

## GENERAL TERMS AND CONDITIONS

### **1 Products, Parties and Documents Covered by the Order.**

- 1.1 Products. These general terms and conditions (the “General Terms and Conditions”) apply to the purchase of the goods and/or services (collectively, the “Products”) identified in the purchase order (sometimes referred to as a “Scheduling Agreement”) and supplemental documents issued by Buyer to Seller which (directly or indirectly) references these General Terms and Conditions (the “Order”).
- 1.2 Parties. Buyer and Seller are identified on the face of the Order. If no Buyer is identified, Buyer is Rotek Inc.
- 1.3 Documents. In addition to these General Terms and Conditions, the Order may include and be governed by (i) a “Nomination Agreement”; (ii) a “Logistics Parameter”; (iii) a “Master Purchase Agreement”; (iv) “Buyer’s Material Releases”; (v) Buyer’s Supplier Code of Conduct; and (vi) Buyer’s written policies and procedures, as revised by Buyer from time to time. Buyer’s Policies may be obtained from Buyer’s assigned purchasing representative.

### **2 The Terms Governing the Order.**

- 2.1 Terms of the Order. The terms governing this Order (hereinafter, “Terms of the Order”) are contained in the following documents identified in this section 2.1. In the event of a conflict, the documents shall take precedence in the order listed, with the first applicable document having the highest priority: (i) the Negotiation Record and Logistics Parameter; (ii) the Master Purchase Agreement; (iii) these General Terms and Conditions; (iv) Buyer’s Material Releases; (v) all other documents incorporated into or otherwise made a part of the Order by Buyer and issued by Buyer to Seller in connection with the Order; and (vi) Buyer’s Policies. Seller has read and understands the Terms of the Order and agrees to keep current regarding the terms of Buyer’s Policies.
- 2.2 Seller Acceptance. The Order is an offer by Buyer to purchase the Products from Seller pursuant to the Terms of the Order. The contract is formed when Seller accepts the Order. This occurs upon the earlier of: (a) Seller notifying Buyer of its acceptance of the Order; (b) Seller retaining the purchase order for ten (10) days without making written objections thereto; or (c) Seller beginning work or performance relating to the Order. **THE ORDER IS LIMITED TO AND CONDITIONAL UPON SELLER’S ACCEPTANCE OF ALL TERMS OF THE ORDER EXCLUSIVELY.**
- 2.3 Seller’s Terms Rejected. The Order does not constitute an acceptance of any offer or proposal made by Seller, and Seller acknowledges that: (i) a request for quotation or similar document issued by Buyer is not an offer by Buyer; and (ii) any response by Seller to a request for quotation or similar document issued by Buyer is not an offer by Seller. Any additional or different terms proposed by Seller in Seller’s quotation, acknowledgement, confirmation, invoice or in any other document transmitted by Seller to Buyer in connection with the Order (whether before or after the issuance of Buyer’s Order), are unacceptable to Buyer, are expressly rejected by Buyer, and are not part of the Order.
- 2.4 Entire Agreement. The Order is the entire agreement between the parties respecting the Products and when accepted, supersedes any prior agreements, negotiations or understandings of the parties respecting the Products, whether written or oral. No modification of the Order shall be effective unless in writing and signed by Buyer’s authorized representative.

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

- 3.1 Releases. Unless specified differently in the Order, Seller shall deliver Products in strict conformance with the Material Releases. **Times and quantities are of the essence under the Order and Seller**

agrees to 100% on-time delivery of the quantities and at the times specified by Buyer. Seller shall not fabricate any of the Products or procure any of the materials required in their fabrication, and Buyer shall have no obligation as to the same, except to the extent expressly authorized in Material Releases. Seller acknowledges that Buyer is under no obligation to issue Material Releases for any minimum quantity of Products and that Buyer may cease issuing Material

- 3.2 Releases at any time with no liability to Seller, other than payment of the Purchase Price (as that term is defined in section 5.1, below) for Products ordered and delivered.
- 3.3 Blanket Orders. If the Order does not specify a quantity, states zero, "blanket," "per release" or a similar term, the Order is a blanket order. If the Order is a blanket order, then for consideration of \$10.00 to be paid by Buyer following expiration or termination of the Order, Seller grants to Buyer an irrevocable option during the term of the Order to purchase Products in such quantities specified in Material Releases that are transmitted to Seller during the term of the Order, provided that Buyer may purchase no less than a minimum quantity of at least one piece or unit of each of the Products and no more than 100% of Buyer's requirements for the Products.
- 3.4 Non-Exclusivity. Seller shall supply Buyer with one hundred percent (100%) of Buyer's requirements as stated in the Order for the Products unless Buyer's Orders provide otherwise. Buyer shall have the right to obtain all or a portion of such Products from another third party source or from Buyer's internal sources at Buyer's discretion.
- 3.5 Electronic Data Interchange. Buyer may require Seller to participate in electronic data interchange or similar inventory management programs, at Seller's expense, for notification of Material Releases, shipping confirmations or other information.

#### 4 Shipping and Delivery.

- 4.1 Buyer Requirements. Seller will properly pack, mark, and ship the Products (and provide all related documentation) according to the requirements of Buyer, the involved carriers and the country of destination and will safeguard the Products against any loss or damages. No charges will be allowed for boxing, wrapping, cartage or storage unless so specified in the Order. Seller will promptly provide Buyer with, in the form requested by Buyer, the identity and amount of all ingredients and components (and any changes in the ingredients or components) of the Products.
- 4.2 Hazardous Materials. Before and at the time Products are shipped, Seller will give Buyer sufficient warning in writing (including, without limitation, appropriate labels on all Products, containers, and packing, disposal and recycling instructions, material safety data sheets and certificates of analysis) of any hazardous or restricted material that is an ingredient or part of the Products, together with any special handling instructions that are needed to advise carriers or Buyer, or their employees, how to take appropriate measures while handling, transporting, processing, using or disposing of the Products, containers, or packaging. Seller agrees to comply with all Laws (as defined below) relating to such materials.
- 4.3 Country of Origin. Seller agrees to fulfill any customs- or NAFTA-related obligations, origin markings or labeling requirements, and local content origin requirements. Export licenses or authorizations necessary for the export of Products are Seller's responsibility unless otherwise stated in the Order, in which case Seller will provide the information necessary to enable Buyer to obtain the licenses or authorizations. Seller will promptly notify Buyer in writing of any material or components used by Seller in fulfilling the Order that Seller purchases in a country other than the country in which the Products are originated. Seller will furnish any documentation and information necessary to establish the country of origin or to comply with the applicable country's rules of origin requirements. Seller will promptly advise Buyer of any material or components imported into the country of origin and any duty included in the Products' Purchase Price. If Products are manufactured in a country other than the country in which Products are delivered, Seller will mark Products "Made in [country of origin]." Seller will provide to Buyer and the appropriate governmental agencies the documentation necessary to determine the admissibility, and the effect, of entry of Products into the country in which Products are delivered. Seller warrants that any information that is supplied to Buyer about the import or export of Products is true and that all sales covered by the Order will be made at not less than fair value under the anti-dumping laws of the countries to which the Products are exported.

- 4.4 Title and Risk of Loss. Title to and risk of loss of all Products subject to the Order shall remain with Seller until delivery and acceptance of the Products at Buyer's plant at the address set forth in the purchase order.
- 4.5 Delivery. Seller shall prepare and maintain contingency plans reasonably acceptable to Buyer to ensure the timely delivery of Products hereunder in the event of an emergency or disruption, including, without limitation, utility interruptions, labor shortages, key equipment failure, and field returns. Seller shall immediately notify Buyer if Seller's timely performance under the Order is delayed or is likely to be delayed. If Seller, for any reason, does not comply with Buyer's delivery schedule, Buyer may (a) approve a revised delivery schedule; (b) require shipment of any of the Products by a more expeditious method of transportation; and/or (c) cover, and adjust any quantity requirement under the Order accordingly. Buyer reserves the right to reject and return all Products received more than five (5) business days in advance of any scheduled delivery date (if retained, time for payment shall be based upon the scheduled delivery date). Buyer's rights under this section are at Seller's sole expense, at Buyer's sole discretion and in addition to and without prejudice to any other rights or remedies available to Buyer (including, without limitation, Buyer's rights under Sections 6.2 and 15.2.2).
- 4.6 Seller's Production Capacity. Seller shall take all steps necessary to ensure a level of production capacity, including, without limitation, management of its own supply chain, to ensure the uninterrupted supply of Products to Buyer hereunder and to minimize obsolescence.

## 5 Price and Payment.

- 5.1 Price. The purchase price of the Products (the "Purchase Price") is set forth on the face of the purchase order. Unless otherwise stated in the Order, the Purchase Price: (i) is a firm fixed price for the duration of the Order and not subject to increase for any reason, including increased raw material costs, increased labor or other manufacturing costs, increased development costs, or changes in volumes from the volumes estimated or expected; (ii) is inclusive of all federal, state, provincial, and local taxes and any duties, customs, tariffs, imposts and government imposed surcharges; and (iii) includes all storage, handling, packaging, shipping, delivery and all other expenses and charges of Seller. Seller shall, at Buyer's request, break-out from the Purchase Price all such taxes and other charges in its invoices. Notwithstanding the foregoing, Seller shall use its best efforts to assist Buyer in all legal efforts to minimize the taxes resulting from performance of the Order.
- 5.2 Invoices. Unless otherwise stated in the Order, invoices shall be issued on or after delivery of the Products to Buyer. Separate invoices must be issued for each Order, and the purchase order number must be clearly indicated on the invoice. Seller shall, at its expense, comply with all instructions and policies of Buyer with respect to the form, content and method for submission of invoices. Non-compliance will result in rejection of the invoice.
- 5.3 Payment Terms. Payment shall be deemed to occur upon mailing of a check to Seller or receipt of electronic funds. All payments shall be made in U.S. dollars unless otherwise agreed by Buyer in the Order. Unless otherwise stated in the Order, Buyer shall pay invoices for Products which conform to the Order and are not subject to dispute as follows: unless otherwise agreed in the Order, payment for each delivery shall be made by Buyer within 14 days after receipt of the defect-free Products by Buyer and receipt of the respective invoice, less a cash discount of 3%, within 30 days less a cash discount of 2% or within 60 days without discount. Payment terms for overseas shipments are net 90 days.
- 5.4 Set Off. In addition to any right of setoff provided by law, Buyer shall be entitled at any time to set off against any amount required to be paid by Buyer to Seller any amounts which may be required to be paid at any time by Seller to Buyer irrespective of the order or agreements from which such debits or credits arise and regardless of any differences in payment or credit terms. Buyer may do so without notice to Seller. For purposes of this Section 5.4, the references to "Buyer" shall include Buyer and any of Buyer's affiliated companies and the references to "Seller" shall include Seller and any of Seller's affiliated companies.
- 5.5 Payment Not Acceptance. Payment for Products shall not constitute acceptance of Defective Products (defined below), nor will it limit or affect any rights or remedies of Buyer.
- 5.6 Credits. Credits or benefits resulting from the Order, including trade credits, export credits or the refund of duties, taxes, or fees, belong to Buyer. Seller will provide all information and certificates

(including NAFTA Certificates of Origin) necessary to permit Buyer (or Buyer's customers) to receive these benefits or credits.

## **6 Non-Conforming Products.**

- 6.1 **Rejection.** Buyer shall be entitled to reject any Products which, in the sole discretion of Buyer, are not in conformity with Buyer's requirements or specifications set forth in the Order, or are unmerchantable or unfit for Buyer's intended use, or are otherwise defective (the "Defective Products"). At Buyer's option, Buyer may (i) return the Defective Products for a refund or credit at the full invoice price (thereby reducing the quantity of Products under the Order); (ii) require Seller to replace the Defective Products with conforming non-defective Products; or (iii) require Seller to repair the Defective Products. As an alternative to (i) through (iii), Buyer may accept the Defective Products conditioned on Seller providing a refund or credit in an amount reasonably determined by Buyer to represent the diminished value of the Defective Products. Seller bears all expenses or charges (including, without limitation, shipping and handling charges) and the risk in connection with the return of the Defective Products from Buyer to Seller.
- 6.2 **Buyer Losses.** Seller is liable for all direct, incidental and consequential damages, losses, costs, and expenses (including attorneys' fees) incurred by Buyer resulting from Seller's failure to deliver conforming and non-defective Products or to comply with the shipping, delivery or other requirements of Buyer, even if Seller has cured the failure (collectively, "Buyer Losses"). Buyer Losses include, but are not limited to, the following: (i) any amounts charged by Buyer's customer(s); (ii) all costs of containment, sorting, repair, replacement, cure, cover, or any other costs incurred by Buyer, in such manner and in such amount as reasonably determined by Buyer; and/or (iii) all costs of any recall campaign, corrective service action, or other voluntary or involuntary action in which Buyer or any customer participates in connection with the inclusion of Products in goods sold by Buyer.
- 6.3 **Corrective Action.** Promptly upon learning of any Defective Products, Seller will develop, document and implement corrective actions in accordance with all applicable quality control policies and standards of Buyer and its customers.

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

- 7.1 Seller will conform to all quality control and other standards and inspection systems as established or directed by Buyer and/or Buyer's customer for goods and services similar to the Products. These include, without limitation, quality control policies, ISO 9001:2000 or ISO/TS 16949:2002 quality certification, OHSAS 18001 health and safety certification and ISO 14001 environmental certification including registration. Seller will also participate in Buyer's supplier quality and development programs as directed by Buyer. These programs and standards may be obtained by contacting Buyer's assigned purchasing representative. If there is a conflict between any part of the above programs or standards and an express provision of the Terms of the Order, the Terms of the Order will control.
- 7.2 For Products used in motor vehicle manufacturing, Seller agrees to meet the full requirements of industry Production Part Approval Process (PPAP) as specified by Buyer and (as applicable) Buyer's customer(s) and agrees to present this information to Buyer upon request at the level requested.
- 7.3 To the extent any of the standards, policies or systems cited above are amended, supplemented or replaced, Seller shall comply with any such amended, supplemented or replaced standards, policies or systems.

## **8 Changes.**

- 8.1 **Buyer Changes.** Buyer may, at any time, make changes to the Products under the Order, including, but not limited to, changes regarding the quantity, design, specifications, engineering level, materials, packaging, shipping date, or time or place of delivery. Seller will promptly implement any such change. Any changes to Product specifications will be managed according to Buyer's change management Procedure.
- 8.2 **Seller Changes.** Seller will not make any changes to the Products except at Buyer's written instruction or with Buyer's prior written approval. If Seller learns of a possible change to the Products

that may reduce costs, improve quality, or otherwise be beneficial to Buyer, Seller shall inform Buyer of the possible change.

- 8.3 **Impact on Cost.** Seller will promptly notify Buyer in writing if a change directed or approved by Buyer will affect cost or timing and provide substantiation of its claim. If Buyer determines that an adjustment is appropriate, Buyer and Seller will negotiate in good faith an equitable adjustment (up or down), including adjustments to price as well as claims for other costs, a change in shipping or delivery terms, or other appropriate adjustment. Seller acknowledges that (i) in no event may any claim for adjustment exceed the cost of Raw Material (as defined in any applicable Logistics Parameter) and/or tooling equivalent based on a term of supply of finished Products as projected by the production releases in place at the time of the production change order; and (ii) no adjustments will be recognized that were not submitted to Buyer as part of Seller's written notification hereunder. If Buyer determines that no adjustment is appropriate, it will so advise Seller.
- 8.4 **Obsolescence.** Buyer shall have no responsibility for obsolescence as a result of a running change approved by Buyer. In such case, Seller will be liable for any obsolescence of Raw Materials and/or Finished Goods (as those terms are defined in the Logistics Parameter) in excess of the amount projected by the production releases in place at the time of the production order change. If the change approved by Buyer is a fixed-date change, Buyer's obligation for obsolescence shall not exceed the amount equal to six (6) weeks of Raw Materials and two (2) weeks of Finished Goods (as those terms are defined in the Logistics Parameter) according to projected production releases in place at the time of the production order.

## 9 **Service Parts.**

- 9.1 For Products used in motor vehicle manufacturing, during the fifteen-year period after Buyer completes current model purchases for its customer, Seller will sell to Buyer Products to fulfill Buyer's customer's past model service and replacement requirements. During the fifteenth year of such period, Buyer and Seller will negotiate in good faith with regard to Seller's continued manufacture of service and replacement Products. All such parts will be sold at the prices specified in this Order plus actual cost differentials for packaging and manufacturing; provided, however, that such price adjustment, if any, shall become effective no sooner than six (6) months following the end of serial production.
- 9.2 If the Products are systems or modules, Seller will sell each component or part for service or replacement purposes at a price that does not, in the aggregate, exceed the system or module price specified in the Order, less assembly costs, plus any actual cost differential for packaging.

## 10 **Warranties.**

- 10.1 In addition to any other express and implied warranties provided by law or otherwise, Seller warrants for the benefit of Buyer and its customers, dealers and users of the Products, and all of their successors and assigns, that each Product shall:
- 10.1.1 be new and conform to the Order in all respects;
  - 10.1.2 strictly conform to all specifications, drawings, samples and other descriptions furnished by Buyer or otherwise part of the Order;
  - 10.1.3 be free from all defects in design (to the extent designed by Seller), workmanship, materials and fabrication, and be of highest quality and workmanship;
  - 10.1.4 be selected, designed (to the extent designed by Seller), manufactured and assembled by Seller based upon Buyer's stated use and be fit and sufficient for the purposes intended by Buyer; and
  - 10.1.5 conform to all applicable Laws (as defined below) in each country where the Products (or goods into which the Products are incorporated) are to be sold or used, including without limitation, in the case of Products used in connection with the manufacture of motor vehicles, the National Traffic and Motor Vehicle Safety Act, United States motor vehicle safety standards and European Union Directive 2000/53/EC.
- 10.2 For all Products that are services, Seller further warrants that its work will be performed in a professional and workmanlike manner, consistent with all standards and specifications agreed on with Buyer and otherwise consistent with industry standards.

- 10.3 Seller also warrants that the Products shall be delivered to Buyer free and clear of any security interest or other lien or encumbrance of any person and that Buyer shall have good and marketable title thereto.
- 10.4 All warranties of Seller extend to future performance of the Products and are not modified, waived or discharged by, and shall survive, delivery, inspection, testing, acceptance of, and payment for, the Products, and Buyer's approval of any design, drawing, material, process or specifications will not relieve Seller of these warranties. Seller waives any right to notice of breach.
- 10.5 The warranty period shall be the longer of: (i) four years from the date Buyer accepts the Products; (ii) the warranty period provided by applicable law; and (iii) the warranty period offered by Buyer or Buyer's customer to end-users for the products into which the Products are incorporated.
- 10.6 Seller will immediately notify Buyer in writing when it becomes aware of any ingredient, component, design or defect in the Products that is or may become harmful to persons or property.

## **11 Indemnification.**

- 11.1 Seller agrees to indemnify, defend and hold harmless Buyer and its affiliates, customers (both direct and indirect, including manufacturers of vehicles in which the Products are incorporated), dealers and users of the Products sold by Buyer (or the goods in which they are incorporated), and all of their respective officers, directors, shareholders, members, managers, employees, agents, representatives, successors and assigns (each, an "Indemnified Party," and, collectively, the "Indemnified Parties"), from and against any and all losses, liabilities, damages (consequential and otherwise), injuries, fines, penalties, costs and expenses of whatever form or nature (including attorneys' fees and other costs of legal defense) (collectively, the "Losses") including, but not limited to, any Losses from any claim, action, demand and suit made or brought by any third party, whether direct or indirect, that an Indemnified Party might sustain or incur as a result of any acts or omissions of Seller or its affiliates, or their directors, officers, shareholders, members, managers, employees, agents or representatives, including, but not limited to, the following:
  - 11.1.1 defect or non-conformity in the Products;
  - 11.1.2 breach of any representations, warranties, covenants or other obligations under the Order;
  - 11.1.3 negligence or fault in connection with the design or manufacture of the Products;
  - 11.1.4 any spill, discharge or emission of hazardous wastes or substances which relates, in whole or in part, to the Products;
  - 11.1.5 any recall campaign, corrective service action, or other voluntary or involuntary action in which Buyer or any customer participates in connection with the inclusion of Products in goods sold by Buyer;
  - 11.1.6 infringement (including claims of direct or contributory infringement or inducement to infringe) of any Intellectual Property Right (as defined below) relating to the Products, even if they are made to Buyer's specifications;
  - 11.1.7 damages to the property of, or personal injuries to, any Indemnified Party or any third party; and
  - 11.1.8 any challenge to Buyer's sole right, title and interest in the Tooling (as defined below), or right to possession of the Tooling, brought by any third party, including, but not limited to, toolmakers, subcontractors, and lending institutions.
- 11.2 If Seller is obligated to indemnify under this section, then Buyer may at its option participate in the defense of any third party claim with its own counsel, at Seller's expense.
- 11.3 To the maximum extent permitted by applicable law, Seller's obligation under this Section 11 will apply even as to Losses caused in whole or in part by an Indemnified Party's negligence, but Seller's indemnification shall not apply to the extent that Losses resulted solely and directly from the gross negligence or willful misconduct of such Indemnified Party. Seller's obligation to defend and indemnify under this Section 11 also apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise. The indemnification obligation under this Section 11 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the benefit of Seller under workers' compensation acts, occupational disease acts, disability benefits acts or other employee benefits acts.

## **12 Inspection and Audit.**

- 12.1 Seller's Quality System. Seller shall maintain an effective written quality control system that is acceptable to Buyer in its sole discretion, which ensures compliance with the Order requirements.
- 12.2 Inspection. Buyer may enter Seller's facility at any time to inspect the facility, Products, materials, and any of Buyer's Property (as defined below) related to the Order. Buyer's inspection does not constitute acceptance of the Products or any work-in-process and does not relieve Seller of any of its warranties or responsibilities under the Order. Notwithstanding the foregoing, Buyer shall have no obligation to inspect or test the Products whether prior to or after delivery of the Products to Buyer. Seller will, at no charge to Buyer, make that portion of its premises in which the Products are manufactured or stored available for such inspection, and will take all reasonable steps to ensure the safety of Buyer's personnel and to make the inspection convenient to Buyer.
- 12.3 Incoming Inspection. Products supplied to Buyer shall be subject to inspection using Buyer's incoming inspection procedures. Buyer may utilize test reports, outside laboratory testing, specifications, and dimensional verification as appropriate. All appropriate paperwork, i.e., test reports, packing lists and statistical data as required, must accompany each shipment and must be present at delivery. Defective Products may be returned to Seller. Buyer shall not be required to submit suspect material to 100% inspection.
- 12.4 Test Reports. Should a test report ("Test Report") be required on the purchase order, the Test Report must be signed or stamped by an authorized representative of the supplier. It must contain, as a minimum, supplier name and address, Buyer part number, purchase order number, quantity, date shipped, heat/lot number, all acceptance criteria for specification and list all of the specifications i.e. MIL-P, AMS, ASTM, etc. which would apply to the shipment. All material shipped is to be the latest revision available. All Test Reports to reference revision level of material shipped.
- 12.5 Product Identification and Traceability. Seller shall establish and maintain documented procedures for identification of individual product heat/lots. This identification must be recorded, and be made available to Buyer's personnel, customers or any appropriate regulatory agency upon request.
- 12.6 Control of Inspection Measuring and Test Equipment. Seller shall provide suitable tools, gauges and test equipment for the purpose of evaluating product conformance to specified requirements. The Seller shall maintain a system for the purpose of periodic evaluation and calibration of this equipment and traceable to the National Institute of Standards and Technology (NIST). Evidence of evaluation and calibration shall be recorded and made available to Buyer's personnel, customers or any appropriate regulatory agency upon request.
- 12.7 Audit. Upon reasonable notice to Seller, either Buyer or its direct or indirect customers (or a third party designee) may audit Seller's production facility, Products and any of Buyer's Property (including all pertinent documents, data and other information) related to the Order for the purpose of verifying Seller's costs and its compliance with its obligations under the Order.
- 12.8 Financial Review. Upon reasonable notice to Seller, Buyer or a third party designated by Buyer may review the financial condition of Seller and its affiliates. Seller will fully cooperate in such review and will promptly provide copies of or access to 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 nonpublic information about Seller obtained in a financial review and use such information only for purposes of the review, except as needed to enforce the Order.
- 12.9 Subcontractors. Seller will ensure that the terms of its contracts with its subcontractors provide Buyer and its customers with all of the rights specified in this Section.

## **13 Customer Requirements.**

- 13.1 As directed by Buyer in writing, Seller agrees to comply with the applicable terms of any agreements between Buyer and its customer(s) to which Buyer provides the Products (as incorporated into goods supplied to such customer(s)). Seller will meet all disclosed customer terms or requirements applicable to the extent within Seller's control. By written notice to Seller, Buyer may elect to have the provisions of this Section 13.1 prevail over any conflicting term of the Order.

- 13.2 Seller agrees to use commercially-reasonable efforts to participate with Buyer and/or Buyer's customer or other suppliers (other than Seller's direct or indirect competitors) with respect to value analysis and/or value engineering or other continuous improvement programs or initiatives related to the Products (including their manufacturing processes) and/or services that are the subject of this Order.
- 13.3 In the event that Buyer's customer files or has filed against it a petition in bankruptcy or insolvency and, in the course of such proceeding, Buyer permits a reduction in the price(s) paid to Buyer for goods incorporating the Products, the price paid to Seller for the Products from and after the date of such reduction will be automatically adjusted proportionally by the same percentage as the price paid to Buyer by its customer, and the Order will otherwise remain in effect without modification.
- 13.4 If Buyer's customer directed, recommended, requested, suggested or otherwise identified Seller as the source from whom Buyer is to obtain the Products: (a) Buyer will pay Seller for the Products only following and to the extent of Buyer's actual receipt of payment from that customer for those goods in which the specific Products are incorporated, and any lengthening of that customer's payment terms to Buyer will automatically lengthen the payment terms as between Buyer and Seller by an identical amount of time; (b) within three (3) business days of any change in price, specifications or other terms negotiated or proposed between Seller and the customer, Seller will notify Buyer in writing and will immediately adjust its invoices to reflect any price reduction, provided that no change will be binding on Buyer without Buyer's specific written consent.

#### **14 Subcontractors.**

If Seller intends to subcontract all or part of the manufacture of the Products to a third-party subcontractor and to locate Tooling on the subcontractor's premises, Seller will: (a) inform Buyer in advance in writing of the identity of the subcontractor and the location of the Tooling; (b) obtain Buyer's prior written consent to the subcontracting and the subcontractor; (c) inform the subcontractor in writing that it is a bailee-at-will, through Seller, of Tooling owned by Buyer; and (d) be solely responsible for payments to the subcontractor.

#### **15 Duration and Termination of the Order.**

- 15.1 Duration. The Order shall become effective on the date specified in the Order, or if no date is specified, when issued to Buyer (the "Effective Date"). Unless terminated earlier in accordance with the Terms of the Order, the term of this Order is for the period commencing on the Effective Date and continuing through the later of the agreed upon expiration date or the end of the vehicle/equipment platform(s), including any extensions, for which such Products are supplied.
- 15.2 Termination by Buyer. In addition to any other rights of Buyer to cancel or terminate the Order, and subject to Section 23, Buyer may terminate the Order in whole or in part by written notice (each, a "Termination Notice"):
- 15.2.1 For convenience at any time by not less than three (3) days advance Termination Notice to Seller;
- 15.2.2 For default, effective upon delivery of a Termination Notice or upon such other date specified in said Termination Notice. Seller shall be in default if (i) Seller breaches any warranty; (ii) Seller repudiates, breaches or threatens to breach any of the Terms of the Order; (iii) Seller fails to deliver, or threatens not to deliver, Products in connection with the Order; (iv) Seller fails to make progress or to meet reasonable quality requirements so as to endanger timely and proper performance of the Order; (v) Seller becomes insolvent or makes an assignment for the benefit of creditors, or proceedings in bankruptcy or insolvency are instituted by or against Seller; (vi) Seller sells all or substantially all of its assets to a third party; or merges or consolidates with, or sells all of its stock or membership interests to, another party, or undergoes some other form of reorganization; (vii) Seller undergoes a change of control which, in Buyer's sole discretion, is detrimental to the interests of Buyer, (viii) Seller needs accommodations from Buyer, financial or otherwise, in order to meet its obligations under the Order; (ix) at any time, in Buyer's sole judgment, Seller's financial or other condition or progress on the Order shall be such as to endanger timely performance; or (x) Seller fails to perform or observe or perform its obligations under any other order or agreement with Buyer or any of Buyer's affiliates.



Termination by Buyer shall not relieve Seller of any liability under the Order.

- 15.3 Termination by Seller. Seller may terminate the Order only for non-payment of the Purchase Price for Products which are thirty or more days past due and material in amount, and then only if: (i) Seller first provides Buyer with written notice specifying the amounts past due, and (ii) Buyer, within 60 days of such notice, does not do any of the following: (x) pay the past due amounts; or (y) notify Seller that the amounts claimed to be unpaid are disputed by Buyer. Seller shall terminate under this Section 15.3 by delivering a Termination Notice to Buyer. Seller may not terminate or cancel the Order for any reason except as permitted under this Section.
- 15.4 Seller's Obligations Following Termination. Following delivery of a Notice of Termination, Seller shall, unless otherwise directed by Buyer and subject to Seller's obligations set forth in Section 15.7:
- 15.4.1 terminate promptly all work under the Order and transfer title and deliver to Buyer all finished work completed prior to receipt of the Termination Notice;
- 15.4.2 transfer title and deliver to Buyer all work in process, and the parts and materials which Seller produced or acquired in accordance with the Order and which Seller cannot use in producing goods for itself or for others;
- 15.4.3 verify/settle all claims by subcontractors for actual costs that are rendered unrecoverable by such termination and provided the recovery of materials in Seller's possession is ensured; and
- 15.4.4 take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest until disposal instruction from Buyer has been received.
- 15.5 Buyer's Obligations Following Termination. Buyer shall pay to Seller in connection with a termination only the following amounts, without duplication, in complete and final satisfaction of any liabilities relating to the Order:
- 15.5.1 The Purchase Price for all conforming Products received by Buyer prior to the Termination Notice or delivered following such notice under Section 15.4.1, Section 15.7 or at the direction of Buyer;
- 15.5.2 If the termination is not based on a default by Seller, Seller's reasonable actual cost of: (i) merchantable and useable work in process and the parts and materials transferred to Buyer under Section 15.4.2 above (but not to exceed the Purchase Price of the Products had the work been completed); (ii) settling claims under Section 15.4.3; and (iii) carrying out its obligation under Section 15.4.4.
- 15.6 Limitations on Buyer's Obligations Following Termination.
- 15.6.1 Buyer's obligations under Section 15.5 are conditioned upon Seller's furnishing to Buyer, within one month after the date of termination (or such shorter period as may be required by Buyer's customer), a termination claim, which will consist exclusively of the items of Buyer's obligation to Seller that are expressly permitted by this Section. Buyer may audit Seller's records before or after payment to verify amounts requested in Seller's termination claim.
- 15.6.2 Buyer will have no obligation for and will not be required to pay Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, tooling, facilities and equipment rearrangement costs or rental, unamortized capital or depreciation costs, finished goods, work in process or raw materials that Seller fabricates or procures in amounts exceeding those authorized in the Material Releases, or general administrative burden charges from termination of the Order, except as otherwise expressly agreed in a separate order issued by Buyer.
- 15.7 Transition of Supply Following Termination or Expiration. Following expiration or termination of the Order by either party for any reason (including termination by Seller) and notwithstanding any claimed or actual breach of any obligation by Buyer, Seller will cooperate in the transition of supply to a successor supplier (collectively, "Transition Support"), including the following:
- 15.7.1 Seller will continue the production and delivery of all Products 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), such that Seller's action or inaction causes no interruption in Buyer's ability to obtain Products as needed;
- 15.7.2 At no cost to Buyer, Seller will promptly provide all requested information and documentation regarding and access to Seller's manufacturing process, including on-site inspections, bill-of-material data, terminating and process detail and samples of Products and components; and

- 15.7.3 Subject to Seller's actual capacity constraints, Seller will provide special overtime production, storage and/or management of extra inventory of Products, extraordinary packaging and transportation and other special services as expressly requested by Buyer in writing. If the transition occurs for reasons other than Seller's termination for default, Buyer will, at the end of the transition period, pay the reasonable, actual cost of the assistance under this Section 15.7.3, provided that Seller has advised Buyer prior to incurring such amounts of its estimate of such costs. If the parties disagree on the cost of Seller's Transition Support, Buyer will pay the agreed portion to Seller without prejudice to Seller's right to seek to recover any disputed amounts.

## **16 Buyer's Property.**

- 16.1 Property which is furnished by Buyer, either directly or indirectly, to Seller to perform the Order or for which Buyer has agreed to reimburse or otherwise pay Seller will become property of Buyer or its customer (including passage of title) as it is fabricated or acquired, regardless of payment (collectively "Buyer's Property").
- 16.2 Buyer's Property includes: (i) all tooling, including, without limitation, fixtures, gauges, jigs, patterns, castings, cavity dies and molds, with all related software, appurtenances, accessions, and accessories (collectively, the "Tooling"); (ii) packaging; (iii) equipment, materials or other items owned by Buyer that are placed in the possession or control of Seller for its use in connection with the Products; and (iv) all of Buyer's Intellectual Property Rights, Confidential Information, and all other materials and items relating to the Products. Buyer's Property also includes any modifications, repairs, refurbishments, and replacements of Buyer's Property.
- 16.3 Seller shall use Buyer's Property only for the production of Products for Buyer.
- 16.4 Seller shall not purchase any Tooling for the account of Buyer or charge Buyer for any Tooling except as authorized in an Order.
- 16.5 Seller at its own expense shall: (i) keep all of Buyer's Property in good working condition and fully insured for the benefit of Buyer at all times while in Seller's possession with Buyer named as Loss Payee on the insurance policy (at Buyer's request, Seller shall provide Buyer with a copy of the insurance certificate reflecting the addition of Buyer as Loss Payee); (ii) create a record of all Buyer's Property and keep such record up to date; (iii) keep Buyer's Property segregated from all other assets and labeled as being the property of Buyer, and immediately sign and file any financing statements required by Buyer in respect thereof; (iv) inspect, test and approve Buyer's Property prior to any use; and (v) house, maintain, repair and replace it, except for normal wear and tear.
- 16.6 Seller shall have only temporary possession of Buyer's Property as a bailee-at-will. Seller may not release or dispose Buyer's Property to any third party without the express written permission of Buyer. Seller may not relocate Buyer's Property without Buyer's express written permission. Buyer will have the right to enter Seller's premises to inspect Buyer's Property and Seller's records regarding Buyer's Property. Only Buyer (or Buyer's affiliates) has any right, title or interest in Buyer's Property, except for Seller's limited right, subject to Buyer's sole discretion, to use Buyer's Property in the manufacture of Products. Seller agrees neither to create nor allow to exist any liens on Buyer's Property and Seller agrees to sign any documents reasonably required by Buyer to perfect all rights granted herein. Seller expressly waives and releases any and all statutory, equitable or other liens, including but not limited to any molder liens, special tool liens, builder liens and the like, that Seller has or might have on or in connection with Buyer's Property for any and all work, including but not limited to, designing, manufacturing, improving, maintaining, servicing, using, assembling, fabricating or developing Buyer's Property.
- 16.7 Immediately upon Buyer's request or upon any bankruptcy or insolvency filing, and without payment of any kind, Seller will return Buyer's Property, and will comply with Buyer's instructions relating to its return, including but not limited to the method and location for its return. Seller is responsible for shipping, labor and other costs incidental to its return. Seller will cooperate with Buyer and will provide Buyer with access to all facilities at which Buyer's Property is located. Seller expressly waives any right to additional notice or process relating to Buyer's exercise of its rights under this Section. Seller waives, to the extent permitted by law: (i) any lien or other rights that Seller might otherwise have on any of Buyer's Property, including but not limited to molder's and builder's liens; and (ii) any objection to Buyer's repossession and removal of Buyer's Property for any or no reason, including bankruptcy or insolvency proceedings.

## **17 Seller's Property.**

- 17.1 All Tooling and other items that are not Buyer's Property and that are necessary for the production of Products are the property of Seller (collectively, "Seller's Property").
- 17.2 Seller, at its expense, will furnish, keep in good working condition capable of producing the Products meeting all applicable specifications, and replace when necessary, all Seller's Property. Seller will insure Seller's Property with "all risk" Property Insurance for its full replacement cost. If Seller uses Seller's Property to produce goods or services similar to the Products for other customers, including aftermarket customers, such goods or services will not incorporate any of Buyer's Intellectual Property Rights (including, but not limited to its, logos, trademarks, trade names) or part numbers. Seller will not disclose or imply in its marketing efforts that such goods or services are equivalent to those purchased by Buyer. Seller grants to Buyer an irrevocable option to take possession of and title to Seller's Property that is special for the production of Products under the Order upon payment to Seller of its net book value less any amounts that Buyer has previously paid to Seller for the cost of such items, if any. This option does not apply if Seller's Property is used to produce goods that are the standard stock of Seller or if a substantial quantity of like goods is being sold by Seller to others.

## **18 Infringement; Use of Products.**

- 18.1 "Intellectual Property Right(s)" means any and all copyrights, trademarks and trade names, trade secrets, patents, designs and other industrial property rights, and all other intellectual and industrial property rights, whether arising by operation of law, contract, license or otherwise, under U.S. or any foreign law.
- 18.2 Seller warrants that the Products and the sale and/or use thereof (before or after incorporation into products during manufacture) do not and will not infringe any Intellectual Property Rights.
- 18.3 Seller warrants that all Products or other deliverables provided under the Order will be original to Seller and will not incorporate any Intellectual Property Rights of any third party.
- 18.4 In addition to its indemnification obligations under Section 11 hereof, Seller waives any claim against Buyer arising out of or related to a third party claim asserted against Seller or Buyer for infringement of any Intellectual Property Rights.
- 18.5 Seller warrants that it is aware of the uses to which the Products are to be put, and grants to Buyer and each party or entity to which the Products are provided, a royalty-free, unrestricted, irrevocable and perpetual license (with a right to sublicense to others) to (i) use, repair and reconstruct the Products in any manner, and (ii) to use any additional or background intellectual property owned or acquired by Seller that is necessary or incident to the reasonably intended use or application of the Products. Seller further warrants that it has full right to grant said license.
- 18.6 Seller will ensure that the terms of its contracts with its subcontractors and employees are consistent with the terms of this Section 18.

## **19 Inventions.**

If Seller, or any person employed by or working under the direction of Seller, in the performance of the Order conceives or first reduces to practice: (i) any invention or any experimental, development or research activities, including engineering related thereto, whether or not patentable, (ii) any reduction to practice of any subject matter, application or discovery which could be patented or copyrighted, or (iii) any improvement in the design of the Products or any alternative or improved method of accomplishing the objectives of the Order (collectively, "Inventions"), such Inventions shall be owned by Buyer and be deemed confidential and proprietary property of Buyer, whether such Inventions or any portions thereof can be copyrighted or patented or not. Seller shall immediately disclose all Inventions to Buyer and shall cooperate (and cause its employees to cooperate) in executing any documents and taking any other actions necessary or convenient to patent, copyright, assign to Buyer or otherwise perfect or protect such Inventions for the benefit of Buyer. Seller will ensure that the terms of its contracts with its employees or persons working under its direction will be consistent with the terms of this Section 19.

## **20 Proprietary Information.**

- 20.1 Seller agrees to treat as confidential all information, data and materials received by it from Buyer in connection with the Order and the performance of its obligations thereunder, including, without limitation, Buyer's business, processes, apparatus, products or services, research, research programs, customers, customer lists, supplier and vendor identities, customer requirements, know-how or Intellectual Property Rights, marketing, pricing, financial data, forecasts, business plans, strategies or other confidential or proprietary information, including the financial terms and all other Terms of the Order (collectively, the "Confidential Information"). Seller shall exercise the same degree of care with regard to the protection of such Confidential Information as it uses in protecting and preserving its own confidential and proprietary information but at least a reasonable standard of care. Seller shall use Confidential Information strictly for the benefit of Buyer for purposes of implementing the Order and agrees that it will not use such information for any other purpose and it will not directly or indirectly disclose such Confidential Information to any third party without receiving Buyer's prior written consent.
- 20.2 Notwithstanding the foregoing, Seller may disclose such Confidential Information to any of its officers, directors, employees, affiliates, agents, advisors or subcontractors who (i) has a need to know the same, and (ii) has been advised of, and has agreed in writing to comply with, the restrictions upon such Confidential Information set forth in the Order.
- 20.3 Seller further agrees not to assert any claims with respect to any of Seller's proprietary, technical or confidential information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the Products.
- 20.4 Confidential Information shall not include information that: (a) is already publicly known at the time of its disclosure by Buyer; (b) after disclosure by Buyer becomes publicly known through no fault of Seller; or (c) Seller can establish by written documentation was properly in its possession prior to disclosure by Buyer.
- 20.5 Notwithstanding anything to the contrary in these Orders, any confidentiality or non-disclosure agreement between the parties that predates the Order will remain in effect except as expressly modified by the Order, and to the extent of a conflict between the express terms of such an agreement and this Section 20, the terms of that agreement will control.
- 20.6 All documents containing Confidential Information produced or acquired by Seller under the Order will belong to Buyer. Seller shall, within five (5) business days of Buyer's request or the expiration or termination of the Order, return all Confidential Information (including all copies, notes and/or extracts thereof) to Buyer at Seller's expense.

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

- 21.1 Without limiting any of the other obligations or liabilities of the Seller under the Order, Seller will at all times specified below carry and continuously maintain at its own expense, or cause to be carried and continuously maintained, at least the minimum insurance coverage set forth below, in each case with insurance companies of recognized responsibility and with terms and conditions acceptable to Buyer. By way of description, such insurance shall include at the least the following coverage: At all times during the duration of the Order, occurrence-based comprehensive general liability, automobile liability and statutory worker's compensation and employer's liability;
- 21.2 Workers' compensation insurance with statutory limits in compliance with the law or laws of the state or states in which employees are hired or will work, and employers' liability insurance with limits of \$1,000,000;
- 21.3 Commercial general liability insurance and excess (if necessary) with limits of not less than \$5,000,000 general aggregate and \$5,000,000 per occurrence, and including but not limited to the following coverages: blanket contractual, products, operations, completed operations, independent contractors;
- 21.4 Automobile liability insurance covering any auto, with limits of not less than \$1,000,000 combined single limit;
- 21.5 Umbrella excess liability coverage of not less than \$5,000,000 beyond each primary policy; and
- 21.6 Professional Liability insurance, of not less than \$3,000,000 per occurrence and in the annual aggregate.

- 21.7 Seller shall furnish Buyer, on Buyer's request and on any coverage renewal date, approved certificates of all insurance required hereby executed by each insurer or by an authorized representative of each insurer where it is not practical for such insurer to execute the certificate itself. Such certification shall evidence that the insurance required is in effect, identify the underwriters, the type of insurance, the insurance limits (including applicable deductibles) and the policy term, and shall specifically list the special provisions enumerated for such insurance required by this Section. The insurance certificates shall provide that not less than 30 days' advance written notice will be given to Buyer prior to any cancellation, reduction or restrictive modification of the coverage. Upon request, Seller shall furnish Buyer with copies of all insurance policies, binders, endorsements, cover notes and other evidence of such insurance obtained by Seller.
- 21.8 Insurance carried in accordance with this Section 21, with the exception of worker's compensation and employers liability insurance, shall be endorsed to provide that Buyer shall be included as additional insured with the understanding in each case that any obligation imposed upon the insured (including the liability to pay premiums) shall be the sole obligation of Seller and not that of Buyer. Inasmuch as such insurance is written to cover more than one insured, all terms, conditions, insuring agreements and endorsements, with the exceptions of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.
- 21.9 With respect to all insurance maintained by Seller hereunder, (A) the interests of Buyer and Seller shall not be invalidated by any action or inaction of any other person, and Seller and Buyer shall be insured regardless of any breach or violation by the Seller or any other person of any warranties, declarations or conditions contained in such policies; (B) all deductibles or self-insured retentions shall be in amounts acceptable to Buyer but shall be paid by Seller; (C) with the sole exception of professional errors and omissions insurance, the insurers thereunder shall waive all rights of subrogation against Seller and Buyer, any right of set-off and counterclaim and any other right to deduction whether by attachment or otherwise; (D) such insurance shall be primary without right of contribution of any other insurance or self-insurance carried by or on behalf of Buyer; and (E) if such insurance is cancelled by the insurer for any reason whatsoever (including nonpayment of premium) or any substantial change is made in the coverage that affects the interests of Seller and Buyer, such insurance shall nonetheless remain effective for thirty (30) days after receipt of written notice to Buyer sent by registered mail from such insurer of such cancellation or change.
- 21.10 Seller hereby waives all mechanics' liens and claims and agrees that none shall be filed or maintained against Buyer's premises on account of any Products and shall cause all its subcontractors, materialmen and suppliers (and subcontractors of such parties) to provide similar waivers and agreements in a form satisfactory to Buyer.

## **22 Force Majeure.**

No delay, failure or omission of either party to perform its obligations under the Order shall be deemed a breach of the Order or create any liability if such failure is due to an event or occurrence beyond the party's reasonable control and without its fault or negligence, such as: acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority, embargoes, fires, explosions, natural disasters, riots, wars, terrorist acts, sabotage, inability to obtain power, or court injunction or order. The change in cost or availability of materials, components or services based on market conditions, supplier actions, labor disruptions or contract disputes will not excuse Seller's performance, and Seller assumes these risks. As soon as possible (but no more than one full business day) after the occurrence, Seller will provide written notice describing such delay and assuring Buyer of the anticipated duration of the delay and the time that the delay will be cured. During the delay or failure to perform by Seller, Buyer may at its option and at Seller's expense: (a) purchase Products from other sources and reduce its schedules to Seller by such quantities, without liability to Seller; (b) require Seller to deliver to Buyer at Buyer's expense all finished goods, work in process and parts and materials produced or acquired for work under the Order; or (c) have Seller provide Products from other sources in quantities and at a time requested by Buyer and at the price set forth in the Order. In addition, Seller at its expense will take all necessary actions to ensure the supply of Products to Buyer for a period of at least thirty (30) days during any anticipated labor disruption or resulting from the expiration of Seller's labor contracts.

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

- 23.1 Buyer's sole liability under the Order (including its termination, expiration or cancellation) is to pay the Purchase Price for the Products in accordance with Section 5 and to pay the specific termination related amounts described in Sections 15.5 and 15.7.
- 23.2 BUYER SHALL NOT BE LIABLE TO SELLER WITH RESPECT TO THE SUBJECT MATTER OF THE ORDER UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY AMOUNTS IN EXCESS OF THE AMOUNT THAT BUYER PAID TO SELLER FOR THE PRODUCTS DELIVERED UNDER THE ORDER.
- 23.3 IN NO EVENT SHALL BUYER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, MULTIPLE, OR EXEMPLARY DAMAGES (INCLUDING LOSS OF PROFITS, LOSS OF BUSINESS, OR ANY OTHER LOSS DIRECTLY OR INDIRECTLY ARISING OUT OF OR RESULTING FROM THE ORDER) OR FOR ANY INTEREST OR PENALTIES, IN CONNECTION WITH THE ORDER, WHETHER FOR BREACH OF CONTRACT, LATE PAYMENT, PROPERTY DAMAGE, PERSONAL INJURY, ILLNESS, DEATH OR OTHERWISE, WHETHER OR NOT BUYER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
- 23.4 THE LIMITATIONS SET FORTH IN THIS SECTION 23 WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

## **24 Limitation on Assignment.**

The Order shall be binding upon Seller and Buyer and their respective successors and assigns. The Order is issued to Seller, in reliance upon Seller's personal performance of the duties imposed and by accepting same Seller agrees not to assign the Order or delegate the performance of its duties hereunder (except for the procurement of raw materials) without Buyer's prior written consent. Buyer's approval of any assignment or delegation by Seller shall not relieve Seller from any of its obligations under the Order. Any breach of this provision shall entitle Buyer to terminate the Order for default without any liability in accordance with Section 15.2.2.

## **25 Compliance with Laws.**

- 25.1 Seller, and the Products, shall comply with all applicable federal, state, provincial and local laws, rules, regulations, ordinances, conventions and standards that relate to the manufacture, sale, labeling, distribution, transportation, importation, exportation, licensing, approval or certification, delivery or use of the Products (collectively, the "Laws"), including without limitation:
  - 25.1.1 Compliance with all permit, approval, and filing requirements.
  - 25.1.2 Compliance with country of origin requirements under the North American Free Trade Agreement and any other duty preference programs.
  - 25.1.3 Compliance with all applicable anti-corruption laws and regulations including, without limitation, the U.S. Foreign Corrupt Practices Act of 1977 ("FCPA"), as amended, which makes it unlawful for any U.S. company or any officer, director, employee, agent or stockholder thereof acting on behalf of such U.S. company to directly or indirectly offer to pay any bribe, gift or thing of value to any foreign official, candidate for foreign office, foreign political party or party official to influence any act or decision of such persons or entities in their official capacity. Additional information concerning the FCPA can be found at the following web address: <http://www.usdoj.gov/criminal/fraud/docs/dojdocb.html>. Seller hereby acknowledges that Seller is familiar with the FCPA and understands its provisions. If requested by Buyer, Seller will from time to time execute certificates of compliance with the FCPA and attend FCPA training. If requested by Buyer, Seller shall have its subcontractors, consultants, agents and representatives, as applicable, execute an FCPA compliance statement containing substantially the same provisions as set forth in this Section 25.1.3, and shall promptly provide written evidence thereof to Buyer. Seller's failure to comply in all respects with the requirements of this Section 25.1.3 and the provisions of the FCPA shall constitute a material breach by Seller of Seller's obligations under the Order and shall entitle Buyer to suspend or terminate the Order effective immediately on notice to Seller without liability; provided, however, that for purposes of the foregoing, Buyer's "good faith" belief that Seller has failed to comply in all respects with the

requirements of this Section 25.1.3 and the provisions of the FCPA shall be sufficient cause for Seller to suspend or terminate the Order.

- 25.1.4 Compliance with the United States Export Administration Regulation (“EAR”), the International Traffic in Arms Regulation (“ITAR”) as well as the Arms Export Control Act, the Trading with the Enemy Act, the International Emergency Economic Powers Act, the Foreign Assets Control Regulations and any other applicable law or regulation governing the export, transfer, use or re-export of products and technical data (together, the “Products and Technical Data”). The Order involves Products and Technical Data that may be subject to export controls under the laws and regulations of the United States. Products and Technical Data that are commercial or have dual-uses (and are not subject to ITAR (defined below)) may be controlled under the EAR, available at

<http://www.access.gpo.gov/bis/index.html>,

while Products and Technical Data that are inherently military in nature may be controlled under the ITAR, available at:

[http://pmddtc.state.gov/official\\_itar\\_and\\_amendments.htm](http://pmddtc.state.gov/official_itar_and_amendments.htm).

In connection therewith, Seller agrees that it will not export, directly or indirectly, Products and Technical Data to any country or foreign national for which the United States Department of Commerce, Department of State or Department of Defense, or any other agency of the United States, at the time of export requires an export license, permit, authorization or other governmental approval, without first obtaining such license, permit, authorization or other governmental approval from the applicable agency. Seller also agrees that it will not conduct business activities without the authorization of the United States government with those countries and political regimes restricted pursuant to the Office of Foreign Assets Control Country Sanctions Programs, available at:

<http://www.ustreas.gov/offices/enforcement/ofac/programs>

and those individuals and entities set forth on the Entity List, the Denied Persons List, the Unverified Persons List, the Specially Designated Nationals List, the Debarred List and the Nonproliferation Sanctions List available at:

<http://www.bis.doc.gov/complianceandenforcement/liststocheck.htm>.

Seller hereby acknowledges that it is familiar with the export laws and regulations referenced in this Section 25.1.4 and understands their provisions. Seller’s failure to comply in all respects with the requirements of this Section 25.1.4 and the export laws and regulations referenced herein shall constitute a material breach of the Order entitling Buyer to suspend or terminate the Order effective immediately on notice to Seller without liability.

- 25.1.5 Compliance with any child, slave, prisoner or any other form of forced or involuntary labor laws in connection with the manufacture and supply of the Products.
- 25.1.6 Compliance with the National Traffic and Motor Vehicle Safety Act, United States motor vehicle safety standards and European Union Directive 2000/53/EC for Products used in connection with the manufacture of motor vehicles.
- 25.1.7 Compliance with all provisions of the Equal Opportunity clause (41 CFR 60-1.4(a)); the Affirmative Action Obligations (41 CFR 60-250); the Listing of Employment Openings clause (41 CFR 60-250.4(b) - (h)); the Employment of the Disabled clause (41 CFR 60.741.5); and any applicable laws pertaining to small/small disadvantaged business concerns during the performance of the Order. Further, Seller agrees to comply with Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973 (29 USC Section 793) and Section 402 of the Vietnam Era Veteran Readjustment Assistance Act (38 USC Section 4012), not to discriminate against any employee or applicant for employment because of race, religion, sex, creed, color, national origin, or disabled or veteran’s status, and Seller certifies that it does not maintain any unlawful segregated facilities. The Order shall be deemed to incorporate by reference all the clauses required by the provisions of

said regulations and laws and wherever the term "Contractor" is used in said clauses it will be deemed to refer to Seller.

- 25.2 To the extent that any of the Products are to be used by Buyer in connection with its manufacturing or assembly operations, including any activities incidental thereto, Seller hereby certifies and represents that said Products comply with all applicable rules and regulations issued under the Occupational Safety and Health Act (Public Law 91-596).
- 25.3 Seller further agrees to comply with the workplace hazard communication standard of the Workplace Hazardous Materials Information System ("WHMIS"), if applicable. Hazard communication labeling and Material Safety Data Sheets ("MSDSs") must precede all shipments of controlled substances.
- 25.4 All invoices issued by Seller under the Order must carry the following certificate, and Seller agrees to comply therewith as to all Products: "We hereby certify that these Products were produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof."
- 25.5 At Buyer's request, Seller shall certify in writing its compliance with this Section 25. Seller agrees to indemnify and hold Buyer harmless from and against any liability claims, demands, fines, penalties or expenses arising from or relating to Seller's noncompliance with the provisions of this Section 25. If Seller retains subcontractors to perform work on the Products, Seller will use only subcontractors that will adhere to the requirements of this Section 25. Seller shall monitor subcontractor's compliance. Failure by Seller to adhere to this provision shall be a material breach of the Order entitling Buyer to suspend or terminate the Order effective immediately on notice to Seller without liability. Seller shall use its best efforts to promptly and regularly inform Buyer of any requirements under applicable laws and regulations that directly or indirectly affect these General Terms and Conditions or the Products.
- 25.6 To the extent any of the statutory or regulatory provisions cited above are amended, supplemented or replaced, or additional statutory or regulatory provisions are enacted, Seller's obligations under the Order shall be automatically amended to take the same into account and Seller's documents shall contain all legends and other disclosures required by the same.

## **26 Special Situations.**

- 26.1 In addition to its indemnity obligations under Section 11.1.7, if Seller performs any work on Buyer's or Buyer's customer's premises or utilizes the property of Buyer or Buyer's customer, whether on or off Buyer's or Buyer's customer's premises, (i) Seller will examine the premises to determine whether they are safe for the requested services and will advise Buyer promptly of any situation it deems to be unsafe; (ii) Seller's employees, subcontractors, and agents will comply with all regulations that apply to the premises and may be removed from Buyer's premises at Buyer's discretion; and (iii) Seller's employees, contractors, and agents will not possess, use, sell, transfer or be under the influence of alcohol or unauthorized, illegal, or controlled drugs or substances on the premises.
- 26.2 If the Order includes the removal, moving or installation of production equipment, the following applies: Seller agrees that it has inspected the equipment and the site from which it is to be removed or where it will be installed, and that the price includes everything necessary to complete the work, including without limitation the cost of providing access and egress, relocating other equipment, power lines and other utilities, preparing a proper foundation to receive the machinery, and all special permits and equipment required to accomplish the move. If any of the foregoing is to be furnished by Buyer, such items shall have been clearly and specifically identified on the face of the Order. With respect to items or services furnished by Buyer, including without limitation foundations or lifting or moving equipment, Seller agrees to inspect same before use thereof and to be fully and completely responsible for the adequacy thereof.

## **27 Remedies.**

- 27.1 The rights and remedies reserved to Buyer in the Order will be cumulative with and in addition to all other legal or equitable remedies.
- 27.2 In any action brought by Buyer to enforce Seller's obligations in connection with the production or delivery of Products or Transition Support, or for possession of property, the parties agree that



Buyer does not have an adequate remedy at law and Buyer is entitled to an immediate order for specific performance of Seller's obligations.

- 27.3 Buyer shall recover actual and reasonable attorney's fees (including the cost of in-house counsel) in any action arising out of the Order, unless Seller is the prevailing party.

## 28 Miscellaneous.

- 28.1 Jurisdiction and Applicable Law. This Agreement shall be construed and governed by the laws of the State of Michigan. All disputes arising from this Agreement shall be resolved exclusively in the federal or state courts situated in the State of Michigan. Seller consents to personal jurisdiction in the State of Michigan and waives all forum non conveniens defenses and objections. Seller further consents to venue in the state or federal courts situated in Wayne County, Michigan as the exclusive venue for dispute resolution. SELLER IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE ORDER. The United Nations Convention on Contracts for the International Sale of Products shall not apply to the Order.
- 28.2 Waiver. Either party's failure to insist on the performance by the other party of any term or failure to exercise any right or remedy reserved in the Order, or either party's waiver of any breach or default hereunder by the other party shall not, thereafter, waive any other terms, conditions, rights, remedies, breaches or defaults, whether of the same or a similar type or not.
- 28.3 Severability. If any provision of the Order, or portion of any provision, is declared or found to be unenforceable, the balance of the Order or such provision shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof.
- 28.4 Survival. The obligations of Seller to Buyer survive termination of the Order, except as otherwise provided in the Order.
- 28.5 Interpretation. No provision may be construed against Buyer as the drafting party. Section headings are for convenience or reference only, and do not affect the meaning of the Order.
- 28.6 Notices. To the extent not otherwise provided in the Order, notices under the Order shall be given in writing only, delivered by registered or certified mail, return receipt requested, or by commercial courier, and shall be deemed given, if mailed, five (5) days after notice was deposited in the United States mail, postage pre-paid, and addressed to the party for whom intended at such party's address, or if sent by commercial courier, upon confirmed delivery.
- 28.7 No Publicity. Seller will not advertise, publish or disclose to any third party (other than to Seller's professional advisors on a confidential and need-to-know basis) in any manner the fact that Seller has contracted to furnish Buyer the Products covered by the Order or any terms of the Order (including prices), or use any trademarks or trade names of Buyer in any press release, advertising or promotional materials, without first obtaining Buyer's written consent.
- 28.8 Relationship of Parties. Seller and Buyer are independent contracting parties and nothing in the Order will make either party the employee, agent or legal representative of the other for any purpose. The Order does not grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Seller will be solely responsible for all employment and income taxes, insurance premiums, charges and other expenses it incurs in connection with its performance of the Order, except as expressly provided in a written agreement signed by Buyer. All employees and agents of Seller or its respective contractors are employees or agents solely of Seller or such contractors, and not of Buyer, and are not entitled to employee benefits or other rights accorded to Buyer's employees. Buyer is not responsible for any obligation with respect to employees or agents of Seller or its contractors.
- 28.9 Conflict of Interest. Seller represents and warrants that its performance of the Order will not in any way conflict with any continuing interests or obligations of Seller or its employees or contractors. Seller further warrants that while the Order is in effect, Seller and those of its employees and contractors participating in the performance of the Order will refrain from any activities which could reasonably be expected to present a conflict of interest with respect to Seller's relationship with Buyer or its performance of the Order.