not exclude the existence of a material defect or defect of title.
- 8.5 If delivery is made as contractually agreed to one or more of Buyer’s Affiliates or to another supplier engaged by Buyer, the respective Buyer’s Affiliate or supplier is entitled to assert claims for material defects against Seller on behalf of Buyer.
- 8.6 Seller waives any claim against Buyer and its customers, including any hold-harmless or similar claim, whether known or unknown, contingent or latent, in any way related to a claim asserted against Seller or Buyer for breach of warranty infringement of any patent, trademark, copyright or other proprietary right, including claims arising out of compliance with specifications furnished by Buyer.
- 8.7 In the event that Buyer, or its customer voluntarily or pursuant to a government mandate, makes an offer to owners of vehicles (or other finished goods) on which the Products, or any parts, components or systems incorporating the Products, are installed to provide remedial action to address a defect or condition that relates to motor vehicle safety or reliability or the failure of the vehicle to comply with any applicable law, safety standard or guideline or to prevent personal injury or death, whether in connection with a recall campaign or other customer satisfaction or corrective service action (a “**Remedial Action**”), the Warranty Period shall continue for such time period as may be dictated by Buyer’s customer or the federal, state, local or foreign government where the Products are used or provided and Seller shall fully comply with the requirements of the Agreement. Notwithstanding the expiration of the Warranty Period, Seller shall nonetheless be liable for all costs and damages associated with any Remedial Action to the extent that such Remedial Action is based upon a reasonable determination (including by use of statistical analysis or other sampling methodology) that the Products fail to conform to the warranties set forth in the Agreement. Where applicable, Seller shall pay all reasonable expenses associated with determining whether a Remedial Action involving the Products is necessary. Buyer and Seller agree that any Remedial Action involving the Products shall be treated separately and distinctly from similar Remedial Actions of other goods of Seller;

provided that such separate and distinct treatment is lawful and Seller shall in no event fail to provide at least the same protection to Buyer on such Products as Seller provides to its other customers in connection with such similar Remedial Actions.

## **9. Quality Assurance**

- 9.1 All supplier manuals, code of conduct, guidelines, procedures and released requirements that are provided by Buyer to Seller or otherwise available on Buyer's web site at [RESRG Automotive Documents](#) (together, the "**Supplier Manuals**"), as amended from time to time, are incorporated by reference. In the event of a conflict between any Supplier Manuals and these Terms, these Terms shall govern.
- 9.2 Prior to the start of series production, the Products must be approved by Buyer in accordance with the applicable initial sample inspection procedure (PPF/PPAP) and, if applicable, by Buyer's customer. Any deviation from the agreed quality identified during initial sample inspection and approval shall not lead to a change in the agreed quality without the express prior written consent of Buyer.
- 9.3 Seller agrees to participate in Buyer's quality and development program(s) and to comply with all Quality Requirements and Procedures specified by Buyer, as revised from time to time.
- 9.4 Seller shall bear any and all costs associated with quality issue investigations, containment and Remedial Actions on account of nonconforming or otherwise defective Products provided by Seller to Buyer (including third party activities identified and initiated by Buyer). Seller is obligated to provide all reasonable support requested by Buyer to address immediately and correct the quality of Products provided including, without limitation, the submission of 8D-reports, root cause analyses and corrective action plans within the timeframes specified by Buyer. Seller shall provide additional resources, as necessary and as identified at Buyer's discretion, to support product development, process development, validation, production launch, or any issue attributable to Seller that may jeopardize the success of the manufacture or assembly of any Products or of the program.
- 9.5 Seller is responsible for all sub-tier providers of goods or services. Seller shall impose the same quality requirements as those imposed on Seller by Buyer upon its subcontractors and must maintain adequate development, validation, launch, and ongoing supervision to assure all Products provided to Buyer conform to all specifications, standards, drawing, samples and descriptions, including, without limitation, as to quality, performance, fit, form, function and appearance, under the Agreement.

## **10. Customer Support**

- 10.1 As all elements of the automotive tiered-supply network must work together to ensure that Buyer's customer's terms, conditions and requirements are met, it is the intent of both Seller and Buyer that the applicable terms, conditions and requirements of Buyer's customer shall flow through Buyer to Seller to the extent that they do not conflict with the terms of the Agreement. Seller shall indemnify and hold harmless Buyer from any and all direct and indirect claims (including, but not limited to, claims for death, personal injury or damage to health or property), damages (including all indirect and consequential damages and environmental damages), costs, expenses, losses and demands from Buyer's customer relating to any actual or alleged problem or issue with the Products sold by Seller under any Purchase Order or the Agreement, or the manner in which Seller has supplied such Products under the Agreement.

10.2 The automotive industry is customer focused and Seller agrees to work with Buyer in good faith to meet the requirements of Buyer's customers relating to the Products.. In the event that any requirement imposed by the Agreement on Seller is found to be unenforceable or a gap is otherwise created in the terms applicable to any Purchase Order through operation of law, conflict in terms or otherwise, the parties agree that the corresponding requirement of Buyer's customer 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 Buyer's customer that would apply in such an event.

## **11. Service Parts**

11.1 To the extent that the Agreement or any other Purchase Order covers Products which are parts, components, items, tooling, or services being supplied to or for the benefit of any customer of Buyer, Seller acknowledges and agrees that such Products must be in compliance with all of the applicable requirements, specifications, standards, audit standards, and terms and conditions for such Products which are set forth in the customer's purchase documents.

11.2 Upon receipt of a Release, Seller shall sell to Buyer all Products necessary for Buyer to fulfill Buyer's and its customer's service and replacement parts requirements for its current production model at the then-current production prices plus any actual net cost differential for required unique packaging.

11.3 If the Products are systems, modules or assemblies, Seller shall sell the component or parts of such systems, modules or assemblies at prices that will not in the aggregate exceed the then current production price of the system, module or assembly less the costs of labor involved in connection with the system, module or assembly plus any actual net cost differential for required unique packaging.

11.4 After termination of the current model production of the vehicle involved and for fifteen (15) years thereafter (the "**Service Parts Period**"), to sell to Buyer quantities of Products sufficient to fulfill one hundred percent (100%) of Buyer's and its customers' service and replacement parts requirements for past model years at the prices then specified in the last Purchase Order for current model production plus any actual net cost differential for required unique packaging, shipping and handling.

11.5 If a dispute arises between Seller and Buyer regarding the price of service or replacement parts under this Section, Seller shall continue to supply Buyer's requirements for service and replacement parts at the production prices set forth in the Purchase Order pending resolution of such dispute.

11.6 For the avoidance of doubt, Seller shall be responsible for the storage and maintenance of all tooling necessary to fulfill Buyer's current-model service requirements under this Section, including all costs and expenses related to such storage and maintenance.

11.7 Unless otherwise specified by Buyer, Seller's obligation to provide service parts under this Section shall survive the expiration, termination, or cancellation of the Agreement for the duration of the Service Parts Period as defined in Section 11.4, provided, however, that in the event of an extraordinary termination of the Agreement by Seller for good cause attributable to Buyer, the parties shall negotiate in good faith appropriate arrangements for the continued supply of spare parts during the remaining Service Parts Period.

## **12. Prices, Competitiveness**

- 12.1 Prices for the Products are specified with binding effect in the Purchase Order. All prices are fixed prices and represent the total price for the manufacture and delivery of Products and for the provision of services by Seller. Without limitation, the agreed price shall cover all costs and services of Seller associated with the fulfilment of the Purchase Order. Buyer shall only reimburse Seller for additional costs over and above the price if and to the extent the parties have expressly agreed to this in writing.
- 12.2 Seller acknowledges and warrants that: (i) the prices set out in the respective Purchase Order are final and no surcharges, premiums or other additional fees or taxes of any kind may be added without Buyer's prior written consent; and (ii) events or causes (whether or not foreseen) shall not affect such prices, including specifically, but without limitation, any increase based upon changes in currency fluctuations, raw material, taxes, tariffs or duties, transportation costs, component pricing, labor, transportation or overhead, unless specifically agreed to by Buyer on the face of a Purchase Order amendment. The prices for parts required for off-tool samples and PPAP samples are identical to the prices listed in the respective Purchase Order. The prices listed in the respective Purchase Order particularly include the cost of replacement tools (including all gauges and devices).
- 12.3 Seller does not have the right to adjust prices without the prior express written consent of Buyer.
- 12.4 Seller must ensure that the Products are able to successfully compete against other alternatives in an objective comparison in terms of technical requirements, delivery quality, reliability of delivery and services, and price across their entire service life. In particular, Seller shall make its best efforts to identify, propose, realize and pass on price reductions, in order to ensure the maximum level of price competitiveness of the Products on the market. Buyer is entitled to check this competitiveness. When this occurs in the form of requests for quotation on the market, Buyer shall be entitled to disclose documents that have been rendered neutral to third parties.
- 12.5 Seller agrees to participate in Buyer's cost savings and productivity programs and initiatives and to implement Seller's own cost savings and productivity programs and initiatives to reduce Seller's costs.
- 12.6 If, during the term of the Agreement, Seller delivers comparable quantities of the contractual Products or similar Products to a third party under more favorable terms, in particular regarding price, discounts, technology, quality, terms of payment, delivery dates or any other conditions (hereinafter the "**Conditions**"), Seller must inform Buyer accordingly without undue delay and automatically grant these more favorable Conditions to Buyer. The new Conditions apply retroactively from the time at which Seller granted these favorable Conditions to the third party.

## **13. Taxes**

Unless otherwise stated on the face of the Purchase Order, Seller is responsible for any applicable taxes, duties, customs, tariffs, or assessments in connection with the sale, purchase, transportation, use or possession (prior to delivery and acceptance by Buyer) of the Products ordered hereunder.

## **14. Payment Terms**

- 14.1 Payment terms will be set forth on the Purchase Order, if no payment terms are provided, then the payment terms are net sixty (60) calendar days calculated from the

later of: (i) Buyer's receipt of the relevant Products; and (ii) Buyer's receipt of Seller's invoice in accordance with Section 16. If early deliveries are accepted, the due date shall be based on the agreed delivery date. Buyer shall have five (5) calendar days to cure payment shortfall.

- 14.2 If a payment date falls on a non-business day, payment will occur on the following business day. Payment is deemed to have been made on time if Buyer's bank receives the transfer order before the expiry of the payment period. Buyer is not responsible for delays caused by the banks involved in the payment process.
- 14.3 Seller will provide Buyer with ASNs and otherwise comply with Buyer's shipping and invoicing requirements. Failure to do so by Seller may delay payment to Seller, and Buyer shall not be liable to Seller for any delay in payment, or other damages, resulting from Seller's failure to comply with Buyer's shipping and invoicing requirements.
- 14.4 Notwithstanding the particular payment terms applicable to a Purchase Order: (i) in no event will Seller have a right to payment for tooling before Buyer is paid by its customer for such tooling; (ii) in no event will a Seller who is a directed supplier have a right to receive payment from Buyer until Buyer is fully paid by Buyer's customer for the related Products or, as applicable, the goods into which such Products are incorporated; and (iii) Buyer may, at its option, upon notice to Seller, revise its payment terms for production Products to take into account any change in the payment terms of Buyer's customer applicable to the Products under any Purchase Order.

## **15. Setoff, Right of Retention**

- 15.1 In addition to any right of setoff or recoupment allowed by law, all amounts due Seller, or any of its subsidiaries or Affiliates shall be considered net of indebtedness or obligations of Seller, or any of its subsidiaries or Affiliates to Buyer or any of its subsidiaries or Affiliates, and Buyer may set off against or recoup any amounts due or to become due to Seller, or any of its subsidiaries or Affiliates, to Buyer or any of its subsidiaries or Affiliates, however and whenever arising, including but not limited to Buyer's attorneys' fees and costs of enforcement.
- 15.2 In the event that Buyer or any of its subsidiaries or Affiliates reasonably feels at risk, Buyer may withhold and recoup a corresponding amount due Seller or any of its subsidiaries or Affiliates to protect against such risk.
- 15.3 If any payment to Seller or any of its subsidiaries or Affiliates is disputed, contingent or unliquidated, including but not limited to disputes regarding any right of setoff or recoupment under this Section or applicable law, Buyer or any of its subsidiaries or Affiliates may defer payment of all or any portion of the amount due until such obligation is resolved.
- 15.4 Without limiting the generality of the foregoing and by way of example only, in the event of a bankruptcy of Seller, if all of the Purchase Orders between Buyer and Seller have not been assumed, then Buyer may defer payment to Seller, via an administrative hold or otherwise, for Products against potential rejection and other damages. In the event of a Seller Insolvency (as defined in Section 27), Buyer also may setoff, recoup, and/or withhold from amounts due Seller or any of its subsidiaries or Affiliates any amounts that Seller is obligated to indemnify Buyer pursuant to these Terms, regardless of whether such amounts become due before or after the filing of a petition for bankruptcy protection by Seller. Seller may not set off any amount due from Buyer, whether under the Agreement or otherwise, against any amount due to Buyer hereunder without Buyer's prior written consent.

## **16. Invoices**

- 16.1 All invoices and/or ASNs must reference the Purchase Order number, Purchase Order amendment or Release number, Buyer's part number, Seller's part number where applicable, quantity of pieces in shipment, number of cartons or containers, Seller's name and number, and bill of lading number, before any payment will be made for Products by Buyer. Duplicates of invoices shall be marked as copies. As long as these details are missing the invoice is not payable. Seller is responsible for all consequences arising from non-compliance with this obligation, if it is responsible for such non-compliance.
- 16.2 In addition, no invoice may reference any term separate from or different than these Terms or the terms that appear on the face of the Purchase Order.
- 16.3 Buyer reserves the right to return all invoices or related documents submitted incorrectly and will notify Seller of any deficiencies in an invoice.
- 16.4 Notwithstanding anything to the contrary herein, payment terms will commence upon the receipt and input of a correct invoice or ASN into Buyer's invoicing system; whichever occurs later. Any payment by Buyer of a nonconforming invoice is not an acceptance of any non-conforming elements or terms on such invoice.

## **17. Changes by Buyer**

- 17.1 Buyer reserves the right at any time to request changes (each a "**Change Request**") in any one or more of the following: specifications, drawings, materials, packaging, testing, inspection, quality control, time or method of delivery or shipment, place of delivery or similar requirements and data incorporated in the Agreement. Seller is obliged to implement such Change Request of Buyer.
- 17.2 Immediately, but no later than seven (7) calendar days after receipt of the Change Request, Seller will submit an offer regarding the resulting costs (both possible increase and possible reduction of costs) as well as information regarding postponements and effects of the changes and/or additions on weight, function, quality etc. Seller is obligated to minimize the costs caused by the changes and/or additions requested by Buyer.
- 17.3 Any such claim by Seller for adjustment to time for performance or cost under a Purchase Order in Seller's offer must be solely and directly the result of the change directed by Buyer and any notice of such claim in Seller's offer must be accompanied by all relevant information sufficient for Buyer to verify such claim. In addition, Buyer shall have the right to audit all relevant records, facilities, work or materials of Seller to verify any claim.
- 17.4 Seller shall consider and advise Buyer of the impact of a design change on the system in which the Products covered by a Purchase Order are used.
- 17.5 Any Price increases or extensions of time for delivery related to a Change Request will not be binding on Buyer unless evidenced by a Purchase Order change notice issued and signed by Buyer.
- 17.6 Nothing in this Section shall excuse Seller from performing under the Agreement as changed pending resolution of any Change Request of Buyer offered by Seller for adjustment to time or cost.

## 18. Changes by Seller

- 18.1 If, in Seller's opinion, technical changes or deviations are reasonable – e.g. due to more efficient production methods or to improve and increase the safety of the Products or to adapt to technical progress, Seller shall propose these to Buyer and provide information on the effects on the price and the delivery dates at the same time.
- 18.2 Without the prior approval of Buyer on the face of a Purchase Order amendment or in a writing signed by Buyer, Seller shall not make any changes to any Purchase Order or the Products covered by the Purchase Order, including, without limitation, changing (i) any third party supplier to Seller of services, raw materials or goods used by Seller in connection with its performance under the Purchase Order for manufacturing the Products, (ii) the facility from which Seller or such supplier operates, (iii) the price of any of the Products covered by the Purchase Order (including any price incentives), (iv) the nature, type or quality of any services, raw materials or goods used by Seller or its suppliers in connection with the Purchase Order for manufacturing the Products; (v) the fit, form, function, appearance, performance of any Products covered by the Purchase Order; or (vi) the production method, or any process or software used in the production or provision of any Products under the Purchase Order (“**Modifications**”). Seller shall notify Buyer in good time so that Buyer has sufficient time to discuss the Modifications with its customers and obtain the relevant approvals.
- 18.3 Any Modifications by Seller to any Purchase Order or the Products covered by the Purchase Order without the prior approval by Buyer on the face of a Purchase Order amendment or in a writing signed by Buyer shall constitute a breach of the Agreement.
- 18.4 No costs, fees, surcharges, or expenses of any kind shall be added to the price of a Product without the advance written consent of Buyer for such Modifications. If Modifications lead to a cost reduction for Seller, the parties shall negotiate and agree on an appropriate adjustment of the price.

## 19. Intellectual Property

- 19.1 All Products, including, but not limited to, any idea, invention, concept, design, prototype, produce configuration, process, technique, procedure, system, plan, model, program, software or code, data, specification, drawings, diagram, flow chart, documentation, or the like that are created in the course of performing the Agreement and any associated intellectual property rights therein are the sole and exclusive property of Buyer. Seller agrees that all works of authorship created by Seller in connection with the Agreement are “works made for hire” on behalf of Buyer as that term is used in connection with the U.S. Copyright Act. The term “**intellectual property**” as used herein means all patents, patent applications, patentable subject matter, copyrights, copyrightable subject matter, work of authorship, derivative works, trademark, trade name, trade dress, trade secrets, know-how, and any other subject matter, material, or information that is considered by Buyer to be proprietary or that qualifies for protection under applicable law providing or creating intellectual property rights, including the Uniform Trade Secrets Act.
- 19.2 Seller hereby assigns to Buyer ownership of all right, title, and interest in the Products and any associated intellectual property, and further agrees to cooperate with Buyer and to assist in the preparation and execution of all documents relating to any effort by or on behalf of Buyer to apply for, obtain, maintain, transfer, or enforce any intellectual property right related to the Products at the request and expense of Buyer.
- 19.3 Seller expressly warrants that: (i) the Products shall not incorporate any intellectual property (including copyright, patent rights, utility model rights, design rights,

copyrights, trade secret, mask work, or trademark rights or other intellectual property rights) of third parties without a valid and enforceable license to use and sell to Buyer hereunder; and (ii) there is no suit, proceeding, or claim (whether in the past, current, and/or pending) alleging that the Products infringe any third party intellectual property rights.

- 19.4 Seller grants to Buyer an irrevocable, non-exclusive, royalty-free, worldwide license with the right to grant sublicenses to Buyer Affiliate(s) to use any technical information, know how, copyrights, and patents, or other intellectual property owned or controlled by Seller or Seller's Affiliates to make, have made, use, sell, and import any Products provided by Seller under the Agreement. Such license shall be effective from the first delivery under a Purchase Order.
- 19.5 If the Seller breaches its obligations set out in Section 19.3 and Buyer, Buyer's Affiliates, its/their legal representatives, directors, employees, agents, successors, and/or assigns are subject to claims by a third party as a result, Seller shall defend, hold harmless and indemnify them against any and all direct and indirect claims, losses, liabilities, actions, suits, judgments, damages, costs, and expenses, including, but not limited to, loss of profit, loss of business, loss of goodwill and similar losses, as well as attorneys' and other professional fees and court costs, upon first written request. This does not apply if Seller is not culpable for the breach of duty.
- 19.6 Sections 19.3 and 19.5 do not apply if the Products have been manufactured according to drawings, models or other detailed information provided by Buyer and Seller was neither aware nor should have been aware, despite exercising due care customary in the industry, that this would infringe intellectual property rights.
- 19.7 If a breach or infringement of Section 19.3 results, or is likely to result, in an injunction or other order that would prevent Seller from supplying Products to Buyer or prevent Buyer from using Products for their intended purpose, Seller will at its expense either (i) secure a license that permits Seller to continue supplying the Products to Buyer, or (ii) modify the Products so that they become non-infringing, so long as the modification does not materially alter the operation or performance of the Products or place them outside the applicable specification as determined by Buyer in its sole discretion, or (iii) replace the Products with non-infringing but practically equivalent Products (equivalency to be determined by Buyer in its sole discretion). Such options are without prejudice to Buyer's right to obtain compensation for any loss or damage sustained.
- 19.8 Seller shall inform Buyer immediately of any potential infringement risks or alleged cases of infringement that become known and will mutually counteract any corresponding infringement claims within the scope of what is reasonable.
- 19.9 Seller shall ensure that any subcontractors to Seller have contracts with Seller in writing consistent with the terms of this Section to ensure that the protections required by Buyer from Seller are also received from subcontractors for the benefit of Buyer and Seller.

## **20. Force Majeure**

- 20.1 Any delay or failure of either party to perform its obligations (including any potential obligation to accept delivery of Products) shall be excused for the duration and to the extent such delay or failure is caused by a serious event that was extraordinary and objectively unforeseeable at the time of the conclusion of the Agreement, beyond the control of the nonperforming party and unavoidable despite preventive risk

management customary in the industry (“**Force Majeure Event**”). At the same time, the other party will be released from its respective counter-performance obligations.

- 20.2 Subject to the requirements of Section 20.1, such Force Majeure Events may include fires, floods, windstorms, explosions, riots, natural disasters, wars, terrorist attacks, cyber-attacks, government restrictions (e.g. bans, expropriations or quotas by government agencies), embargoes, earthquakes and epidemics/pandemics and sabotage, and in principle, industry-wide lock-outs and/or strikes, excepting those strikes and lock-outs which are confined to any labor dispute between Seller or Seller’s subcontractor and Seller’s or Seller’s subcontractor’s employees.
- 20.3 Seller acknowledges and agrees that the following will not excuse performance by Seller under theories of force majeure, commercial impracticability, frustration of purpose or otherwise and Seller expressly assumes these risks: (i) change in cost or availability of materials, components, transportation services, supplier actions or contract disputes; (ii) failure of Seller’s internal business systems related to the proper processing of date information that results in any defect or failure in products or services, deliveries; or (iii) unprofitability or financial losses of Seller; or (iv) any other aspect of performance by Seller or its subcontractors.
- 20.4 Written notice of such delay or failure, including all necessary information about the cause, the extent and the anticipated duration of the delay or failure, must be given by the nonperforming party immediately (i.e., within a maximum of two (2) days of the occurrence of the Force Majeure Event). The nonperforming party is also obligated to: (i) do everything possible at its own expense to undertake such measures as may be necessary to overcome or mitigate any delays or difficulties in performance due to the Force Majeure Event; and (ii) to look for alternative ways and means to enable the continued fulfilment of its obligations (“**Necessary Measures**”). If Seller is the nonperforming party, Necessary Measures include, but are not limited to, expediting shipments, utilizing overtime and/or additional shifts, and, if approved in writing by Buyer, use of an alternative manufacturing facility or source of supply.
- 20.5 During the period of any delay or failure to perform by Seller, Buyer, at its option, may purchase Products from other sources and reduce its schedules to Seller by such quantities, without liability to Buyer, or cause Seller to provide the Products from other sources in quantities and at times requested by Buyer and at the price set forth in the Purchase Order. If requested by Buyer, Seller shall, within five (5) days of such request, provide adequate assurance that the delay will not exceed such period of time as Buyer deems appropriate. If the delay lasts more than the time period specified by Buyer, or Seller does not provide adequate assurance that the delay will cease within such time period, Buyer may, among its other remedies, immediately terminate the Agreement and all outstanding Releases issued pursuant thereto, without liability. Additionally, Seller shall reimburse Buyer for any increase in price that Buyer is required to pay to a substitute supplier in order to obtain the Products.
- 20.6 As soon as the Force Majeure Event no longer exists, the original performance obligations must be fulfilled again. In particular, Seller will make up for undelivered quantities as quickly as possible in consultation with Buyer.

## **21. Labor Disputes**

Seller shall notify Buyer in writing of any actual, threatened, or potential labor dispute delaying or threatening to delay timely performance of the Agreement. Seller shall notify Buyer in writing six (6) months in advance of the expiration of any current labor contracts. Upon Buyer’s request, Seller shall deliver a supply of finished Products at

least thirty (30) days prior to the expiration of any such labor contract, in quantities and for storage at sites designated by Buyer.

## **22. Confidential Information**

- 22.1 Any and all designs, drawings, sketches, models, blueprints, plans, or samples; devices, machinery, specifications, part numbers, and bills of materials; processes, techniques, expertise, plans, and projections; prices, pricing strategies, and business and financial records; customer lists, customer contacts, and customer data; supplier lists and supplier contacts; Buyer Data (as defined below in Section 37); the existence of a Purchase Order or Agreement; and other similar information, items, documents, and materials made available by Buyer or Buyer's Affiliate(s) to Seller or Seller's Affiliate(s), or otherwise acquired, obtained or developed by Seller under or in connection with these Terms (collectively, the "**Confidential Information**") are and at all times shall remain the exclusive property of Buyer. Seller must treat all Confidential Information which it receives directly or indirectly from Buyer as confidential.
- 22.2 "Confidential Information" shall not include any item of information that Seller can demonstrate by documentary evidence: (i) is or has become public knowledge, whether by publication or otherwise, through no act, omission or fault of Seller or any of its employees, officers, directors, agents or Affiliates, or (ii) was already in Seller's possession at the time of disclosure, or (iii) is disclosed to Seller by a third party who is in lawful, rightful possession of the information and who has the legal right to make disclosure thereof without confidentiality restrictions.
- 22.3 During the Confidentiality Period, Seller agrees that it shall not: (i) make any use whatsoever of the Confidential Information except for the purpose(s) specified in these Terms, or (ii) disclose the Confidential Information to any third party without the prior written consent of Buyer. The "**Confidentiality Period**" shall mean the period beginning on the date of disclosure to Seller and ending three (3) years after the date that Buyer accepts or rejects the Products subject to the last Purchase Order submitted by Buyer to Seller, except that the parties' obligations with respect to Confidential Information that constitutes trade secrets under applicable law will continue until the date on which such information no longer constitutes trade secrets under applicable law. After termination of the Agreement and/or the Purchase Order, the Seller must, without undue delay, return to Buyer all Confidential Information received, insofar as it is embodied or stored on electronic storage media. Seller must confirm fulfillment of the obligations from the last two sentences to Buyer in writing upon request.
- 22.4 Seller shall require its subcontractors to maintain confidentiality with regard to Confidential Information to the same extent as Seller's obligations under these Terms.
- 22.5 Seller acknowledges and agrees that money damages for any and all breaches of Seller's obligations under this Section are both incalculable and insufficient and that any such breach would irreparably harm Buyer. Therefore, in the event of an actual or prospective breach of any such obligation, Buyer shall be entitled to seek a permanent and/or preliminary injunction to prevent or remedy such breach and shall have the right to specific enforcement of this Section against Seller in addition to any other remedies to which Buyer may be entitled at law or in equity.
- 22.6 For the avoidance of doubt, all information provided by Seller to Buyer in connection with the Agreement shall be disclosed on a non-confidential basis, and Buyer shall have no duty to maintain the secrecy or confidentiality of such information. Further, Seller shall not sell, dispose of (as scrap or otherwise), any completed or partially completed or defective Products manufactured hereunder without defacing and/or rendering them unsuitable for use.

### **23. Advertising**

During and after the term of the Agreement, Seller will not advertise, promote, use Buyer's branding images or trademarks or otherwise disclose its relationship with Buyer or Buyer's customers without Buyer's prior written consent, except as may be required to perform the Agreement or as required by law.

### **24. Buyer-Provided Property**

- 24.1 The right, title and interest in and to all supplies, materials, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment, designs, drawings, specifications, spare parts, trial parts, ancillary products, items owned by Buyer and other items furnished by Buyer or its customers to Seller for use in manufacturing Products, or for which Seller is reimbursed by Buyer or its customers ("**Buyer's Property**"), shall be and remain the property of Buyer and/or its customers. Such Buyer's Property is made available to Seller on a loan basis. Seller shall bear the risk of loss of and damage to Buyer's Property.
- 24.2 Seller will (i) properly house and maintain the Buyer's Property on Seller's premises; (ii) not use the Buyer's Property for any purpose other than for performance under the Agreement and/or the relevant Purchase Order; (iii) prominently mark the Buyer's Property as property of Buyer; (iv) refrain from commingling the Buyer's Property with the property of Seller or with that of a third party; (v) adequately insure the Buyer's Property at its own expense against loss or damage, including but not limited to flooding, fire and explosion, earthquake, theft and all other risks of destruction or damage and extended coverage insurance for replacement value and naming Buyer as an additional insured; (vi) protect Buyer's Property against access by third parties; (vii) ensure that the Buyer's Property does not become subject to any liens or other claims; and (viii) not move the Buyer's Property to another location whether owned by Seller or a third party, without the prior written consent of Buyer.
- 24.3 Seller expressly waives and releases, and agrees not to file or otherwise assert or prosecute or suffer to permit any statutory, equitable or other liens, including but not limited to equitable or other liens, including but not limited to any molder liens, tool liens, builder liens and the like, that Seller has or might have on or in connection with the Buyer's Property for all work, including but not limited to, designing, manufacturing, improving, maintaining, servicing, using, assembling, fabricating or developing the Buyer's Property. Seller hereby agrees to indemnify, defend and hold harmless Buyer from and against any loss, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings, including without limitation all attorney's fees and all other cost of litigation that are in any way related to releasing, terminating or otherwise removing all such liens placed on the Buyer's Property. Seller will assign to Buyer any claims Seller has against third parties with respect to Buyer's Property.
- 24.4 Upon written request, Seller, at its expense, shall immediately deliver the Buyer's Property at F.C.A. Seller's plant, according to Incoterms ®2020, and properly packed and marked in accordance with the requirements of the carrier and Buyer. Seller will cooperate with Buyer's removal of the Buyer's Property from Seller's premises, regardless of any actual or potential claims between Seller and Buyer, financial or otherwise. Seller agrees that it will comply with obligations hereunder to release Buyer's Property notwithstanding any offsetting claim it may have against Buyer.
- 24.5 Seller assumes all risk of, and all liability that results in, death or injury to persons or damage to property arising from use of the Buyer's Property.

- 24.6 Unless otherwise agreed to in writing by Buyer, Seller at its own expense shall keep the Buyer's Property in good condition and repair, including repair necessitated by wear and tear and other usage by Seller. In the event that it becomes necessary, as determined by either Buyer or Seller, to replace the Buyer's Property due to normal use by Seller, or otherwise, said replacement of Buyer's Property shall be at the sole expense of Seller and said replacement Buyer's Property shall remain the property of Buyer. Buyer does not guarantee the accuracy of any Buyer's Property or the availability or suitability of any supplies or material furnished by it assumes sole responsibility for inspecting, testing and approving all Buyer's Property prior to any use by Seller.
- 24.7 Seller acknowledges and agrees that: (i) Buyer may not be the manufacturer of the Buyer's Property nor the manufacturer's agent nor a dealer therein; (ii) Buyer is bailing the Buyer's Property to Seller for Seller's benefit; (iii) Seller has inspected the Buyer's Property and is satisfied that the Buyer's Property is suitable and fit for its purposes, and (iv) BUYER HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF BUYER'S PROPERTY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. Buyer shall not be liable to Seller for any loss, damage, injury or expense of any kind or nature caused, directly or indirectly, by the Buyer's Property, including, without limitation, its use or maintenance, or its repair, service or adjustment, or by any interruption of service or for any loss of business whatsoever or howsoever caused, including, without limitation, any anticipatory damages, loss of profits or any other direct, special or consequential damages. Seller authorizes Buyer to file a UCC-1 financing statement or similar document with the appropriate filing authority to give notice of Buyer's ownership interest in the Buyer's Property. Failure to file a financing statement will not alter or amend Buyer's ownership rights to the Buyer's Property Seller shall provide Buyer, upon Buyer's request, with a written inventory of all Buyer's Property.
- 24.8 Seller acknowledges that the unauthorized possession of Buyer's Property by Seller would cause irreparable harm to Buyer, Buyer's customer, and others. Therefore, Seller recognizes the right and need of Buyer to obtain immediate relief in the nature of a replevin or claim and delivery action. Accordingly, provided that Seller receives at least twenty-four (24) hours' notice of any request for hearings in connection with proceedings instituted by Buyer, Seller waives, to the fullest extent possible under applicable law, the right to notice in excess of twenty-four (24) hours in connection with any judicial proceedings instituted by Buyer. Further, Seller hereby waives any requirement for Buyer to post a bond in a replevin action. Seller shall pay all costs incurred by Buyer, including, but not limited to, reasonable attorney fees, the cost of the bond and sheriff and other court officers' fees in connection with the recovery of Buyer's Property through legal process.

## 25. **Seller's Indemnity**

In addition to any indemnity obligations set forth elsewhere in these Terms, Seller shall indemnify and hold harmless Buyer and its affiliated companies, their directors, officers, employees, invitees, agents and customers ("**Indemnitees**") from and against all liability, demands, claims, losses, costs, actions, judgments, fines, penalties, damages and expenses (including reasonable attorney's fees and other costs of defending any action) (collectively, "**Liabilities**") which is sustained or incurred by any or all Indemnitees as a result of any claim of Seller's negligence, intellectual property infringement, any breach of the Agreement, warranty claims, product recall claims, product liability claims, strict liability in tort or based on any other theory of law in connection with the Products furnished by Seller hereunder, or as a result of any

claim that the Products furnished by Seller fail to conform to or comply with any federal, state or local laws, regulations or standards, or based upon or arising out of any construction or installation services or facilities furnished by Seller under or in connection with any order, or injuries to persons (including death, or damage to property) caused by Seller, its employees, agents, subcontractors, or in any way attributable to the performance of Seller, its employees, agents, subcontractors, or invitees; provided, however, that Seller's obligation to indemnify Indemnitees shall not apply to any Liabilities solely arising from Buyer's gross negligence and other doctrines that may otherwise allocate the liability covered by Seller's indemnity. This indemnification obligation shall be in addition to Seller's warranty obligations. Within a reasonable time of becoming aware of any actual or potential Liabilities, Buyer shall notify Seller. Seller, at Buyer's option and at Seller's expense, will undertake defense of such actual or potential Liabilities through counsel approved by Buyer. Provided, however, that Seller shall first obtain authorization from Buyer before settlement is made of the actual or potential Liabilities if the terms of such settlement could materially adversely affect Buyer, including any terms which admits the existence of a defect in Products or a failure of Buyer to fully and faithfully perform its obligations. In the alternative, Buyer may elect to undertake defense of such Liabilities to the extent it is asserted against Buyer, and Seller shall reimburse Buyer on a monthly basis for all expenses, attorney fees, and other costs incurred by Buyer. Seller's obligation to indemnify Buyer shall survive the expiration, termination, or cancellation of the Agreement.

## **26. Seller Financial and Operational Condition**

- 26.1 Seller represents and warrants to Buyer as of the date of each Purchase Order (which representations and warranties shall be deemed repeated as of the date of Seller's acceptance of each Release under the Agreement and at the time of each delivery under the Agreement) that: (i) it is not insolvent and is paying all debts as they become due; (ii) that it is in compliance with all loan covenants and other obligations; (iii) all financial information provided by Seller to Buyer concerning Seller is true and accurate; (iv) such financial information fairly represents Seller's financial condition; and (v) all financial statements of Seller have been prepared in accordance with generally accepted accounting principles, uniformly and consistently applied.
- 26.2 Seller shall permit Buyer and its representatives to review Seller's books and records concerning compliance with the Agreement, enabling Buyer to verify Seller's financial health and assess that Seller's deliveries are secure and agrees to provide Buyer with full and complete access to all such books and records for such purpose upon Buyer's request. At Buyer's option, the books and records may also be provided to a third party appointed by Buyer (e.g. auditor). Seller may refuse to provide access to the requested books and records only if it can demonstrate that it is not entitled to disclose such books and records according to mandatory provisions under the applicable law (e.g., capital markets rules).
- 26.3 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, including providing designated representatives as set forth above) that are necessary for Seller to fulfill its obligations under any Purchase Order or the Agreement, Seller shall reimburse Buyer for all costs, including attorneys' and other professionals' fees, incurred by Buyer in connection with such accommodation and shall grant a right of access to Buyer to use Seller's premises, machinery, equipment and other property necessary for the production of

Products covered by such Purchase Order (and a lien to secure the access right) under an access and security agreement.

- 26.4 Additionally, Seller agrees to provide prompt written notice to Buyer of any impending or threatened insolvency of the Seller.

## **27. Seller Insolvency**

Buyer may immediately terminate the Agreement without any liability of Buyer to Seller upon the occurrence of any of the following or any other similar or comparable event (each, a “**Seller Insolvency**”): (i) insolvency of Seller; (ii) Seller’s inability to promptly provide Buyer with adequate and reasonable assurance of Seller’s financial capability to perform timely any of Seller’s obligations under any Purchase Order; (iii) filing of a voluntary petition in bankruptcy by Seller; (iv) filing of an involuntary petition in bankruptcy against Seller; (v) appointment of a receiver or trustee for Seller; or (vi) execution of an assignment for the benefit of creditors of Seller. Seller shall reimburse Buyer for all costs incurred by Buyer in connection with a Seller Insolvency, including but not limited to, all attorneys’ fees and other professional fees.

## **28. Insurance**

Prior to commencing work on Buyer’s premises or utilizing Buyer’s property (including Buyer’s Property), Seller, at its own expense, shall procure and maintain for at least the duration of the Agreement the following insurance policies and amounts (a) workers’ compensation to statutory limits; (b) Employer’s Liability Insurance (minimum of \$2,000,000 for bodily injury by accident or disease); (c) Commercial General Liability Insurance including contractual liability, products/completed operations coverage and premises coverage, with limits of not less than \$2,000,000 for each occurrence/combined single limit property damage, bodily injury and personal injury liability; (d) comprehensive automobile liability insurance with limits of not less than \$2,000,000 for each occurrence/combined single limit property damage and bodily injury; (e) property insurance for all of Seller’s property at the worksite, and insurance for the full purchase price of goods sold to Buyer as to which the risk of loss has not passed; and (f) Umbrella/Excess coverage of \$5million per occurrence applying over the primary commercial general liability, auto liability, and employer’s liability policies. Buyer may request and Seller shall obtain, additional insurance or higher policy amounts. Seller is required to name Buyer as an additional insured to casualty insurance coverages. Seller’s insurance coverages shall apply on primary and non-contributory basis and provide a waiver of subrogation in the favor of Buyer for all required insurance coverages. Subcontractors engaged by Seller to satisfy the terms and conditions of the Agreement shall be subject to all insurance obligations required of the Seller. It shall be Seller’s responsibility to ensure that each subcontractor is compliant with Buyer’s minimum insurance requirements. Should Seller have control, custody and care of Buyer’s assets, Seller shall insure Buyer assets on a replacement cost new basis and name Buyer as a loss payee to Seller’s property policy. Buyer, in its sole discretion, may require additional insurance coverages. Seller agrees to submit certificates of insurance evidencing its insurance coverage when requested by Buyer. A lapse in coverage or failure to secure any required insurance coverage shall be a breach of the Agreement.

## **29. Rights of Entry, Reclamation, Inspection, and Audit**

- 29.1 Buyer shall have the right (but not the obligation) to enter Seller’s facility upon reasonable prior notice and during normal business hours or, in the event of a Seller shutdown, at reasonable times, to inspect, verify and review: (i) the facility, in which Seller manufactures the Products, e.g. to verify the quality of the manufacture of the Products (meaning before, during or after manufacture and delivery in order to check that the quality requirements are kept and followed), and to conduct audits or the

handling of complaints together with Seller; (ii) the Products (including testing); and (iii) any Buyer's Property. In this context facilities include amongst other materials, work in process, equipment and tooling relevant for manufacture of the Products. Seller shall grant Buyer and, if applicable, Buyer's customers access to these facilities. If there is a justified reason, Seller shall also allow Buyer to carry out inspections at short notice. Seller without additional charge will provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties.

- 29.2 Buyer may enter upon Seller's premises and remove property belonging to Buyer or any customer of Buyer, including, without limitation, Buyer's Property and other goods, inventory or Seller's Property that has been or is agreed to be sold to Buyer under the Agreement. Buyer's inspection and test of the shall not be deemed acceptance, nor shall it release Seller from the fulfilment of any express or implied condition of the Purchase Order and/or the Agreement. In the case of development work or the start of serial production, Buyer's approval does not release Seller from its product responsibility, whether during manufacture, prior to delivery or within a reasonable time after delivery, shall not constitute acceptance of any work in process or finished Products.
- 29.3 Buyer and, if applicable, its customers shall also be granted access to all relevant documents and records, regarding quality for the inspection.
- 29.4 Seller will maintain records as necessary to support amounts charged to Buyer under the Agreement for the greater of the time period set forth in Seller's document retention policies or ten (10) years. Buyer and its representatives may audit Seller's records of transactions to the extent needed to verify the quantities of Products shipped and that the prices charged match the agreed prices. Any audit will be conducted at Buyer's expense (but will be reimbursed by Seller if the audit uncovers errors in the amounts charged).

### **30. Termination for Default**

- 30.1 Buyer reserves the right to terminate immediately all or any part of the Agreement or any Purchase Order, without any liability of Buyer to Seller, in the event of any default by Seller under the Agreement including, but not limited to:
- (i) if Seller repudiates, or breaches or threatens to breach any of the terms of the Agreement including, without limitation, Seller's warranties;
  - (ii) if Seller fails to perform or deliver Products as specified by Buyer;
  - (iii) if Seller fails to provide Buyer with adequate and reasonable assurance of Seller's ability to perform timely any of Seller's obligations under any Purchase Order, including, without limitation, delivery of Products;
  - (iv) if a significant deterioration or a significant threat to the financial circumstances of Seller occurs or threatens to occur and this jeopardizes the fulfilment of Seller's obligations under the Agreement; or
  - (v) if Buyer cancels any other Purchase Order issued by Buyer to Seller in accordance with the terms of such Purchase Order (whether or not such other Purchase Order is related to the Agreement).

### **31. Termination for Change of Control**

31.1 In addition to its other remedies, Buyer may, at its option, terminate the Agreement without any liability to Seller upon a change of control of Seller by providing written notice to Seller. A change of control of Seller shall be deemed to occur upon the occurrence of any of the following events, or upon Seller entering into a binding agreement providing for any of the following:

- (i) the sale, lease, license or transfer of a substantial portion of Seller's assets used for the production of Products in terms of gaining control over the relevant production capacity;
- (ii) the sale or transfer of more than 20% of Seller's shares or other ownership interest (or of such other amount as would result in a change of control of Seller), or the entrance into an agreement regarding the same;
- (iii) the execution of a voting agreement, shareholders' agreement or similar agreement by which any natural or legal person is granted control over Seller or over more than 20% of Seller's shares or other ownership interest (or of such other amount as would result in a change of control of Seller).

The right of termination of Buyer shall apply regardless of the identity or intentions of the third party acquiring control.

31.2 Seller shall notify Buyer in writing without undue delay, but in any event within five (5) business days of the earlier of: (i) the entrance into an agreement, or (ii) the occurrence of an event, pursuant to Section 31.1.

### **32. Termination for Convenience**

In addition to any other right of Buyer to terminate the Agreement, Buyer may, at its option, immediately terminate all or any part of the Agreement at any time and for any reason by giving five (5) days written notice to Seller.

### **33. Termination Claim**

33.1 Within thirty (30) calendar days after receipt of termination notice pursuant to Sections 31 and 32, Seller shall submit all claims for costs set forth below resulting from such termination. Buyer will have the right to verify such claims by auditing the relevant records, facilities, work or materials of Seller and/or its subcontractors. In the event the Agreement is terminated pursuant to Section 31 or Section 32, Buyer agrees to pay to Seller the following amounts without duplication:

- (i) the Purchase Order price for all finished and completed Products that conform to the requirements of the Agreement and not previously paid for;
- (ii) Seller's reasonable actual cost of the usable and merchantable work in process and raw materials/components; and
- (iii) Seller's reasonable actual cost of settling claims for the obligations Seller would have had to the subcontractors approved by Buyer on the face of a Purchase Order or Purchase Order amendment or in an agreement signed by Buyer in the absence of termination.

33.2 In no event shall Buyer be required to pay for finished goods, work in process or raw materials which Seller fabricates or procures in amounts that exceed those Buyer

authorizes in firm delivery Releases nor will Buyer be required to pay for any goods or materials that are in Seller's standard stock or that are readily marketable. Such payment shall constitute Buyer's only liability for termination hereunder with title and right of possession to all delivered Products, Services, work in process and raw materials vesting in Buyer immediately upon Buyer's tender of such payment.

### **34. Effect of Termination**

- 34.1 Upon receipt of a notice of cancellation or termination, Seller, unless otherwise directed in writing by Buyer, shall: (i) terminate immediately all work under the Agreement; (ii) at Buyer's option, transfer title and deliver to Buyer the usable and merchantable finished Products, work in process, and raw materials/components that Seller produced or acquired pursuant to the Agreement and which Seller cannot use in producing Products for itself or for others; (iii) at Buyer's option, transfer title and deliver to Buyer the usable and merchantable work in process and raw materials/components that Seller acquired pursuant to resale programs offered by Buyer or Buyer's customers; (iv) settle all claims by subcontractors approved by Buyer on the face of a Purchase Order or Purchase Order amendment or in a writing signed by Buyer, if any, for reasonable actual costs that are rendered unrecoverable by such termination; (v) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest; and (vi) upon Buyer's request, cooperate with Buyer in effecting the resourcing of the Products covered by the Agreement and/or Purchase Order to an alternative supplier designated by Buyer.
- 34.2 Except as set forth in Sections 33 and 34, Buyer shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for any other alleged losses or costs, whether denominated as loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, ancillary exit charges (including, but not limited to, costs of riggers, warehousing, premium manufacturing costs, loading of trucks or other standard business procedures related to transitioning production to an alternative supplier), or general and administrative burden charges resulting from termination of the Agreement and/or Purchase Order.
- 34.3 Notwithstanding anything to the contrary, Buyer's obligation to Seller upon termination shall not exceed the obligation Buyer would have had to Seller in the absence of termination.

### **35. Transition of Supply**

- 35.1 Upon the expiration or earlier termination of any Purchase Order or the Agreement for whatever reason, Seller agrees to take all actions necessary in order to ensure that there is no interruption in the supply of Products to Buyer (transition of supply). Any costs in the context of such transition of supply will be discussed and agreed between the parties in good faith.
- 35.2 Among other things, Seller agrees to take such actions as may be reasonably required by Buyer to accomplish the transition from Seller to an alternative supplier, including without limitation the following:
- (i) provide all notices necessary or desirable for Buyer to resource the Agreement to an alternative supplier;
  - (ii) provide a sufficient stock of Products to ensure that the transition to any alternative supplier chosen by Buyer will proceed smoothly, as reasonably

determined by Buyer, and at Buyer's request, Seller shall assure proper storage for the stock of Products, and deliver such Products per standard Releases from Buyer;

- (iii) provide to Buyer in a timely manner (not more than five (5) days) after expiration of the Purchase Order or the Agreement all Buyer's Property in as good a condition as when received by Seller, reasonable wear and tear excepted. Buyer and any alternative seller reserve the right upon reasonable prior written notice and within normal business hours, while taking appropriate account of trade secrets of Seller having a legitimate interest of protection, to access and actively participate during the disconnect or disassemble process for the Buyer's Property, and the location, time and date of the exit shall be mutually agreeable between Buyer and Seller;
- (iv) at Buyer's option: (a) assign to Buyer any or all supply contracts or purchase orders for raw material or components relating to the Agreement; (b) sell to Buyer any or all perishable tooling and Products inventory relating to the Agreement; and/or (c) sell to Buyer any of Seller's property which is necessary for the manufacture of the Products ("**Necessary Means of Production**"), at a price equal to the unamortized portion of the cost of such Necessary Means of Production less any amounts Buyer previously has paid to Seller for the cost of such Necessary Means of Production unless Seller requires the Necessary Means of Production for the manufacture and delivery of the Products on the basis of a valid (not terminated) Purchase Order or the exercise of the option would result in another unreasonable consequence for Seller which clearly outweighs Buyer's legitimate interests in acquiring the Necessary Means of Production; Seller shall provide documentation supporting its calculation of unamortized costs; and
- (v) Seller shall cooperate with Buyer and perform a reasonable tooling and property exit process as a standard course of conducting business. Seller also agrees to provide all information (including technical information and safety instructions for use) requested or required by Buyer for the transition. For purposes of this Section, an alternative supplier includes, but is not limited to, a Buyer-owned facility.

### **36. Remedies**

- 36.1 The rights and remedies reserved to Buyer in the Agreement shall be cumulative with, and additional to, all other or further remedies provided in law or equity. Without limiting the generality of the foregoing, should any Products fail to conform to the warranties set forth herein, Buyer shall notify Seller and Seller shall, if requested by Buyer, reimburse Buyer for any special, incidental and consequential damages caused by nonconforming Products, including, but not limited to, costs, expenses and losses incurred by Buyer: (i) in inspecting, sorting, testing, repairing or replacing such nonconforming Products; (ii) resulting from production interruptions; (iii) in conducting Remedial Actions; (iv) conducting field service actions; (v) debits and warranty shares passed to Buyer from Buyer's customers; and (vi) in connection with claims for personal injury (including death) or property damage caused by such nonconforming Products. If requested by Buyer, Seller shall, without charge to Buyer, administer and process warranty charge-backs for nonconforming Products in accordance with Buyer's directions.
- 36.2 Seller acknowledges and agrees that money damages would not be a sufficient remedy for any actual, anticipatory or threatened breach of the Agreement or any Purchase Order by Seller with respect to its delivery of Products to Buyer and that, in addition to all other rights and remedies which Buyer may have, Buyer shall be entitled to

specific performance and temporary, preliminary and permanent injunctive or other equitable relief as a remedy for any such breach, without proof of actual damages and without bond or other security being required.

- 36.3 Seller also acknowledges and agrees that shutting down a customer's plant creates issues for which money damages are not a sufficient remedy. While the cost of a plant shutdown may easily generate substantial costs, the damages to Buyer's relationship with Buyer's customer through potential loss of business, and other damages which are equally difficult to calculate, are far worse. Because of these risks, in the event of a breach or threatened breach by Seller of any of the representations, warranties or covenants of Seller, Buyer may, without notice to Seller, resource the production of Products from Seller to another supplier or dual source any of the Products covered hereby (i.e., have another supplier produce or be prepared to produce Products being produced by Seller), to protect Buyer and its customers. This process of moving business may take a considerable amount of time and Seller understands that, given the risks posed by the possible shutdown of Buyer's customer, Buyer is justified in initiating and transferring business without prior notice to Seller.
- 36.4 Seller understands that the resourcing of business during a program, while not desirable, is a part of the automotive business and is an acknowledged risk to Seller in the industry. Even the risk of Seller's financial or operational uncertainty, in light of the huge risks to Buyer and Buyer's customer, is an example of a justified reason to move production, without notice, and that any incidental or related activity by Buyer is understandable and reasonable.
- 36.5 Notwithstanding anything to the contrary contained in any Purchase 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 Agreement or any breach or anticipatory breach of the Agreement or any other Purchase Order between Buyer and Seller (even if that Purchase Order relates to other products).

### **37. Data Protection, Information Security**

- 37.1 Seller must ensure that all persons entrusted by it with the processing or execution of this Agreement and/or the Purchase Order comply with all applicable laws and regulations regard data protection and security.
- 37.2 For purposes of these Terms, "**Buyer Data**" means all data, content, material, confidential information and other information provided by Buyer to Seller or otherwise transmitted to Seller for use in connection with the Agreement or Purchase Order. Seller will maintain and enforce information and security procedures with respect to its access, use and storage of all Buyer Data that: (i) are at least equal to industry standards taking into consideration the sensitivity of the relevant Buyer Data, and the nature and scope of the Products to be provided; (ii) are in accordance with Buyer's reasonable security requirements; (iii) comply with all applicable laws and regulations; and (iv) provide reasonably appropriate administrative, technical, and physical safeguards to protect against accidental or unlawful destruction, loss, alteration or unauthorized disclosure, access or use of Buyer Data.
- 37.3 Seller undertakes to implement and maintain appropriate technical and organizational measures to ensure state-of-the-art information and cyber security.
- 37.4 Seller shall immediately inform Buyer of any security incidents or vulnerabilities affecting the Products supplied, or Buyer's IT systems or Buyer Data. Seller shall provide Buyer with the necessary assistance to investigate and resolve such incidents, and to fulfil statutory reporting obligations.

- 37.5 Without limiting the generality of the foregoing, Seller will take all reasonable measures to secure and defend its location and equipment against anyone who may seek, without authorization, to modify or access Seller systems or the information found therein without consent. Seller will periodically test its systems for potential areas where security could be breached. Seller will report to Buyer immediately any breaches of security or unauthorized access to Seller systems that Seller detects or becomes aware of. Seller will use diligent efforts to remedy such breach of security or unauthorized access in a timely manner and deliver to Buyer a root cause assessment and future incident mitigation plan with regard to any breach of security or unauthorized access affecting Buyer Data.
- 37.6 Seller is solely responsible for the integrity of its email, accounting, invoicing, accounts payable, accounts receivable, and other systems. In the event that any payment to Seller is lost or misdirected as a result of an unauthorized third-party accessing Seller's system, Buyer (and its end customer) shall have no further obligation to Seller for such payment. If Buyer (or its end customer) makes any payment to a third party that is lost or misdirected as a result of an unauthorized third party accessing Seller's system, Seller shall reimburse Buyer (or its end customer) for the amount of such payment. The requirements of this Section shall apply regardless of whether Seller hosts the Buyer Data itself or through a third-party hosting or cloud services provider.
- 37.7 Seller must ensure that its subcontractors are contractually obliged to: (i) comply with the provisions contained in this Section 37; and (ii) pass on these obligations along the supply chain.

### **38. Notices, Electronic Communication**

- 38.1 All notices, claims and other communications to Buyer required or permitted under the Agreement shall be made in writing and sent both by email and also by a national recognized overnight delivery service or by certified or registered mail, return receipt requested and proper postage prepaid to the specific buyer identified on the Purchase Order.
- 38.2 Seller's failure to provide any notice, claim or other communication to Buyer in the manner and within the time periods specified in the Agreement shall constitute a waiver by Seller of any and all rights and remedies that otherwise would have been available to Seller upon making such notice, claim or other communication. Seller will comply with the method of electronic communication specified by Buyer in Buyer's request for quotation and confirmed in the Agreement, including requirements for electronic funds transfer, purchase order transmission, electronic signature, and communication. Seller will also make commercially reasonable efforts to comply with any modification to Buyer's specified method of electronic communication after the date of the Agreement.

### **39. Compliance with Laws**

- 39.1 Seller shall comply with all applicable laws, rules, regulations, orders, conventions, or standards enacted by the United States of America, and any other applicable jurisdiction, that regulate the manufacture, labeling, transportation, importation, licensing, approval or certification of Products, including but not limited to, those relating to: (i) anti-bribery and corruption; (ii) export and import control, customs and foreign trade law; (iii) environmental matters; (iv) human rights and supply chain due diligence; (v) data protection and privacy; (vi) wages, hours and conditions of employment and forced labor; (vii) subcontractor selection, discrimination, occupational health/safety; (viii) product safety and motor vehicle safety; and (ix) EU and national antitrust and competition law, and the Agreement shall be deemed to

incorporate by reference all the clauses required by the provisions of said laws, orders, rules, regulations and ordinances.

- 39.2 Seller is obligated not to commit any acts that could result in criminal liability, including fraud, breach of trust, insolvency offences, offences against competition, or bribery. For the purposes of these Terms, "**Bribery**" includes the promising, granting, requesting or receiving of benefits in money or money's worth to or from any person with the aim of improperly influencing that person to obtain business or gain an improper advantage. Seller confirms that it understands the importance of anti-bribery laws and will ensure that its employees and representatives comply with all applicable national and international anti-bribery laws. Seller agrees to keep proper accounting records of all payments and financial transactions.
- 39.3 Seller further represents and warrants that neither it nor any of its subcontractors will utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in corrupt business practices, in the supply of the Products under the Agreement. Seller shall ensure that all applicable statutory human rights and environmental due diligence obligations along its supply chain are complied with in its area of responsibility, in accordance with all applicable laws. Seller shall pass on the obligations arising from this Section to its subcontractors by means of suitable contractual provisions.
- 39.4 Seller shall ensure that its employees and other representatives have, at its own expense, sufficient knowledge of the applicable laws, including through an appropriate and effective internal compliance program and regular training and education and that it takes and will take all necessary steps to ensure that its employees and representatives comply with the applicable laws in their business-related activities.
- 39.5 Seller must be in compliance with ISO14001, IATF 16949 and ELV or their successors, as amended from time to time.
- 39.6 Buyer reserves the right to inspect or audit in a reasonable manner once a year or on an ad hoc basis whether the Seller is complying with the requirements under this Section 39 (together "**Compliance Audit(s)**"). The Compliance Audits may be performed - at Buyer's discretion and after prior consultation with Seller - by Buyer itself via an on-site Compliance Audit, by third parties commissioned to carry out Compliance Audits or by using recognized certification or audit systems, to the extent these methods ensure an independent and appropriate Compliance Audit. Justified concerns of Seller will be considered in the selection of the above methods, their conduction and scope. Seller shall allow such a Compliance Audit in its business operations at Buyer's request and shall undertake all reasonable assistance, including the inspection of Seller's documents which, according to Buyer's estimation, are necessary to carry out the Compliance Audit. Buyer may use the information and findings from such Compliance Audits to comply with legal obligations, such as those under applicable laws. The costs of the Compliance Audits are borne by Seller as they have already been considered in the price calculation of the Products. Buyer (including its employees) shall treat all confidential information obtained in the course of the Compliance Audit as confidential in accordance with Section 22 and, to the extent Buyer commissions third parties to carry out the Compliance Audit, shall oblige these third parties to maintain appropriate confidentiality.
- 39.7 Seller shall notify Buyer in writing without undue delay of any circumstances indicating that a violation of applicable laws in connection with Seller's business has taken place or may have taken place. Seller shall inform Buyer without being asked about identified risks and/or mitigating measures in connection with this Section and shall provide Buyer with documentation of its due diligence measures upon request.

- 39.8 If Buyer determines that a violation of applicable law has occurred or is imminent, or if Buyer has a factually justified reason to suspect that such a violation occurred or is imminent, Buyer is entitled to immediately take appropriate investigation and/or remedial measures to prevent, end or minimize the violation or its extent thereof. In particular, Buyer is entitled to temporarily suspend the business relationship with Seller including the corresponding performances until the violation has been remedied. If the violation of the laws is such that Buyer cannot remedy it in the foreseeable future and a concept for remediation and minimizing it is therefore necessary, Seller is obligated to cooperate in the preparation and subsequent implementation of the concept to the extent that it is reasonable for it to do so.
- 39.9 Seller shall indemnify and hold Buyer harmless from and against any liability claims, demands or expenses (including, without limitation, attorneys' or other professional fees) arising out of or in connection with Seller's non-compliance with the provisions of this Section 39. At Buyer's request, Seller shall certify in writing its compliance with the foregoing.
- 39.10 If the Agreement is issued in support of a U.S. Government prime contract or subcontract, the applicable Federal Acquisition Regulation ("**FAR**") clauses and any applicable agency supplements thereto shall be deemed a part of the Agreement. Seller shall comply, and shall cause its sub-suppliers to comply, with all such requirements.

#### **40. Conflict Minerals**

- 40.1 Seller agrees to timely respond, following a reasonable due diligence inquiry, to any requests made by, or on behalf of, Buyer for information on the source and chain of custody of any Conflict Minerals (as defined below) necessary to the functionality or production of the Products supplied by Seller to Buyer. In order to comply with this Section, Seller must either (i) register its organization with iPoint Conflict Minerals Program (IPCMP) at: <http://www.conflict-minerals.com> and submit online all requested information, or (ii) complete the Electronic Industry Citizenship Coalition® and Global e-Sustainability Initiative (EICC-GeSI) template at: [www.conflictfreesmelter.org](http://www.conflictfreesmelter.org) and submit all requested information to the requesting party in Buyer's Supplier Quality organization. If Seller is a smelter, Seller also agrees to comply with the Conflict-Free Smelter Program protocols developed by EICC-GeSI.
- 40.2 As used in this Section 40 the term "**Conflict Minerals**" means columbite-tantalite, cassiterite, wolframite and gold ores – which are refined into tantalum, tin, tungsten and gold, respectively, or other minerals or compounds designated as such by applicable law or regulation, including any future designations under applicable law or regulation.
- 40.3 Seller understands and acknowledges that any information provided pursuant to this Section may be provided by Buyer to its customers and may be used by Buyer's customers to comply with their reporting obligations under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Act**"), including filing a Form SD and Conflict Minerals Report with the U.S. Securities and Exchange Commission, and Seller will (i) ensure that the information provided in this regard is current, accurate and complete, to the best of its knowledge and belief, as of the date of submission, (ii) update such information in a timely manner if the status of any Product supplied by Seller to Buyer changes during Seller's performance of the Agreement, and (iii) retain all necessary documentation to support the information provided in response to Buyer's request. If Seller fails to comply with this Section, or fails to reasonably demonstrate that all materials processed and/or supplied to Buyer originated from "DRC conflict-free" sources (as that term is defined in the Act), then Buyer may terminate the Agreement in whole or in part. Seller agrees to include substantially the

same requirements set forth in this Section in each contract with any of its sub-suppliers that provide any material or sub-component incorporated into Products supplied to Buyer.

41. **U.S. C-TPAT (U.S. Customs Service's Customs Trade Partnership Against Terrorism).**

For Seller's Products to be imported in the United States, Seller shall accept, implement and comply with all applicable recommendations or requirements of the United States Customs Service's Customs Trade Partnership Against Terrorism ("C-TPAT") initiative. At Buyer's or the Customs Service's request, Seller shall certify in writing its acceptance, implementation and compliance with the C-TPAT and any accompanying recommendation and guidelines. Seller shall indemnify and hold Buyer harmless from and against any liability, claims, demands or expenses (including attorney's or other professional fees) arising from or relating to Seller's not accepting, implementing or complying with C-TPAT.

42. **Customs, Export Control**

- 42.1 Transferable credits or benefits associated with Products purchased, including trade credits, export credits, or rights to the refund of duties, taxes, or fees, belong to Buyer unless otherwise prohibited by applicable law. Seller will provide Buyer with all information and records relating to the Products necessary for Buyer to (i) receive these benefits, credits, and rights, (ii) fulfill any customs obligations, origin marking or labeling requirements, and certification or local content reporting requirements, (iii) claim preferential duty treatment under applicable trade preference regimes, and (iv) participate in any duty deferral or free trade zone programs of the country of import.
- 42.2 Seller shall fulfill the applicable requirements of national and international export, customs and foreign trade law for all Products and shall obtain the necessary export permits, unless Buyer or a third party, and not Seller, is obligated to apply for the export permits under the applicable foreign trade law.
- 42.3 For each individual delivery of Products, Seller shall provide Buyer as early as possible with all information and data required by Buyer to comply with the applicable foreign trade law for export and import, in particular: (i) the Export Control Classification Number according to the U.S. Commerce Control List ("ECCN"), if the Product is subject to the U.S. Export Administration Regulations; (ii) all export list numbers listed under the applicable national law, in particular the dual-use classification number if the delivery item falls within the scope of the EU Dual-Use Regulation (Regulation (EU) 2021/821); (iii) the statistical goods number according to the current goods classification of foreign trade statistics and the HS ("Harmonised System") code and (iv) the country of origin (non-preferential origin).
- 42.4 In the event of changes to the origin or characteristics of the Products or the applicable foreign trade law, Seller shall update the export control and foreign trade data as early as possible, but no later than one (1) week before the delivery date and notify Buyer in writing. Seller shall bear all expenses and damages incurred by Buyer due to the absence or inaccuracy of export control and foreign trade data.
- 42.5 Seller shall comply with all applicable sanctions regulations, including those of the USA, EU, the United Kingdom, and other relevant jurisdictions.
- 42.6 Seller will obtain all export licenses and authorizations and pay all export taxes, duties, and fees unless otherwise stated in the Agreement, in which case Seller will provide all

information and records necessary to enable Buyer to obtain those export licenses or authorizations.

#### **43. Governing Law, Dispute Resolution**

43.1 Unless otherwise stipulated in these Terms, the place of performance for all obligations arising from and in connection with the Agreement shall be the place of Buyer to which the Products are delivered or the services are rendered, as specified in the Purchase Order.

43.2 The construction, interpretation, performance and enforcement of the Agreement and all transactions thereunder shall be governed exclusively by the laws of the State of Michigan, without regard to principles of conflicts of law. The United Nations Convention on the International Sale of Goods is expressly excluded. Seller consents to the exclusive jurisdiction of the appropriate state court in Wayne County, Michigan or, if original jurisdiction can be established, in the federal court in the U.S. District Court for the Eastern District of Michigan, Southern Division, for any legal or equitable action or proceeding arising out of, or in connection with the Agreement. Seller specifically waives any and all objections to venue in such courts on grounds of forum non conveniens or otherwise.

#### **44. Compensation to Buyer's Agents**

44.1 No employee or other agent of Buyer is permitted to solicit or accept any compensation or payment from any supplier, however characterized, in connection with the placement of any order; and any rebate, discount, incentive, or other amount offered in that will be separately itemized in Seller's invoice.

#### **45. No Assignment**

45.1 Seller shall not assign, transfer or sublet its rights or obligations or the work to be done under the Agreement, in whole or in part, without the prior written consent of Buyer, provided that this provision shall not be interpreted to prohibit Seller from procurement of sub-component parts or materials. Any assignment in violation of this Section will be void.

45.2 Without Buyer's prior written consent, which may not be unreasonably withheld, Seller is not authorized to assign its claims against Buyer or to have them collected by third parties. Any applicable mandatory statutory provisions remains unaffected.

#### **46. Waiver**

The failure of Buyer to insist upon the performance of any term or condition of the Agreement, or to exercise any right hereunder shall not be construed as a waiver of the further performance of any such term or condition or the exercise in the future of any such right. A waiver by Buyer of any right or remedy shall not affect any rights or remedies subsequently arising under the same or similar clauses. Any waiver must be made expressly and in writing to be effective.

#### **47. Severability**

If any provision of the Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law, such invalidity, illegality, or unenforceability will not affect any other provision of the Agreement. In place of the invalid, illegal or unenforceable provision, a valid provision shall be deemed to have been agreed which comes as close as possible in economic terms to the provision agreed.

#### **48. Relationship of Parties**

Buyer and Seller are independent contractors, and nothing herein shall be construed to create a partnership, joint venture, agency, or employment relationship. Neither party has nor will have any power to bind the other, or to assume or create any obligation or responsibility, express or implied, on behalf or in the name of the other party. Seller is solely responsible for its own employees, agents and subcontractors and shall ensure that none of them act in a manner that could give rise to any obligation or liability on the part of Buyer vis-à-vis third parties.

#### **49. Updates**

- 49.1 Buyer may modify the Terms from time to time by posting notice of such modified Terms at least thirty (30) calendar days prior to the modified Terms becoming effective. Seller periodically shall review the website and the Terms. The modified Terms shall be deemed accepted by Seller's continued supply of Products under the Agreement after the effective date if Seller fails to object in writing within twenty (20) calendar days after posting.
- 49.2 Buyer may modify the Supplier Manuals or add additional Supplier Manuals from time to time by posting notice of such modified or new Supplier Manuals through links provided on Buyer's website at least thirty (30) calendar days prior to any modified or new Supplier Manuals becoming effective. Seller periodically shall review the website and the Supplier Manuals. The modified or new Supplier Manuals shall be deemed accepted by Seller's continued supply of Products under the Agreement after the effective date if Seller fails to object in writing within twenty (20) calendar days after posting.
- 49.3 Except as provided in this Section 49 or as otherwise provided in these Terms, the Purchase Order may only be modified by a Purchase Order amendment or a written agreement signed by authorized representatives of both parties.