

**Federal-Mogul  
Terms and Conditions of Purchase  
North America**

1. **Offer.** Each purchase order or purchase order revision (“Order”) issued by Federal-Mogul LLC or its applicable subsidiary that issues the Order in question (“Buyer”) is an offer to the seller identified on the Order and its applicable subsidiaries and affiliates (collectively, “Supplier”) for the purchase of goods, parts, components, tooling, equipment, materials and/or services (collectively, the “Goods”) and includes and is governed by these terms and conditions of purchase (collectively, these “Terms”). The Order does not constitute an acceptance of any offer or proposal made by Supplier. Supplier will specify the relevant product information no later than upon delivery and without further request. Buyer’s approval of designs, drawings or other documentation does not release Supplier from its liability hereunder.
2. **Acceptance.** A contract is formed when Supplier accepts the Order. Upon acceptance, the Order, together with these Terms and any other documents expressly incorporated into the Order or separately issued by Buyer, including releases, specifications, drawings, requirements of Buyer’s customer, quality requirements, or anything else agreed to in writing between Buyer and Supplier, will become a binding contract between Buyer and Supplier and binding components of the Order. Each Order shall be deemed accepted by Supplier, subject to these Terms, by shipment of Goods by Supplier, performance of services by Supplier, commencement of work on Goods by Supplier, written acknowledgement (including email) by Supplier, or any other conduct of Supplier that recognizes the existence of a contract pertaining to the Goods. Supplier’s signed acceptance of the Order is not a condition to Supplier’s acceptance.
3. **Exclusive Terms.** When accepted, the Order (including, but not limited to, these Terms) supersedes all prior agreements, purchase orders, quotations, proposals and other communications between the parties regarding the Goods covered by the Order. Any additional or different terms proposed by Supplier, whether in Supplier’s quotation, acknowledgement, invoice or otherwise, are unacceptable to Buyer, are expressly rejected by Buyer, and shall not become part of the Order. Such proposal shall not operate as a rejection of this Order. Any modification of these Terms must be expressly stated in the Order. Each Order can be modified only under Section 45.
4. **Supplemental Terms.**
  - (a) **Web Guides.** Supplier has reviewed and shall comply with Buyer’s quality system requirements as defined in Buyer’s *Supplier Requirements Manual* and the *Restricted Substance Management Standard* and other manuals, guidelines and requirements (together, the “Web Guides”) available via [www.federalmogul.com](http://www.federalmogul.com) or [www.fmmotorparts.com](http://www.fmmotorparts.com) (the “Buyer’s Website”) and incorporated herein by reference. Supplier acknowledges and understands that the Web Guides may be periodically updated, revised and amended and that it is Supplier’s obligation to review and comply with the Web Guides at all times.
  - (b) **Equipment Terms.** In addition to being governed by these Terms, each Order for the purchase of equipment, machinery, dies, molds, patterns, jigs, fixtures, and/or tooling and any related installation, maintenance, warranty or other services (collectively, “Equipment”) shall be governed by Buyer’s Equipment Rider (the “Equipment Rider”) available at Buyer’s Website and incorporated herein by reference. In the event of an inconsistency between these Terms and the Equipment Rider, the Equipment Rider shall control as to such Equipment.
  - (c) **Service Terms.** In addition to being governed by these Terms, each Order for the purchase of services shall be governed by Buyer’s Services Rider (the “Services Rider”) available at Buyer’s Website and incorporated herein by reference. In the event of an inconsistency between these Terms and the Services Rider, the Services Rider shall control as to such services.

(d) Customer's Terms. Where the Goods under this Order are or will be sold, or incorporated into goods or services that are or will be sold by Buyer to an original equipment manufacturer of vehicles, whether directly or indirectly through an upper tier supplier, or any other customer (collectively, the "Customer"), Supplier shall take such steps, provide such disclosure, comply with such requirements and do all other things as Buyer deems necessary or desirable and within Supplier's control to enable Buyer to meet Buyer's obligations under the terms and conditions of any contract or purchase order or other document (the "Customer Terms") that may be applicable to Buyer from time to time in respect of its direct or indirect requirements; warranties and warranty periods; intellectual property rights; indemnification; confidentiality; access to facilities and records; conflict minerals; and replacement and service parts. Buyer may, from time to time, in its sole discretion, provide Supplier with information regarding the applicable Customer Terms, but, in any event, Supplier shall be responsible for ascertaining the Customer Terms that may affect Supplier's obligations hereunder. If there is any conflict between the provisions of the Customer Terms and any provisions of the Order, Buyer shall have the right to have the provisions of the Customer Terms prevail to the extent necessary or desirable to resolve such conflict.

5. **Duration of Order.** The agreement formed by the Order is binding on the parties for the shorter of (a) the duration set forth on the face of the Order or (b) the length of the applicable original equipment manufacturer vehicle program production life (including model updates or refreshes) or, if longer, the life of the part (the "Duration"). If the Order does not specify a Duration, the agreement formed by the Order will be binding for the quantity specified on the Order. Supplier's obligations with respect to service and replacement parts, including those under Section 21 hereof, will survive termination or expiration of the Order. The Duration is subject to Buyer's termination rights, as set forth below.

6. **Quantity; Material Releases.** Unless otherwise expressly stated in the Order or a Signed Writing (defined below), if no other quantity is stated on the face of the Order or if the quantity is blank or states the quantity as zero, "blanket," "see release," "as scheduled," "as directed," "subject to Buyer's production releases" or similar terms, then the agreement is a requirements contract, and Supplier shall supply such facility's requirements for Goods in such quantities specifically identified by Buyer as firm orders in material authorization releases, manifests, broadcasts or similar releases ("Material Releases"). Material Releases are part of the Order, are governed by these Terms, and are not independent contracts. Supplier accepts the risk associated with lead times of various raw materials and/or components if they are beyond those provided in Material Releases and the risk that Buyer can be terminated by its Customer, thereby reducing Buyer's actual requirements to none.

7. **Volume Forecasts.** Buyer may provide Supplier with estimates, forecasts or projections of its future anticipated volume or quantity requirements for Goods. Supplier acknowledges that any such forecasts are provided for informational purposes only and, like any other forward looking projections, are based on a number of economic and business factors, variables and assumptions, some or all of which may change over time. Buyer makes no representation, warranty, guaranty or commitment of any kind or nature, express or implied, regarding any such forecasts provided to Supplier, including, without limitation, with respect to the accuracy or completeness of such forecasts. Such forecasts will not express Buyer's intent to purchase future anticipated volume or quantity requirements, and they may not be construed by Supplier as a commitment by Buyer to do so.

8. **Electronic Data Interchange and Electronic Communication.** Supplier shall comply with any method of electronic communication specified by Buyer, including, without limitation, requirements for electronic funds transfer, purchase order transmission, production releases, electronic signature, and communication. E-mails, even those containing a signature block of one of Buyer's representatives, do not constitute a Signed Writing by Buyer.

9. **Delivery Time.**

- (a) Time of the Essence. Time and quantities are of the essence under the Order. Supplier agrees to 100% on-time delivery of the quantities and at the times specified by Buyer as stated in the Order and related Material Releases. Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which entitles Supplier to modify the price for Goods. Buyer is not obligated to accept early deliveries, late deliveries, partial deliveries or excess deliveries.
- (b) Late Delivery. If Goods are not delivered by the agreed time (including the timely performance of services), then all resulting damages suffered by Buyer, including but not limited to the cost of expedited transportation, other special transportation, or other damages incurred by Buyer resulting from late delivery or performance, will be Supplier's responsibility. All other legal or equitable rights of Buyer remain unaffected.
- (c) Partial Delivery. Supplier is not entitled to effect partial deliveries, unless Buyer has expressly approved such partial delivery in writing. If Supplier delivers a quantity in excess of the quantity ordered, Buyer shall not be responsible for taking delivery of or storing or maintaining such excess quantities, and shall further be entitled to return any such excess quantities to Supplier at Supplier's expense.
- (d) Shipment/Delivery Suspension. Supplier will, upon Buyer's request, suspend shipment and delivery of Goods for such periods as Buyer directs. Buyer may change the timing of scheduled shipments or direct temporary suspension of scheduled shipments without entitling Supplier to a price adjustment or other compensation.

**10. Pricing.** Except as expressly stated on the Order, the price of Goods stated on the Order is complete, and includes storage, handling, packaging, setup and all other expenses and charges of Supplier, and no surcharges, premiums or other additional charges of any type may be added without Buyer's express written consent. Prices are not subject to increase, unless specifically stated in the Order or a Signed Writing, and Supplier assumes the risk of any event or cause affecting prices, including, without limitation, volume fluctuations, foreign exchange rates, increases in raw material costs, inflation, increases in labor and other production and supply costs, and any other event which impacts the price or availability of materials or supplies. Except as expressly stated on the Order or implied in the relevant shipping terms (as construed per Incoterms 2010), the total price includes all duties and taxes other than U.S. sales and use tax **[FOR U.S. ONLY]**. Buyer is not responsible for any taxes arising from or in connection with Supplier's business activity, payroll income, or assets.

**11. Invoices.** All invoices for Goods must reference the Order number, amendment or release number, Buyer's part number, Supplier's part number where applicable, quantity of pieces in the shipment, description of the included Goods, number of cartons or containers in the shipment, bill of lading number, currency and other information reasonably required by Buyer and must be sent to Buyer in the manner designated by Buyer. No invoice may reference any term separate from or different than these Terms or the terms that appear on the face of the Order. Buyer reserves the right to return all invoices or related documents submitted incorrectly. Buyer will only pay upon proper invoices complying with the requirements herein and all of the terms of the Order, subject to adjustments, set-offs, discrepancies or other rights of Buyer.

## **12. Payment.**

- (a) Except as otherwise provided in these Terms, Buyer will pay upon proper invoices in accordance with applicable payment date terms stated in the Order or a Signed Writing. Such payment terms commence on the date Goods and the corresponding invoice are received at the facility designated by Buyer or, in the case of services, the date that Buyer receives Supplier's invoice following completion of the services. If payment terms are not listed, the default payment terms are approximately 90 days on the next payment run date. Payment may be made electronically or by check on or before the due date

unless otherwise expressly agreed by Buyer. For the avoidance of doubt, whether stated in the Order or a Signed Writing or if default payment terms are applied, Supplier understands that Buyer makes payments twice a month and therefore Buyer's payment terms are approximate and not net.

- (b) Buyer may withhold payment pending receipt of evidence, in the form and detail requested by Buyer, of the absence of any liens, encumbrances, or claims on Goods provided under the Order. Payment will be made in the currency expressly stated in the Order; if no such currency is on the Order, payment will be made in currency local to the receiving facility.
- (c) Buyer is entitled to all legal and equitable rights of retention.

- 13. Competitiveness.** Buyer makes an effort to supply its Customers with goods of the highest possible quality and technology and at the lowest possible cost. Therefore, any Goods delivered by Supplier must, at least, match goods of its competitors with regard to each of quality, technology and price. If a competitor offers any goods of better quality, technology or price, then within 30 days of Buyer's provision of a notice to Supplier of a competitive offer, Supplier shall provide Buyer with a new offer that matches, or is more competitive than, the competitor's offer.
- 14. Premium Freight.** Supplier will pay all premium freight costs over normal freight costs if Supplier needs to use an expedited shipping method to meet required delivery dates due to its acts or omissions or problems in its supply chain. This is the case even if Buyer normally pays for shipping costs. Supplier will indemnify and pay any costs incurred by Buyer, including, without limitation, costs charged by third parties who directly or indirectly purchase or receive products containing the Goods from Buyer, as a result of Supplier's failure to comply with shipping or delivery requirements. Notwithstanding Supplier's responsibility to pay premium freight costs, Supplier must still use Buyer routing instructions.
- 15. Shipping; Risk of Loss.** Supplier will: (a) properly pack, mark, and ship Goods according to Section 16 and the requirements of Buyer, the involved carriers, and the country of destination; (b) package all Goods to ensure that they are adequately protected against damage and deterioration in transit; (c) route the shipments according to Buyer's routing instructions, incorporated herein by reference and available via Buyer's Website (with the understanding that in such cases where the guiding instructions do not provide applicable routing detail, Supplier's guidelines shall not apply and instead Supplier must contact Buyer for shipment instructions); (d) provide papers with each shipment as required by law, as applicable, and papers showing the Order number, amendment or release number, Buyer's part number, Supplier's part number (where applicable), number of pieces in the shipment, number of containers in the shipment, Supplier's name and number, and the bill of lading number; and (e) promptly forward the original bill of lading or other shipment receipt for each shipment according to Buyer's instructions and carrier requirements. Unless otherwise provided in the Order, the applicable shipping terms shall be FCA Supplier's facility in accordance with Incoterms 2010 (Commercial Chamber of Paris, Edition 2010). Except as expressly stated on the Order or implied in the relevant shipping terms (as construed per Incoterms 2010), the risk of loss for the Goods passes from Supplier to Buyer upon delivery to Buyer's designated location on the Order, but title passes to Buyer only upon acceptance by Buyer at Buyer's facility where the Goods are to be used.
- 16. Packaging.** Buyer's packaging requirements, as provided by Buyer to Supplier, are incorporated herein by reference. To the extent packaging requirements are not provided by Buyer, Supplier shall pack the Goods in accordance with sound commercial practices, the applicable Automotive Industry Action Group packing requirements and, if applicable, ISPM (International Standards For Phytosanitary Measures) 15. In addition, Supplier shall package and ship all Goods in a manner that will ensure that the product is adequately protected against damage and deterioration in transit. If the packaging is defective or non-compliant with environmental regulations, the delivery will be deemed defective, and Buyer shall be entitled to object to and refuse such deliveries. Supplier shall reimburse Buyer for any liabilities, expenses and costs incurred (and indemnify Buyer pursuant to Section 25) as a result of Supplier's improper packing, marking, routing, or shipping or any

other non-compliance with the requirements of this Section. In no event shall shipping documents attached to or contained in the shipment display pricing information or any of Buyer's proprietary information.

**17. Inspection; Audit.** Upon reasonable notice to Supplier, either Buyer or its Customers may conduct audits at Supplier's facilities and information, including but not limited to, books, records, payroll data, receipts, correspondence, and other electronic and non-electronic documents relating to the Goods, Supplier's obligations under the Order, any payment made to Supplier, or any claim made by Supplier, shall be made available to Buyer or its Customers as reasonably required for the purpose of auditing or verifying Supplier's performance of its obligations under the Order and its charges therefore. Among other things, Buyer may enter Supplier's facility to inspect the facility, the Goods, materials, and any of Buyer's Property (defined below) or Supplier's Property (defined below) or other property that relates to the Order. Buyer's audit(s) and/or inspection of the Goods, whether prior to production, during manufacture, prior to delivery, or within a reasonable time after delivery, does not constitute acceptance of any work-in-process or finished goods nor does it remove responsibility from Supplier to comply with the terms of the Order. Buyer's acceptance, inspection, or failure to inspect does not relieve Supplier of any of its responsibilities or warranties. Nothing in the Order releases Supplier from the obligation of testing, inspection and quality control. Supplier will preserve information subject to audit hereunder for the life of the relevant program plus eight (8) years or, if required by the Customer, longer. In addition, Buyer has the right to make copies of any information that it may audit hereunder.

**18. Changes.**

- (a) Buyer reserves the right at any time to direct changes, or cause Supplier to make changes, to the Goods under any Order or Order amendment, including, without limitation, changes in the design, drawings and specifications, processing, methods of packing and shipping and the date or place of delivery of the Goods covered by the Order, work with respect to such matters as inspection, testing or quality control, or to otherwise change the scope of the work covered by the Order. Supplier agrees to promptly make such changes. Buyer may also direct the supply of raw materials from itself or from third parties. Any such changes shall be deemed not to affect the time for performance or cost under the Order unless (i) Supplier provides Buyer with written notice of a claim for adjustment to time for performance or cost within ten (10) days after Buyer's notice to Supplier of the change and (ii) after Buyer's audit of such claim, the parties jointly analyze the results and reach an equitable adjustment (*e.g.*, price increase, price decrease, change in order quantity or lead time) taking into consideration the adjustment, if any, received by Buyer from its Customer. No price increase shall take effect without an Order amendment issued by Buyer. Any such claim by Supplier for adjustment to time for performance or cost under an Order must be solely and directly the result of the change directed by Buyer, and any notice of such claim shall be effective only if accompanied by all 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 Supplier to verify any claim. Supplier shall consider and advise Buyer of the impact of a design change on the system in which the Goods covered by the Order are used. Nothing in this Section 18, including a pending notice of a claim for adjustment to time for performance or costs issued by Supplier, shall excuse Supplier from proceeding with the Order as changed.
- (b) Without the prior approval of Buyer on the face of an Order amendment or in a Signed Writing by an authorized representative of Buyer, Supplier shall not make any changes to any Order or the Goods covered by the Order, including, without limitation, changing (i) any third party supplier to Supplier of services, raw materials or goods used by Supplier in connection with its performance under the Order; (ii) the facility from which Supplier or such sub-supplier operates; (iii) the price of any of the Goods covered by the Order; (iv) the nature, type or quality of any services, raw materials or goods used by Supplier or its suppliers in connection with the Order; (v) the fit, form, function, appearance, or performance of any Goods covered by the Order; or (vi) the production method, or any process or software used in the production or provision of any Goods under the Order. Any changes by Supplier

to any Order or the Goods covered by the Order without the prior approval by Buyer on the face of an Order amendment or in a Signed Writing by an authorized representative of Buyer shall constitute a breach of the Order.

## **19. Warranties.**

- (a) Supplier expressly warrants and guarantees to Buyer, to Buyer's successors, assigns and Customers, and to users of Buyer's products, that all Goods delivered or provided to Buyer will: (i) be competitive Goods in terms of price, quality, delivery and technology; (ii) conform to the applicable specifications, standards, drawings, samples, descriptions and revisions; (iii) conform to all applicable laws, orders, regulations and standards in countries where Goods or vehicles or other products incorporating Goods are to be sold, including, without limitation, the National Traffic and Motor Vehicle Safety Act, United States motor vehicle safety standards and European Union Directive 2000/53/EC; (iv) be merchantable and free of defects in (A) design (to the extent designed by Supplier or any of its Representatives (as defined below), even if the design has been approved by Buyer), (B) materials (including, without limitation, rust or other contamination) and (C) workmanship; (v) be selected, designed (to the extent designed by Supplier or any of its Representatives, even if the design has been approved by Buyer), manufactured and assembled by Supplier based upon Buyer's stated use and be fit and sufficient for the purposes intended by Buyer; and (vi) be transferred to Buyer with good title, free of all liens, claims and encumbrances whatsoever. Supplier further expressly warrants that, unless otherwise expressly stated in the Order, the Goods are manufactured entirely with new materials. These warranties are intended to provide Buyer with protection from any and all warranty claims brought against Buyer by Customers, including, without limitation, Customer-required warranties relating to the Goods or any products into which such Goods are incorporated. All such Customer-required warranties are incorporated herein by reference, copies of which will be provided to Supplier upon written request. The foregoing warranties are in addition to those available to Buyer under applicable law, express or implied.
- (b) The term of this warranty shall be the longer of:

  - (i) the term of warranty provided by the Customer of the final product into which the Goods purchased herein are incorporated (hereinafter "Final Product"). For example, an automobile component that is installed as original equipment in a motor vehicle shall have the same warranty period that is extended with the motor vehicle. While such warranty terms and programs are generally public knowledge, Buyer shall provide Supplier with the details of such Customer Final Product warranty coverage upon written request; or
  - (ii) the term mandated by applicable law; or
  - (iii) forty-eight (48) months from the date the Final Product is first placed into operation.
- (c) Notwithstanding the foregoing warranty periods, in the event of serial defects in the Goods the warranty period shall continue indefinitely.
- (d) Buyer's audit, review or approval of any design, drawing, material, process or specifications will not relieve Supplier of its warranty obligations.
- (e) The following communications shall each constitute notice of a breach of warranty under the Order: (i) any communication specifying a defect, default, claim of defect or other problem or quality issue of the Goods provided under the Order; (ii) any communication to Supplier claiming that the Goods are in breach of any warranty or that Supplier is in default under the Order; and (iii) a termination notice from

Buyer under Section 28. Any such claim by Buyer of breach may only be rescinded in writing by an authorized representative of Buyer.

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

## **20. Supplier Standards, Quality and Development; PPAP; Required Programs.**

- (a) Supplier will conform to the quality control and other standards and inspection systems of Buyer and (as applicable) its Customers, including, without limitation, quality control policies, ISO 9001 or ISO/TS 16949 quality certifications. Supplier will also participate in supplier quality and development programs of Buyer and (as applicable) its Customers. Supplier agrees to meet the full requirements of industry Production Part Approval Processes (PPAP) as specified by Buyer and its Customers (as applicable) and agrees to present this information to Buyer upon request, at the level requested. As requested by Buyer at any time, Supplier will participate in and comply with the Buyer programs and standards as more fully described under Section 4. In the event of any discrepancy between any part of the above programs or standards and an express provision of these Terms, these Terms will control.
- (b) Supplier must keep any documentation relating to the Goods for at least the life of the program plus eight (8) years or, if required by its Customer, longer. Supplier will provide such documentation to Buyer in any case upon Buyer's first and any subsequent written request.
- (c) Supplier is responsible for all lower-tier providers of goods or services, whether or not the lower-tier providers were selected by Buyer. Supplier must maintain adequate development, validation, launch and ongoing supervision to assure all Goods provided to Buyer conform to all applicable warranties and other provisions of the Order.

**21. Service and Replacement Parts.** This Section applies only to the extent that the Goods are destined for sale or incorporation into goods sold, directly or indirectly, to original equipment manufacturers (*i.e.*, not aftermarket sales). During the term Goods are supplied hereunder, and for a period of 15 years after Buyer has completed the last purchase of Goods, Supplier will supply all of the Buyer's service and replacement requirements for the Goods at the last valid prices for the first five (5) years of this 15-year period. For the remaining ten (10) years of the 15-year period, the price will be the last valid prices plus any actual cost differential for manufacturing and packaging, such cost differential to be negotiated (and may be audited by Buyer). Unless otherwise stated in this Section 21, Supplier's production and supply of Buyer's service and replacement requirements are subject to these Terms.

**22. Remedies.** The rights and remedies reserved to Buyer in each Order will be cumulative with and in addition to all other or legal or equitable remedies.

- (a) Supplier will reimburse, and indemnify and hold Buyer harmless from and against, any incidental, consequential or other damages (including, without limitation, lost profits) caused or required by Supplier's breach or by non-conforming Goods, including, without limitation, costs, expenses and losses incurred directly or indirectly by Buyer or its Customer(s): (i) in inspecting, sorting, storing, reworking, repairing or replacing the non-conforming Goods; (ii) resulting from production interruptions; (iii) conducting recall campaigns, Customer field service actions or other corrective

service actions; or (iv) resulting from personal injury (including, without limitation, death) or property damage caused by the non-conforming Goods. Buyer's recoverable damages include actual attorneys' fees and other professional fees, settlements and judgments incurred by Buyer and other costs associated with Buyer's administrative time, labor, and materials.

- (b) If requested by Buyer, Supplier will enter into a separate agreement for the administration or processing of warranty charge-backs for non-conforming Goods, and will participate in and comply with warranty reduction or related programs of Buyer or (to the extent directed by Buyer) of its Customer(s) that relate to the Goods.
- (c) In any action brought by Buyer to enforce Supplier's obligations in connection with the production or delivery of the Goods or transition support, or for possession of property, Supplier acknowledges and agrees that monetary damages are not a sufficient remedy for any actual, anticipatory or threatened breach of the Order and that, in addition to all other rights and remedies that Buyer may have, Buyer shall be entitled to specific performance and injunctive equitable relief as a remedy for any such breach, plus Buyer's actual attorneys' fees and other professional fees.
- (d) If defective Goods are rejected by Buyer, the quantities under the Order shall be reduced unless Buyer otherwise notifies Supplier. Supplier shall not replace reduced quantities without a new Material Release or Order from Buyer. Buyer's recoverable, incidental damages include, without limitation, third party charges and Buyer internal expenses (*e.g.*, hourly wages, salaried wages and carrying costs) relating to transportation, containment, sorting and other attempts at mitigation relating to such non-conforming Goods.
- (e) All Goods shall be received subject to inspection and approval by Buyer after delivery. Upon inspection, Buyer may give Supplier notice of rejection or revocation of acceptance of the Goods, notwithstanding any payment, approval or inspection. No inspection, approval, delay or failure to inspect, or failure to discover any defect or non-conformance, shall relieve Supplier of any obligations under any Order or impair or waive any right or remedy of Buyer with respect to the Goods or Supplier's performance of services. If, in Buyer's judgment, any Goods do not conform to the requirements of the Order, Buyer shall have the right to reject the Goods and, in addition to any other rights and remedies it may have, Buyer may, in its sole discretion: (i) seek reimbursement, credit, replacement, or repair of the Goods as Buyer may direct; or (ii) correct, rework, and/or repair the Goods with all costs associated therewith to be charged to and paid by Supplier.
- (f) In addition to other remedies available to Buyer: (i) Supplier agrees to accept return of defective Goods, at Supplier's risk and expense at full invoice price, plus transportation charges, and to replace defective Goods at Buyer's direction; and/or (ii) at the expense of Supplier, Buyer may have corrected, at any time prior to shipment from Buyer's plant, Goods that fail to meet the requirements of the Order. Supplier shall document corrective actions within a commercially reasonable period after receipt of a defective sample and take whatever measures necessary to rectify the defect. Payment for non-conforming Goods is not an acceptance of the Goods, does not limit or impair Buyer's right to assert any legal or equitable remedy, and does not relieve Supplier's responsibility for any latent defects. Supplier shall ensure that the terms of its contracts with its subcontractors provide Buyer and its Customers with all of the rights specified in this Section.

## **23. Compliance.**

- (a) General. Supplier and its subcontractors shall comply with all applicable laws, regulations, directives, guidelines, rules, orders, conventions, ordinances and standards of the country(ies) of origin and destination or that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval or certification of the Goods, including, without limitation, those relating to



environmental matters, data protection and privacy, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety. Without limiting the generality of the foregoing, Supplier and its subcontractors shall comply with all applicable domestic and foreign anti-bribery and anti-corruption laws, and other laws governing improper payments, including but not limited to, the requirements of the U.S. Foreign Corrupt Practices Act, the UK Bribery Act of 2010, and any other applicable anti-bribery and anti-corruption laws and regulations in other jurisdictions (collectively, the “Anti-Bribery Laws”), and Supplier shall not act in a way that would cause Buyer to be in violation of the Anti-Bribery Laws (such as, by way of example only, providing a kickback, bribe, inappropriate gift or entertainment to any employee or agent of Buyer or government official or political party in order to obtain or retain business or to secure an improper commercial advantage). Supplier further represents 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 abusive worker treatment or corrupt business practices. At Buyer’s request, Supplier shall certify in writing its and its subcontractors’ compliance with the foregoing. Supplier shall indemnify and hold Buyer harmless from and against any liability, claims, demands or expenses (including, without limitation, all attorneys’ or other professional fees) arising from or relating to Supplier or Supplier’s subcontractors’ non-compliance.

- (b) Environmental. Supplier will conform to environmental standards and inspection systems of Buyer and (as applicable) its Customers, including, without limitation, ISO 14001 environmental certification. In addition, Supplier warrants that the Goods comply upon delivery with all state-of-the-art requirements with regard to their environmental compatibility. Supplier shall comply with all applicable regulations regarding the Goods including, without limitation, all materials used in producing the Goods and shall provide all information required by such regulations and/or requested by Buyer. Supplier shall be responsible, where physically possible, to take its Goods back for the purpose of recycling them within the scope of any statutory duties or to dispose of them in an environmentally-friendly manner. Supplier shall comply with Buyer’s restricted substances management requirements as found on Buyer’s Website. Before or at the time Goods are shipped, Supplier shall give Buyer sufficient warning in writing (including, without limitation, appropriate labels on all Goods, containers, and packaging, disposal and recycling instructions, material safety data sheets and certificates of analysis) of any hazardous, flammable, toxic, corrosive or restricted material that is an ingredient or part of the Goods, together with any special information necessary for the proper handling, transportation, processing, use or disposal of the Goods, containers, and packaging. Supplier agrees to comply with all applicable laws and regulations pertaining to product content and warning labels, including, without limitation, the U.S. Toxic Substances Control Act and European Union Directive 2000/53/EC. Supplier shall indemnify and hold Buyer harmless from all liabilities, costs, damages, fees, expenses, and fines incurred by Buyer due to Supplier’s violation of the above-mentioned obligations. In case of administrative procedures against Buyer by relevant authorities due to Goods or materials/substances used therein, Supplier shall support Buyer to defend each case and shall provide all reasonable information needed and/or requested by any authority and/or Buyer for such defense. Delivery of any Goods shall constitute Supplier’s representation to Buyer that there has been and will be full compliance with all applicable environment, health and safety governmental requirements.
- (c) Customs/Export. Credits or benefits resulting from the Order, including, without limitation, trade credits, export credits or the refund of duties, taxes, or fees, belong to Buyer. Supplier will provide all information and certificates (including, without limitation, NAFTA, Certificates of Origin, EUR1, Mercosur, CAFTA, JMEPA, ASEAN) necessary to permit Buyer (or, if applicable, its Customers) to receive these benefits or credits. Supplier agrees to fulfill any customs- or trade-related obligations, origin marking or labeling requirements, and local content origin requirements. Export licenses or authorizations necessary for the export of Goods are Supplier’s responsibility unless otherwise stated in the Order or a Signed Writing by an authorized representative of Buyer, in which case, Supplier shall provide the information necessary to enable Buyer to obtain the licenses or authorizations. Supplier

shall promptly notify Buyer in writing of any material or components used by Supplier in filling the Order that Supplier purchases in a country other than the country of final destination. Supplier shall furnish any documentation and information necessary to establish the country of origin or to comply with the applicable country's rules of origin requirements. Supplier shall promptly advise Buyer of any material or components imported into the country of origin and any duty included in the Goods' purchase price. If Goods are manufactured in a country other than the country of final destination, Supplier shall mark Goods "made in [country of origin]". Supplier shall provide to Buyer and the appropriate governmental agency the documentation necessary to determine the admissibility and the effect of entry of the Goods into the country of final destination. Supplier warrants that any information that is supplied to Buyer about the import or export of the Goods is true and that all sales covered by the Order will be made at not less than fair value under the anti-dumping laws of the countries of final destination. To the extent any Goods covered by this Order are to be imported into the United States of America, European Union, Canada, Mexico, or any country that has initiated an anti-terrorist initiative, Supplier shall comply with all applicable recommendations or requirements of any governing agency supporting an anti-terrorist initiative including, without limitation, the Customs-Trade Partnership Against Terrorism (C-TPAT), Authorized Economic Operator (AEO), and Partners in Protection (PIP) initiatives. Upon request, Supplier shall certify in writing its compliance with said initiatives.

- (d) **Ethics Policy.** Buyer's agents and employees are prohibited from soliciting or accepting kickbacks, bribes and inappropriate gifts and entertainment. Supplier is required to avoid any action to induce Buyer's agents and employees to accept any improper consideration, whether legal or illegal. Supplier warrants that no such consideration has been offered or provided to any Buyer agent or employee. Buyer reserves the right, and by acceptance of an Order, Supplier agrees to permit Buyer, to audit any of Supplier's records that are deemed necessary by Buyer to ensure compliance with this ethics policy. An expanded version of Buyer's *Ethics Statement* is available on Buyer's Website.
- (e) **Conflict Minerals.** Supplier warrants that, to its knowledge, no tin, tantalum, tungsten and/or gold (collectively, "Conflict Minerals"), contained in any Good subject to this Order, originated from the Democratic Republic of the Congo or an adjoining country (each a "Covered Country"), unless the Conflict Minerals were processed by a facility listed as compliant pursuant to the CFSI Conflict-Free Smelter Program. As requested by Buyer from time to time, Supplier shall disclose to Buyer any Goods delivered by Supplier that contain Conflict Minerals. Supplier shall use due diligence protocols, standards, and procedures that meet or exceed the reasonable country of origin inquiry described in the U.S. Securities and Exchange Commission rules and relevant best practices developed by the industry to diligence its supply chain (*see* Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and its implementing regulations). Supplier shall have a supply chain policy for Conflict Minerals and, upon request, shall provide to Buyer all supporting information and documentation in any format requested by Buyer to substantiate its due diligence activities. All such supporting information and documentation shall be retained by Supplier for a minimum of five (5) years and be subject to audit by Buyer upon reasonable notice. If Buyer has reason to believe the Conflict Minerals originated in a Covered Country and directly or indirectly support conflict in such Covered Country, Buyer may evaluate alternative suppliers to determine whether to discontinue such procurement activities with Supplier.
- (f) **[FOR U.S. ONLY:]** The commitment to comply with law and Supplier's representation concerning compliance with law includes, without limitation, the Child Labor provisions of the Fair Labor Standards Act, 29 USC § 212. Supplier agrees to provide a completed "US Customs Form 434 - North American Free Trade Agreement Certificate of Origin" for all parts that have an origin of USA, Canada, or Mexico; and for parts with origins other than USA, Canada or Mexico, to provide and properly mark the country of origin of each part. **To the extent required by law, Supplier certifies that Supplier and Supplier's subcontractors (i) comply with the provisions of the Equal Opportunity Clause in Executive Order 11246 and with 41 CFR 60-1.4; (ii) do not and will not discriminate against any**

employee or applicant for employment on the basis of race, color, religion, sex, national origin or disability; (iii) do not maintain segregated facilities in violation of 41 CFR 60-1.8; (iv) will, in accordance with 41 CFR 60-1.7, file Standard Form 100 (EEO-1); (v) comply with Section 401 of the Vietnam Era Veteran Readjustment Act of 1974 and 41 CFR 60.250; and (vi) comply with Section 503 of the Rehabilitation Act of 1973 and 41 CFR 60-741.

**24. Customer Requirements.** This Section applies only to the extent that the Goods are destined for sale or incorporation into goods sold, directly or indirectly, to original equipment manufacturers (*e.g.*, not aftermarket sales).

- (a) The automotive industry is customer focused and Supplier understands and agrees to use best efforts to assist Buyer, as part of this tiered supply network, to meet the requirements of the Customer. Supplier agrees that it shall take all steps, provide such disclosures, comply with such requirements, and do all other things as Buyer deems necessary or desirable and within Supplier's control to enable Buyer to meet Buyer's obligations under the terms and conditions of Buyer's Customer(s) that may be applicable to Buyer from time to time (including, without limitation, warranties; intellectual property rights; indemnification; confidentiality; audits of facilities and records; and replacement and service parts).
- (b) If a Customer directed, recommended, requested, suggested or otherwise identified supplier is the Supplier from which Buyer is to obtain the Goods ("Direct Supply Relationship"), then notwithstanding the terms otherwise applicable to the Order:
  - (i) while price increases are not allowable under this Order, Supplier understands that even on an exception basis, no price increase will be granted unless and until both: (A) the Customer agrees to the increase and (B) the Customer provides a related and corresponding increase to the price of the Buyer's products into which the Goods are incorporated;
  - (ii) in no event will Supplier have a right to receive payment from Buyer until Buyer is fully paid by the Customer for the related Goods or, as applicable, the goods into which such Goods are incorporated; and
  - (iii) if any requirement imposed by any Order on Supplier is found to be unenforceable or a gap otherwise exists or is created in the terms applicable to any Order through operation of law, conflict in terms or otherwise, the corresponding requirement(s) of Customer shall be applicable to and binding on Supplier for the benefit of Buyer. Supplier acknowledges that it is familiar with the automotive industry and the applicable Customer Terms that would apply in such event.

**25. Indemnification.**

- (a) To the fullest extent permitted by law: (i) Supplier assumes sole responsibility for any injury to any person (including, without limitation, death) or damage to any property of any kind or nature caused by, resulting from or in connection with the furnishing of the Goods by Supplier, its subcontractors, officers, agents, representatives or employees (collectively, "Representatives"); (ii) Buyer shall not be responsible for any injury to any person (including, without limitation, death) or damage to any property resulting from Supplier's possession, use, misuse or failure of any Buyer's Property or other property furnished to Supplier by Buyer, and the use of any such property by Supplier shall constitute acceptance by Supplier of all responsibility for any claims for such injury or damage, and (iii) Supplier will defend, indemnify and hold harmless Buyer, its Customers and dealers and users of the products sold by Buyer (or the vehicles or other end-use application in which they are incorporated), and all of their respective agents, customers, invitees, subsidiaries, affiliates, successors and assigns, against all damages, fees, losses, claims, liabilities and expenses (including, without limitation, attorneys' and other professional fees, settlements and judgments) arising out of or resulting from any defective Goods, or from any

negligent or wrongful act or omission of Supplier or Supplier's Representatives, or any breach or failure by Supplier to comply with any of Supplier's representations or other terms and conditions of an Order (including, without limitation, any part of these Terms).

- (b) This obligation to indemnify includes, without limitation, the cost of recall campaigns, Customer field service actions or other corrective service actions that, in Buyer's or its Customers' reasonable judgment, are required because of non-conformities in some or all of the Goods provided by Supplier hereunder, and including, without limitation, interim set-offs or charges (such as interim field service action cost recovery debits) by Customers attributable to the Goods but subject to adjustment based on final determination of whether and to what extent the damages, fees, losses, claims, liabilities and expenses were attributable to defects or other failures of the Goods or Supplier to comply with its obligations under one or more Orders.
- (c) Supplier's obligation to defend, indemnify and hold harmless under this Section will apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise, except for claims that arise as a result of the sole negligence of Buyer. Buyer has the right to be represented by and actively participate through its own counsel in the defense and resolution of any indemnification matters, at Supplier's expense. The indemnification obligations of Supplier set forth in this Order, including, without limitation, this Section, are independent of and in addition to any insurance and warranty obligations of Supplier.
- (d) If Supplier performs any work on Buyer's or its Customers' premises or utilizes the property of Buyer or its Customers, whether on or off Buyer's or its Customers' premises: (i) Supplier will examine the premises and the Buyer and/or Customer property to be used to determine whether they are safe for the requested work and will advise Buyer promptly of any situation it deems to be unsafe; (ii) Supplier's Representatives will comply with all laws and regulations that apply to the premises and may be removed from Buyer's premises at Buyer's discretion; (iii) Supplier's Representatives will not possess, use, sell, transfer or be under the influence of alcohol or unauthorized, illegal, or controlled drugs or substances on the premises; and (iv) to the fullest extent permitted by law, Supplier will indemnify and hold Buyer and its Customers, and their respective agents, successors and assigns, harmless from and against any liability, claims, demands or expenses (including, without limitation, attorneys' and other professional fees, settlements and judgments) for damages to the property of or personal injuries (including, without limitation, death) to Buyer, Customers, their respective employees or agents, or any other person or entity to the extent arising from or in connection with Supplier's work on the premises or Supplier's use of Buyer's or its Customers' property, except for any liability, claim or demand arising out of the sole negligence of Buyer.
- (e) Other provisions of these Terms, the Order or any other Signed Writing referencing or incorporating these Terms may contain provisions providing for indemnification. The indemnification obligations under those sections are to be interpreted broadly to incorporate the provisions of this Section 25. Moreover, a violation of an obligation of Supplier that results in an injury, claim, cost or expense to or against Buyer that is not in one of the foregoing referenced sections calling for indemnification shall also be subject to the indemnification obligations under this Section 25.

**26. Insurance.** Supplier will obtain and maintain, with insurance companies having a minimum AM Best rating of A VII or the equivalent, the insurance coverages listed below or in additional amounts and coverages as may be reasonably requested by Buyer or (to the extent directed by Buyer) its Customer(s), in each case naming Buyer and its affiliates, as, is applicable, loss payee(s) and additional insured(s). Supplier's insurance is primary and non-contributory and will include a waiver of subrogation in favor of Buyer. Minimum coverage required is as follows: (i) Worker's Compensation at statutory requirements, and Employers Liability with limits of at least USD \$1,000,000 or the equivalent in other currency; (ii) Commercial General Liability, including, without limitation, Products Recall insurance, Products Liability, Completed Operations

and Contractual Liability at a minimum of USD \$5,000,000 per occurrence or the equivalent in other currency; (iii) All Risks Property including Business Interruption (and including (A) all Supplier's Property, and (B) any bailed property of Buyer or a Customer maintained by Supplier and owned by Buyer or Customer) for full replacement cost without limitation for co-insurance; (iv) Comprehensive Automobile insurance coverage at a minimum limit of USD \$2,000,000 or the equivalent in other currency; and (v) Professional Liability insurance covering liability for loss or damage due to an act, error, omission or negligence of Supplier in an amount not less than USD \$5,000,000 or the equivalent in other currency. This policy must not have any cyber exclusions, and if written on a claims made form, coverage must be maintained for three (3) years after this Order terminates. This coverage may be satisfied under a Cyber policy (including, without limitation, network security and privacy coverage) with a minimum limit of USD \$5,000,000 or the equivalent in other currency. All such insurance required shall not carry deductibles or self-insured retentions greater than USD \$1,000,000 per policy and Supplier is solely responsible for payment of all deductibles and self-insured retentions. Supplier will furnish to Buyer a certificate, including endorsements, showing compliance with these insurance requirements within ten (10) days of this Order and annually thereafter. The certificate will provide that Buyer (and, if applicable, Customer(s)) will receive 30 days prior written notice of any termination or material reduction in the amount or scope of coverage of the above insurance policies. Certificates must show the amount of coverage, number of policy, and date of expiration, and existing self-insured retentions shall be declared on the certificate under the *Description of Operations* section. No limitation of liability right available to Supplier under this Order or otherwise shall in any way apply to limit the recovery of Buyer to the extent the related claim is required to be insured hereunder.

## **27. Financial Review and Distress.**

- (a) Buyer, or a third party designated by Buyer, may at any time review the financial condition of Supplier and its subsidiaries and affiliates, and Supplier will fully cooperate in such review and will promptly provide copies of or access to reasonably requested documents, including, without limitation, financial records and statements, forecasts, business plans, banking contacts and loan documents, and will make its financial managers available for discussions during reasonable business hours. Buyer, and any designated third party, will keep confidential any non-public information about Supplier obtained in a financial review and use such information only for purposes of the review, except as needed to enforce the Order.
- (b) Buyer may terminate this Order, in whole or in part, upon written notice to Supplier, if Supplier: (i) becomes insolvent; (ii) files a voluntary petition in bankruptcy; (iii) has an involuntary petition in bankruptcy filed against it; (iv) has a receiver, administrator, custodian or trustee appointed over Supplier or its assets; or (v) executes an assignment for the benefit of its creditors.
- (c) Supplier agrees that if Supplier experiences any delivery or operational problems, Buyer may, but is not required to, designate one or more representatives to be present in Supplier's applicable facility to observe Supplier's operations. Supplier agrees that if Buyer provides to Supplier any accommodations (financial or other) that are necessary for Supplier to fulfill its obligations under this Order, Supplier will reimburse Buyer for all costs, including, without limitation, attorneys' and other professionals' fees, incurred by Buyer in connection with such accommodation and will grant access to Buyer to use Supplier's premises and machinery, equipment, and other property necessary for the production of the Goods covered by this Order. Notwithstanding anything contained in this Section 27 to the contrary, financial information provided by Supplier to Buyer hereunder pursuant to a Direct Supply Relationship may be provided to the Customer if Supplier fails to provide Buyer with adequate reasonable assurance of Supplier's financial capability to perform any of Supplier's obligations under the Order on a timely basis.

**28. Termination for Supplier Breach or Nonperformance.** Buyer may terminate all or any part of the Order, without liability to Supplier, if Supplier: (i) repudiates, breaches or threatens to breach any of the terms of the

Order (including, without limitation, Supplier's warranties and world-class supplier provisions); (ii) fails to adequately respond to a demand for adequate assurance; (iii) fails or threatens not to deliver Goods or perform services in connection with the Order; (iv) fails to make progress or to meet reasonable quality requirements so as to endanger timely and proper completion or delivery of Goods and does not correct the failure or breach within ten (10) days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from Buyer specifying the failure or breach or Buyer terminates for breach any other Order issued by Buyer to Supplier in accordance with the terms of such other Order (whether or not such other Order is related to the Order); (v) enters or offers to enter into a transaction that includes a sale of a substantial portion of its assets used for the production of Goods for Buyer or a merger, sale or exchange of stock or other equity interests that would result in a change in control of Supplier; or (vi) fails to remain competitive with respect to quality, technology, delivery, service or pricing of the Goods. Supplier will notify Buyer within ten (10) days after entering into any negotiations that could lead to the situation specified in Subsection (v) above, *provided* that upon Supplier's request, Buyer will enter into an appropriate non-disclosure agreement related to information disclosed to Buyer in relation to such transaction. Moreover, Supplier acknowledges and accepts the risk of vehicle program production life being cancelled by the Customer, and Buyer may terminate the Order upon such cancellation by the Customer.

## **29. Termination for Convenience.**

- (a) Termination for Convenience. In addition to any other rights of Buyer to cancel or terminate the Order, Buyer may, at its option and in its sole discretion, terminate all or any part of the Order at any time and for any reason, and notwithstanding the existence of any event of force majeure under Section 32, by giving at least five (5) days written notice to Supplier. If Buyer purports to terminate an Order for cause under Section 28 or otherwise and it is later determined that such cause or reason was lacking, such termination shall be deemed a termination for convenience under this Section 29.
- (b) Supplier Obligations Relating to Section 29. Upon receipt of notice of termination, and unless otherwise directed by Buyer, Supplier will: (i) promptly terminate all work under the Order on the effective date of termination; (ii) transfer title and deliver to Buyer the finished Goods, work-in-process, and the parts and materials that Supplier reasonably produced or acquired but, for all three, no more than those amounts listed as firm on Buyer's Material Releases (*provided, however*, Buyer shall not have an obligation to buy raw materials if Supplier can use such raw materials for producing goods for itself or for others); (iii) verify and settle any claims by subcontractors for actual costs incurred directly as a result of the termination and ensure the recovery of materials in subcontractors' possession; (iv) take actions reasonably necessary to protect property in Supplier's possession in which Buyer has an interest until disposal instructions from Buyer have been received; and (v) upon Buyer's request, cooperate with Buyer in transferring the production of Goods to a different supplier, including, without limitation, as described in Section 31.
- (c) Calculation of Buyer Payment Obligation Under Section 29. Upon termination by Buyer under this Section, Buyer will be obligated to pay only the following:
  - (i) the Order price for all finished Goods in the quantities listed as firm in Buyer's Material Releases that conform to the Order for which Supplier has not been paid;
  - (ii) Supplier's reasonable actual cost of merchantable and useable work-in-process and the parts and materials transferred to Buyer under Subsection (b) above;
  - (iii) Supplier's reasonable actual costs of settling claims regarding its obligations to its subcontractors required under the Order, to the extent directly caused by the termination, but not to exceed the cost of the firm quantities of Goods and raw materials/components specified in Material Releases issued and outstanding; and

- (iv) if applicable, amounts due in connection with Transition Support (as defined below) under Section 31.

Notwithstanding the foregoing, in no event shall Buyer's obligation upon termination under this Section exceed the obligation Buyer would have had to Supplier in the absence of termination.

- (d) Supplier Termination Claim under Section 29. Supplier must submit its termination claim, if any, within 30 days after the date of termination (or such shorter period as may be required by Customer). Such claim shall consist solely of the items listed under Subsections (c)(i)-(iv) above. Buyer may audit Supplier's records before or after payment to verify amounts requested in Supplier's termination claim. Buyer will have no obligation for payment to Supplier under this Section if Buyer terminates the Order or portion thereof because of a default or breach by Supplier, and any termination shall be without prejudice to any claims which Buyer may have against Supplier. In the event of a termination of the Order by Buyer as a result of Buyer ceasing to be a supplier to the Customer for the vehicle program in respect of which Buyer issued the Order, Buyer shall only be obligated to compensate a Supplier in a Directed Supply Relationship for any costs under this Section if, when, and only to the extent that the Customer reimburses Buyer for such costs.

**30. Termination by Supplier.** Supplier may terminate the Order only for non-payment by Buyer of the purchase price (as reflected in the Order) for Goods, and then only if: (a) the amounts are material in amount and more than 30 days past due; and (b) Supplier first provides Buyer written notice specifying (i) the amounts which are 30 or more days past due (including, without limitation, the relevant Order and invoices numbers and dates) and (ii) Supplier's intent to terminate the Order if the past due amount is not paid; and (c) Buyer, within 60 days of such notice, does not either: (i) pay the past due amounts, or (ii) notify Supplier that the amounts claimed to be unpaid are disputed by Buyer. Provided the foregoing conditions are met, cure periods have expired, and the amounts are not disputed by Buyer, Supplier may terminate the Order by delivering a termination notice to Buyer. Supplier may not terminate or cancel the Order for any reason except as permitted under this Section. Supplier may not suspend performance of the Order for any reason.

### **31. Transition of Supply.**

- (a) In connection with the expiration or termination of the Order by either party, in whole or in part and for any reason, or Buyer's decision to change to an alternate source of Goods (including, without limitation, a Buyer-owned or operated facility) ("Alternative Supplier"), Supplier will cooperate in the transition of supply, including, without limitation, the following transition support ("Transition Support"): (i) following termination, Supplier will continue production and delivery of all Goods as ordered by Buyer, at the prices and other terms stated in the Order, without premium or other condition, during the entire period reasonably needed by Buyer to complete the transition to the Alternate Supplier(s) including, without limitation, at Buyer's request, providing a sufficient bank of Goods covered by the Order, such that Supplier's action or inaction causes no interruption in Buyer's ability to obtain Goods as needed; (ii) at no cost to Buyer, Supplier (A) will promptly provide all requested information and documentation regarding and access to Supplier's manufacturing process, including, without limitation, on-site inspections, bill-of-material data, tooling and process detail, and samples of Goods and components, (B) will provide all notices necessary or desirable for Buyer to resource the Order to an Alternative Supplier, (C) when requested by Buyer, will return to Buyer all Buyer's Property in as good condition as when received by Supplier (reasonable wear and tear excepted), and (D) will comply with Supplier's obligations relating to Supplier's Property (*see* Sections 35 and 36), and in relation to subcontracts; and (iii) subject to Supplier's reasonable capacity constraints, Supplier will provide special overtime production, storage and/or management of extra inventory of Goods, extraordinary packaging and transportation and other special services as expressly requested by Buyer in writing.

- (b) If the transition occurs for reasons other than Supplier's termination under Section 30, Buyer will, at the end of the transition period, pay the reasonable, actual cost of Transition Support as requested and incurred, *provided* that Supplier has advised Buyer prior to incurring such amounts of its estimate of such costs and received Buyer approval. If the parties disagree on the cost of Transition Support, Buyer will pay the agreed portion to Supplier and pay the disputed portion into third-party escrow for disbursement by court or arbitration tribunal.

**32. Force Majeure.** If Supplier is unable to produce, sell or deliver any Goods covered by this Order, or Buyer is unable to accept delivery, buy or use any Goods covered by this Order, as a result of an event or occurrence beyond the reasonable control of the affected party and without such party's fault or negligence, then any delay or failure to perform under this Order that results from such event or occurrence will be excused for only so long as such event or occurrence continues, *provided, however*, that the affected party gives written notice of each such delay (including, without limitation, the anticipated duration of the delay) to the other party as soon as possible after the event or occurrence (but in no event more than three (3) days thereafter). Such events and occurrences shall be limited to natural disasters, fires, floods, severe explosions, riots, wars, and power failures. During any delay or failure to perform by Supplier, Buyer may (a) purchase substitute Goods from other available sources, in which case the quantities under this Order will be reduced by the quantities of such substitute Goods and Supplier will reimburse Buyer for any additional costs to Buyer of obtaining the substitute Goods compared to the prices set forth in this Order and/or (b) have Supplier provide substitute goods and services from other available sources in quantities and at times Buyer requests and at the prices set forth in this Order. If Supplier fails to provide adequate assurances that any delay will not exceed 30 days or if any delay lasts more than 30 days, Buyer may terminate this Order without any liability to Supplier or obligation to purchase raw materials, work-in-process or finished goods under Section 29. Supplier acknowledges that equipment or tooling failures or problems and labor problems (including, without limitation, lockouts, strikes, and slowdowns) are foreseeable, and shall not excuse performance. Before any of Supplier's labor contracts expire, and as soon as Supplier anticipates or learns of any impending strike, labor dispute, work stoppage or other disruption at Supplier's facilities that might affect the delivery of Goods to Buyer, Supplier will produce (and locate in an area that will not be affected by any such disruption) a finished inventory of Goods in quantities sufficient to ensure the supply of Goods to Buyer during the duration of the disruption.

### **33. Technology.**

- (a) If Buyer furnished or supplied Supplier with any designs, drawings, specifications, blueprints or other materials that contain proprietary information, Supplier shall not disclose or use for the benefit of Supplier or others such designs, drawings, specifications, blueprints or other materials including, without limitation, any copies thereof, except as approved by Buyer on the face of an Order or Order amendment or in a Signed Writing by an authorized Buyer representative. Buyer does not transfer to Supplier any right of intellectual property, including patent, trade secret, know-how, trademark, service mark, copyright, work of authorship, software, mask work, industrial designs, technical information, processes of manufacture or any other intellectual property right of Buyer in information, documents or property that Buyer makes available to Supplier under any Order.
- (b) Supplier expressly warrants that all Goods covered by each Order will not and do not infringe, misappropriate, dilute or otherwise violate any patent, trademark, copyright or other intellectual property of any third party. Supplier (i) agrees to defend, hold harmless and indemnify Buyer and its Customers against all claims, demands, losses, suits, damages, liability and expenses (including, without limitation, actual fees for attorneys, experts and consultants, settlement costs and judgments), as more fully described in Section 25, arising out of any suit, claim or action for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright or other proprietary right by reason of the manufacture, use or sale of the Goods ordered, including, without limitation, infringement arising out of compliance with specifications



furnished by Buyer or for actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from Supplier's actions; and (ii) waives any claim against Buyer and its Customers, including, without limitation, any hold harmless or similar claim, whether known or unknown, contingent or latent, in any way related to a claim asserted against Supplier or Buyer for infringement of any patent, trademark, copyright or other proprietary right, including, without limitation, claims arising out of compliance with specifications furnished by Buyer. Each of Buyer and Supplier agree to timely notify the other party of any actual or suspected claim under this Section, but Buyer's failure to do so shall not relieve Supplier of any of its obligations. Buyer shall have the right, but not the obligation, to control the defense of any such claim and Supplier shall not settle any such claim that, directly or indirectly, prejudices any of Buyer's rights under the Order or otherwise.

- (c) In consideration of Buyer purchasing the Goods under this Order, Supplier hereby assigns to Buyer all right, title and interest in and to all inventions, discoveries, patents, trade secrets, know-how, trademarks, copyrights and other proprietary rights in any materials that are created in the course of performing this Order including, without limitation, all inventions, discoveries, patents, trade secrets and know-how that are developed by Supplier or by both Supplier and Buyer during the course of performing this Order, irrespective of the contribution of each party. Supplier agrees to execute, and shall cause its employees and/or consultants to execute, any and all papers, including patent assignments and invention declarations, that Buyer deems necessary or useful to secure the rights assigned herein.
- (d) Technical information and data furnished to Buyer in connection with each Order are disclosed on a non-confidential basis.
- (e) Supplier expressly warrants that all copyrightable works of original authorship (including, without limitation, computer programs, technical specifications, documentation and manuals), ideas, inventions (whether patentable, patented or not), know-how, processes, compilations of information, trademarks and other intellectual property that are used, provided or otherwise delivered during the course of performing this Order (collectively, "Deliverables") shall be original to Supplier and shall not incorporate any intellectual property (including, without limitation, copyright, patent, trade secret, mask work, or trademark rights) of any third party.
- (f) All Deliverables that are created in the course of performing any Order (separately or as part of any Goods), and all intellectual property rights in Deliverables, shall be owned by Buyer and not by Supplier. Supplier agrees that all works of original authorship created by Supplier in connection with each Order are "works made for hire" as the term is used under the U.S. Copyright Law (or, if different, as the term is used under the law governing the Order). To the extent that such works of original authorship do not qualify under applicable law as works made for hire, Supplier hereby assigns to Buyer all rights, title and interest, including, without limitation, copyrights and patent rights, in and to such works of original authorship. Supplier will promptly disclose any such works of original authorship, in form and manner acceptable to Buyer, and cause Supplier's employees, affiliates, or contractors to sign any papers necessary to enable Buyer to obtain full title to and to file applications for registration of same throughout the world. Supplier expressly waives, and disclaims, all rights of attribution and integrity in and to such works.
- (g) To the extent that technical information, know-how, copyrights and patents were not previously assigned under Sections 33(c) and 33(f), Supplier grants to Buyer a perpetual, irrevocable, transferrable, non-exclusive, worldwide royalty-free license, with the right to grant sublicenses, to use any such technical information, know-how, copyrights and patents owned or controlled by Supplier or its affiliates to make, have made, use and sell any Goods provided by Supplier under each Order. The license shall be effective from the first delivery of Goods under the Order.

- (h) To the extent that Supplier incorporates or utilizes third parties in connection with this Order, including the supply of Goods or provision of services (“Third Party Contractors”), Supplier shall secure all such Third Party Contractors’ agreement, in writing, to the terms and conditions set forth in this Section 33, in Buyer’s favor. Supplier shall be jointly and severally liable to Buyer, for any breach, or default, by any such Third Party Contractor of any such requirements.

#### **34. Buyer’s Property; Confidentiality.**

- (a) All information and materials, including, without limitation, for example, tooling (such as fixtures, gauges, jigs, patterns, castings, cavity dies, molds, with all related appurtenances, accessions, and accessories), packaging, documents, standards, specifications, samples, trade secrets, proprietary information and other materials and items (including, without limitation, whether or not such materials are in any way modified, altered or processed) furnished by Buyer either directly or indirectly to Supplier to perform the Order, along with any and all Goods, deliverables, data, and intellectual property rights under Section 33 shall be (or, as applicable, will become as fabricated or conceived or reduced to practice or acquired, regardless of payment) and remain the sole and exclusive property of Buyer or its Customer(s) (collectively, “Buyer’s Property”). To the extent permitted by applicable law, any and all goods manufactured by Supplier with the use of Buyer’s Property, including, without limitation, Buyer specifications, may not be used for Supplier’s own use or manufactured or provided (or offered to be manufactured or provided) to third parties without Buyer’s express written authorization.
- (b) Buyer does not guarantee the accuracy of, or the availability or suitability of, Buyer’s Property supplied by Buyer, and Buyer is supplying such property “as-is” and without any warranties. Supplier agrees to carefully check and approve, for example, all tooling, dies or materials supplied by Buyer prior to using it. Supplier shall assume all risk of death or injury to person or damage to property arising from the use of Buyer’s Property. **TO THE EXTENT PERMITTED BY LAW, BUYER SHALL HAVE NO LIABILITY TO SUPPLIER OR ANYONE CLAIMING BY OR THROUGH SUPPLIER FOR ANY COMPENSATORY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY KIND WHATSOEVER RELATING TO BUYER’S PROPERTY. BUYER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO SUCH BUYER’S PROPERTY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND SUPPLIER WAIVES, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, ALL CLAIMS OF NEGLIGENCE AND STRICT LIABILITY.**
- (c) Buyer’s Property will be held by Supplier, or by a third party to the extent that Supplier has transferred possession of Buyer’s Property to a third party following Buyer’s request or consent, on a bailment basis as a bailee at-will. Supplier shall bear the risk of loss of and damage to Buyer’s Property bailed to Supplier, and Supplier, at its own expense, shall keep such Buyer’s Property insured for the benefit of Buyer, naming Buyer as the loss payee and additional insured. Buyer’s Property shall at all times be properly housed and maintained by Supplier; shall be deemed to be personal property; shall be conspicuously marked by Supplier to identify it as the property of Buyer and indicate Buyer’s name and address; shall not be commingled with the property of Supplier or with that of a third person; and shall not be moved from Supplier’s premises without the prior approval by Buyer on the face of an Order or Order amendment or in a Signed Writing by Buyer. Supplier, at its own expense, shall replace, repair and/or refurbish Buyer’s Property and keep Buyer’s Property in first class condition. All replacement parts, additions, improvements and accessories for such Buyer’s Property shall automatically become Buyer’s property upon their incorporation into or attachment to Buyer’s Property.
- (d) Buyer has the right to take immediate possession of Buyer’s Property at any time and for any reason, without payment of any kind. Supplier agrees to cooperate with Buyer if Buyer elects to take possession of Buyer’s Property. Effective immediately upon written notice to Supplier, without further notice or

legal action, Buyer has the right to enter the premises of Supplier and take possession of all of Buyer's Property. Supplier expressly waives any right to additional notice or process, and agrees to provide Buyer or its nominee(s) with immediate access to Buyer's Property.

- (e) Unless otherwise agreed, Buyer's Property will be delivered, at Buyer's request, by Supplier to Buyer either (i) FCA (loaded) at Supplier's plant (Incoterms 2010), properly packed and marked in accordance with the requirements of Buyer's selected carrier, or (ii) to any location designated by Buyer, in which case Buyer will pay Supplier the reasonable costs of delivery. SUPPLIER WAIVES, TO THE EXTENT PERMITTED BY LAW, ANY LIEN OR OTHER RIGHTS THAT SUPPLIER MIGHT OTHERWISE HAVE ON ANY OF BUYER'S PROPERTY, including, without limitation, tooling, molder's and builder's liens, mechanic's, or any other liens or other rights that Supplier might otherwise have on Buyer's Property for work performed on such property, for the purchase price of Goods, or otherwise.
- (f) Supplier grants to Buyer a right to record financing statements (or record other appropriate documents) to reflect Buyer's interest in Buyer's Property.
- (g) Supplier acknowledges that Buyer's Property includes all Buyer and/or Customer information and materials delivered to Supplier for the purpose of performing the Order, regardless of whether such information is marked or identified as confidential, and is to be used only for performing the Order. All terms of the Order are deemed proprietary and confidential information of Buyer or its Customers. Supplier agrees to keep all of Buyer's Property (and its Customers' information) in strictest confidence, and further agrees not to disclose or permit disclosure to others, or use for other than the purpose of the Order, any such information. This obligation includes, without limitation, Supplier's use of reasonably safe encryption for electronic transmission of such information. Supplier shall (i) disclose Buyer's Property and/or Customer information within Supplier's organization only to those employees who have a need to know in order to fulfill Supplier's obligations hereunder and who have agreed to keep the Buyer's Property and Customer information confidential, and (ii) prevent any such Buyer's Property or Customer information from being divulged to third persons not employed by Supplier without the prior written consent of Buyer, including, without limitation, having recipients acknowledge the confidential status of such Buyer's Property and Customer information and agree to similar restrictions. This obligation of confidence shall survive termination of this Order and will continue for the longer of (i) a period of eight (8) years from the date of disclosure of information covered by this Section, or (ii) a period ending five (5) years after termination or expiration of any related Order, or (iii) as long as Buyer's Property or Customer information remains a trade secret and unless a longer period is specified in writing by Buyer. The restrictions and obligations of this Section will not apply to information that: (i) is already publicly known at the time of its disclosure by Buyer; (ii) after disclosure by Buyer becomes publicly known through no fault of Supplier; (iii) Supplier can establish by written documentation was properly in its possession prior to disclosure by Buyer or was independently developed by Supplier without use of, reference to, or knowledge of Buyer's or Customers' information; or (iv) is disclosed pursuant to law, regulation or lawful order or process. In the event of disclosure due to law, regulation or lawful order or process, Supplier shall promptly notify Buyer of the disclosure requirement to permit Buyer to oppose or limit such disclosure. Notwithstanding anything to the contrary in this Order, any confidentiality or non-disclosure agreement between the parties that predates this Order will remain in effect except as expressly modified by this Order, and to the extent of a conflict between the express terms of such confidentiality or non-disclosure agreement relating to Buyer's or Customers' information and this Section 34, the terms of such confidentiality or non-disclosure agreement will control with respect to Buyer's and Customers' information.

**35. Supplier's Property.** Supplier, at its expense, will furnish, keep in good working condition capable of producing Goods meeting all applicable specifications, and replace when necessary, all materials, machinery, equipment, computers, tools, jigs, dies, gauges, fixtures, molds, patterns, blueprints, designs, specifications, drawings, photographic negatives and positives, art work copy layout, software, electronic files, databases,

electronic data (for example, CAD and math data) and other items that are not Buyer's Property and that are necessary for the production of Goods under any Order ("Supplier's Property"). Supplier will insure Supplier's Property with full fire and extended coverage insurance for its replacement value. If Supplier uses Supplier's Property to produce goods or services similar to the Goods for other customers, including, without limitation, aftermarket customers, such goods or services will not incorporate any of Buyer's Property, logos, trademarks, trade names or part numbers. Supplier will not disclose or imply in its marketing efforts that such goods or services are equivalent to those purchased by, or configured for, Buyer. Supplier grants to Buyer an irrevocable option to take possession of and title to Supplier's Property that is special for production of the Goods under an Order (including, by way of example, and without limitation, Supplier's Property specially designed or configured for the manufacture or assembly or other processing of the Goods), upon payment to Supplier of its net book value less any amounts that Buyer has previously paid to Supplier for the cost of such items, or (if applicable) any such other amount as may be required by applicable law. This option does not apply if Supplier's Property is used to produce goods that are the standard stock of Supplier, or if a substantial quantity of like goods are being sold by Supplier to others and Supplier uses Supplier's Property to produce such goods. Buyer's option rights under this Section with respect to Supplier's Property are intended to be subject to Buyer's rights and elections under applicable insolvency law (*e.g.*, U.S. Bankruptcy Code, 11 USC Section 365(n)) as and to the extent that such Supplier's Property represents embodiments of intellectual property, including, without limitation, intellectual property licensed by Supplier to Buyer under Section 33 above. Buyer is entitled to process data in connection with the business relationship for its own purposes.

**36. Tooling.** This Section 36 applies only to Tooling (as defined below).

- (a) Supplier will provide to Buyer, as requested, access to Supplier's premises and all documentation, paper, electronic or otherwise, relating to the tooling, dies, test and assembly fixtures, jigs, gauges, patterns, casting patterns, cavities, molds, and documentation, including engineering specifications and test reports together with any accessions, attachments, parts, accessories, substitutions, replacements, and appurtenances thereto (collectively, the "Tooling"), prior and subsequent to payment, to inspect work performed and to verify charges submitted by Supplier against the Order. For any Tooling or parts thereof that Supplier obtains from any third party, Supplier will provide Buyer with such access and documentation to the ultimate production source. Supplier will have 90 days from the date Buyer notifies Supplier of Buyer's intention to audit Supplier to provide the requested access and copies of requested documentation for Buyer's exclusive use and records. Any information submitted following such 90 day period will not be considered by Buyer. The price set forth in the Order will be adjusted to credit Buyer in the amount, if any, by which the price exceeds Supplier's actual cost as verified. If Supplier's primary business is to fabricate Tooling, Supplier will be permitted a reasonable profit percentage as indicated by the Order. In the absence of a mutually-accepted profit percentage, Buyer will determine a reasonable profit percentage following the completion of its audit. Supplier will invoice Buyer for (and Buyer will only be obligated to pay) the lower of Supplier's actual cost plus such profit percentage or the amount set forth in the Order. Buyer's audit to verify actual costs will include without limitation, at Buyer's option, copies of Supplier's cancelled checks and bank statements and any other information necessary for Buyer to confirm the existence or absence of rebates, credits or discounts provided to Supplier by any third party relating to such Tooling. If Supplier does not provide such access and documentation, Buyer may determine in its reasonable discretion an appropriate adjustment based on information available to Buyer, including, without limitation, estimated costs, and Supplier shall be responsible for Buyer's costs in determining such estimated costs. Supplier will not disclose to any third party, except for its attorneys and professional advisors who are required to maintain confidentiality, the results of such Tooling audits or any adjustments made by Buyer to the prices and amounts payable to Supplier as a result of such audit. Supplier will retain (and cause its tooling sub-suppliers to retain) all cost records for a period of three (3) years after receiving final payment of the charges. All Tooling is to be made to Buyer's specifications (or, where directed by Buyer, those of Customer). Any exception to such specifications must be stated in writing on the Order or otherwise in

a Signed Writing by Buyer. To the extent the Order expressly states that it is for “tooling” and unless otherwise stated in the Order, freight terms are FCA Supplier’s facility (Incoterms 2010).

- (b) Notwithstanding any other provision of these Terms, and except as otherwise expressly agreed in writing, where Buyer is entitled to receive reimbursement or other payment from a Customer for Goods to be provided by Supplier to Buyer under this Order that constitute Tooling, Supplier shall be entitled to receive payment under the Order for such Tooling only after and to the extent of, and in proportion to, Buyer’s actual receipt of such payment from the Customer.
- (c) To the extent permitted by applicable law, Buyer’s payments for Buyer-owned or Customer-owned Tooling, as applicable, are expressly intended by Buyer to be held in trust for the benefit of any subcontractor(s) used by Supplier to produce the Buyer-owned or Customer-owned Tooling, as applicable, that are covered by such payments. Supplier agrees to hold such payments as trustee in express trust for such subcontractor(s) until Supplier has paid the subcontractor(s) in full for the Buyer-owned or Customer-owned Tooling, as applicable. Supplier acknowledges and agrees that such subcontractor is an intended third-party beneficiary of this Section 36 relating to the express trust, and such tooling subcontractor shall have the right to enforce this Section 36 directly against Supplier in subcontractor’s own name. Supplier agrees that other than making the payment to Supplier in accordance with a tooling Order, Buyer has no obligation to Supplier or Supplier’s tooling subcontractor under this Section. If Supplier’s tooling subcontractor brings an action against Supplier under this Section, Supplier agrees that it will not join Buyer in any such action. Per Section 34(e) above, Supplier waives all lien rights to the Tooling.
- (d) Supplier shall not destroy any Tooling without obtaining prior approval of such destruction in a Signed Writing from Buyer.

### **37. Setoff and Contractual Recoupment; Net Obligations.**

- (a) Net Obligations. In addition to any right of setoff or recoupment provided or allowed by law, all amounts due to Supplier or any of its subsidiaries or affiliates (collectively, the “Supplier Parties”) from Buyer or any of its direct or indirect subsidiaries (collectively, the “Buyer Parties”) shall be considered net of the amounts due to any of the Buyer Parties from any of Supplier Parties.
- (b) Setoff. Any of the Buyer Parties may setoff any amounts due or to become due (*i.e.*, due from any of the Buyer Parties to any of Supplier Parties) against any amounts owed or to become owed (*i.e.*, from any of Supplier Parties to any of the Buyer Parties), however and whenever arising.
- (c) Contractual Recoupment. As a matter of contract, each of the Buyer Parties is authorized to recoup from any amounts due or to become due (*i.e.*, due from any of the Buyer Parties to any of Supplier Parties) against any amounts owed or to become owed (*i.e.*, from any of Supplier Parties to any of the Buyer Parties), however and whenever arising.
- (d) Disputed, Contingent, and Unliquidated Obligations. In addition to any right otherwise provided or allowed by law or this contract, the Buyer Parties may retain/defer payment of all or any portion of the amount due from the Buyer Parties (even if it is not disputed, contingent or unliquidated and is otherwise due) to the extent of any obligation or debt of any of the Supplier Parties owed to any of the Buyer Parties, even if such obligation or debt is disputed, contingent or unliquidated, until such obligation or debt is resolved. Without limiting the generality of the foregoing and by way of example only, in the event of a bankruptcy of Supplier, if all of any of the related agreements between Buyer and Supplier have not been assumed by Supplier, then Buyer may defer payment to Supplier, via an administrative hold or otherwise, of amounts due against potential damages arising from rejection or otherwise.

- (e) Guaranty. Supplier unconditionally guaranties payment when due of all existing and future obligations of any of its subsidiaries or affiliates to any of the Buyer Parties, *provided, however*, that the amount guaranteed by Supplier shall not exceed the amount owed by the Buyer Parties to Supplier Parties at any given time. No act or thing need occur to establish the liability of Supplier hereunder, and no act or thing, except full payment and discharge of all of the above described amounts shall in any way modify, reduce or limit the liability of Supplier hereunder.

**38. No Publicity.** Supplier will not advertise, publish or disclose to any third party (other than to Supplier's professional advisors, on a confidential and need-to-know basis) in any manner the fact that Supplier has contracted to furnish Buyer the Goods covered by the Order or any terms of the Order (including, without limitation, prices), or use any trademarks or trade names of Buyer in any press release, advertising or promotional materials.

**39. Relationship of Parties.** Supplier and Buyer are independent contracting parties and nothing in this Order shall make either party the agent or legal representative of the other for any purpose, nor does this Order grant either party any authority to assume or to create any obligation on behalf of, or in the name of, the other. None of the persons engaged by Supplier in the performance of its obligations under this Order shall be considered employees of Buyer.

**40. Assignment.**

- (a) Buyer may terminate an Order, in whole or in part, upon written notice to Supplier, if control of Supplier changes. A change of control includes: (i) the sale, lease or exchange of a substantial portion of Supplier's assets used for the production of the Goods; (ii) the sale or exchange of a controlling interest in the shares of Supplier; or (iii) the execution of a voting or other agreement of control. Supplier will provide Buyer with written notice of a change of control within ten (10) days after the change of control has become effective. Buyer will have 60 days from the date of such written notice from Supplier within which to notify Supplier of its decision to terminate the Order and the effective date of the termination.
- (b) With Buyer's prior written consent, Supplier may make an assignment of receivables due or to become due to a single financial institution; *provided, however*, that any such assignment shall be subject to both legal and contractual set-off, recoupment and guaranty (*see* Section 37 above) or other proper method of enforcing any claims that Buyer may have under the Order.
- (c) Buyer will have the right to assign any benefit or duty under an Order to any third party upon notice to Supplier without consent.

**41. Severability.** If any term of the Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, the term will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with applicable law. The remaining provisions of the Order will remain in full force and effect.

**42. No Implied Waiver.** The failure of either party at any time to require performance by the other party of any provision of the Order will not affect the right to require performance at any later time, NOR WILL THE WAIVER OF EITHER PARTY OF A BREACH OF ANY PROVISION OF THE ORDER CONSTITUTE A WAIVER OF ANY LATER BREACH OF THE SAME OR OTHER PROVISION OF THE ORDER.

**43. Survival.** The obligations of Supplier to Buyer, including, without limitation, warranty and indemnification obligations for Goods, the service and replacement part provisions, and the transition support provisions, shall survive termination or expiration of the Order, except as otherwise provided in the Order.

**44. Limitation of Damages. BUYER SHALL NOT BE LIABLE TO SUPPLIER, UNDER ANY CIRCUMSTANCES, FOR ANTICIPATED OR LOST PROFITS, INVESTMENT, OR FOR RELIANCE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND.**

**45. Entire Agreement; Modifications; Buyer's Website.**

- (a) Except as described herein, the Order, together with these Terms, attachments, exhibits, supplements or other terms of Buyer specifically referenced therein, constitutes the entire agreement between Supplier and Buyer with respect to the matters contained in the Order. This Order is intended as a final expression and a complete and exclusive statement of the agreement between the parties respecting the subject matter hereof and supersedes all prior and contemporaneous agreements, representations and understandings of the parties that are not expressly incorporated herein. Any understandings or statements, written or oral, made prior to this Order that may be inconsistent with the provisions of this Order are expressly rejected. THE ORDER MAY ONLY BE MODIFIED (I) BY A SIGNED WRITING ("Signed Writing") EXECUTED BY AN AUTHORIZED REPRESENTATIVE OF EACH PARTY OR, (II) FOR CHANGES WITHIN THE SCOPE OF SECTION 18, BY AN ORDER AMENDMENT ISSUED BY BUYER.
- (b) Supplier disclaims any reliance on any statement or representation made by Buyer except those in the Order, together with these Terms, attachments, exhibits, supplements or other terms of Buyer specifically referenced therein.
- (c) Buyer may modify these Terms from time to time by posting revised purchase order terms and conditions to Buyer's Website prior to the date when any modified terms and conditions become effective. Such revised purchase order terms and conditions shall apply to all purchase order revisions/amendments and new Orders issued on or after the effective date thereof. Supplier shall be responsible to review Buyer's Website periodically.
- (d) Buyer's Website may also contain specific additional requirements for certain items covered by this Order, including, without limitation, labeling, packaging, shipping, delivery and quality specifications, procedures, directions and/or instructions (*see* Section 4). Any such requirements shall be deemed to form part of these Terms and the Order. Buyer may periodically update such requirements by posting revisions thereto on Buyer's Website. In the event of any inconsistency between the Order and Buyer's Website, the terms of the Order shall prevail, unless the requirements specified on Buyer's Website expressly provide otherwise.

**46. Dispute Resolution.**

- (a) Governing Law; Jurisdiction; Venue for U.S. Orders. If this Order is issued by Buyer from a location within the United States of America or its territories (as shown by the issuing address of Buyer), then: (i) this Order is to be construed according to the laws of the State of Michigan, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods, and any choice of law provisions that require application of any other law, and (ii) each party agrees that the forum and venue for any legal or equitable action or proceeding arising out of, or in connection with, this Order, will lie in the Federal District Court for the Eastern District of Michigan or, for state court, in Oakland County Circuit Court in the State of Michigan, and each party specifically waives any and all objections to such jurisdiction and venue.
- (b) Governing Law; Jurisdiction; Venue for Non-U.S. Orders. In all cases not covered by Section 46(a) above, but within North and South America, this Order is to be construed exclusively according to the laws of the country (and state or province, if applicable) applicable at Buyer's principal place of business

(registered office) in the country from which the order is issued, without recourse to the rules on conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods does not apply. Any legal or equitable action or proceedings by Buyer against Supplier arising out of, or in connection with, this Order may be brought by Buyer in any court(s) having jurisdiction over Supplier or, at Buyer's option, in any court(s) having jurisdiction over Buyer's receiving location, in which event Supplier consents to such jurisdiction and venue, including, without limitation, service of process in accordance with applicable procedures. Any legal or equitable actions or proceedings by Supplier against Buyer arising out of, or in connection with, this Order may be brought by Supplier only in the court(s) having jurisdiction over the Buyer's receiving location.

- (c) Injunctive Relief. Notwithstanding anything to the contrary, and in addition to the above, Buyer shall have the right, without waiving any remedy under the Order, to seek from any court of competent jurisdiction (i) equitable relief and (ii) any interim or provisional relief that is necessary to protect the rights or property of Buyer.
- (d) Claims by Supplier. To the extent permitted by applicable law, any action or proceeding by Supplier under any Order must be commenced no later than one (1) year after the alleged breach or other event giving rise to Supplier's claim occurs.
- (e) **[FOR U.S. ONLY:]** Waiver of Jury Trial. BUYER AND SUPPLIER ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH OF BUYER AND SUPPLIER, AFTER CONSULTING (OR HAVING THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO ANY ORDER OR OTHER DOCUMENT PERTAINING TO ANY ORDER.
- (f) **[FOR U.S. ONLY:]** Arbitration. At Buyer's discretion, any disputes arising under or in connection with any Order or any other document pertaining to any Order may be finally settled by arbitration in Southfield, Michigan, before a single arbitrator appointed by the American Arbitration Association ("AAA"), which arbitration shall be conducted under AAA's commercial arbitration rules then in effect at the time of the Order; *provided, however*, discovery shall be permitted in accordance with the United States Federal Rules of Civil Procedure and Federal Rules of Evidence. The decision of the arbitrator shall be final and binding upon Buyer and Supplier, shall not be appealable, and judgment on the award rendered may be entered in any court of competent jurisdiction. The arbitrator only has authority to award compensatory, actual damages. The arbitrator will have no authority to award punitive or other damages. Each party will bear equally the costs and expenses of AAA and of the arbitrator. Buyer shall not be responsible for Supplier's costs or expenses. The failure by one party to pay its share of arbitration fees constitutes a waiver of such party's claim or defense in the arbitration. All arbitration proceedings shall be confidential, except to the extent that disclosure is necessary to enforce an arbitration award in a court of competent jurisdiction. Notwithstanding anything to the contrary and in addition to the above, Buyer shall have the right, without waiving any remedy under the Order, to seek from any court of competent jurisdiction (i) equitable relief and (ii) any interim or provisional relief that is necessary to protect the rights or property of Buyer.

47. **[FOR CANADA ONLY:] Language**. The parties acknowledge that it is their wish that these terms and all documents relating thereto be in the English language only.

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