

## **NORMA Group (U.S. Purchasing Entities)**

### **STANDARD TERMS AND CONDITIONS OF PURCHASE**

The following terms and conditions (“Terms”) apply to a purchase by Buyer (defined below) whether or not these Terms are specifically referenced and incorporated by Buyer’s purchase order or other documentation sent to Seller (defined below) at the time of a negotiation or order to purchase, provided that Seller has first been given a copy of these Terms. As used herein, “Buyer” means the NORMA Group business entity within the United States of America that issues to Seller one or more Orders (defined below); these Terms do not apply to Orders issued by a NORMA Group business entity that is outside of the United States.

**1. Offer; Acceptance; Exclusive Terms; Identity of Buyer.** Each purchase order or purchase order revision issued by Buyer (“Order”) is an offer to the seller identified on the Order (the “Seller”) for the purchase of goods and/or services (collectively, “Supplies”) and includes, and is governed by, these Terms. When accepted, the Order supersedes all prior agreements, purchase orders, quotations, proposals and other communications between Buyer and Seller regarding the Supplies covered by the Order. Seller accepts the terms of the Order and these Terms, and forms a contract by doing any of the following: (a) commencing any work under the Order; (b) accepting the Order in writing; or (c) any other conduct that recognizes the existence of a contract with respect to the subject matter of the Order or manifests ascent to the Order. **The Order is limited to and conditional upon Seller’s acceptance of these Terms exclusively.** The Order does not constitute an acceptance of any offer or proposal made by Seller. Any reference in the Order to any offer or proposal made by Seller is solely to incorporate the description or specifications of Supplies in the prior proposal, but only to the extent that the description or specifications do not conflict with the description and specifications in the Order. Any additional or different terms proposed by Seller, whether in Seller’s quotation, acknowledgement, invoice or otherwise, are unacceptable to Buyer, are expressly rejected by Buyer, and will not become part of the Order, but shall not operate as a rejection of this Order if Seller accepts Buyer’s offer by commencement of work, shipment of the Supplies, or by other means acceptable to Buyer, in which case this Order shall be deemed accepted by Seller without any additional or different terms or variations whatsoever. Any modification of these Terms must be expressly stated in the Order. Each Order can be modified only under Section 36. In the event of a conflict in terms, a mutually-signed agreement shall take precedence over a Statement of Work, the Statement of Work will take precedence over the Order, and the Order shall take precedence over these Terms.

**2. Quantity; Material Releases; Delivery.** (a) Quantities listed in each Order as estimated are Buyer’s best estimate of the quantities of Supplies it might purchase from Seller for the contract term specified in the Order. Any estimates or forecasts of production volumes or program durations, whether from Buyer or Customers (defined in Section 13 below), are subject to change from time to time, with or without notice to Seller, and shall not be binding upon Buyer. Unless otherwise expressly stated in the Order, Buyer makes no representation, warranty, guaranty or commitment of any kind or nature, whether express or implied, to Seller in respect of Buyer’s quantitative requirements for the

Supplies or the term of supply of the Supplies. (b) Unless otherwise expressly stated in the Order or an Agreement, 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," or similar terms, then Seller will supply Buyer's requirements for Supplies in such quantities as identified by Buyer as firm orders in material authorization releases, manifests, broadcasts or similar releases ("Material Releases") that are transmitted to Seller, and Seller will supply all such Supplies on such dates and times, at the price and on the other terms specified in the Order. Material Releases are part of the Order, are governed by these Terms and are not independent contracts. Seller accepts the risk associated with lead times of various raw materials and/or components if they are beyond those provided in Material Releases. (c) Time and quantities are of the essence under the Order. Seller 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 Seller to modify the price for Supplies. Buyer is not obligated to accept early deliveries, late deliveries, partial deliveries or excess deliveries. Unless otherwise agreed in writing by Buyer, the risk of loss passes from Seller to Buyer upon delivery to Buyer's transportation carrier (or if shipment is by Seller or common carrier, then upon delivery to Buyer's designated facility), but title passes to Buyer only upon acceptance by Buyer at Buyer's facility where the Supplies are to be used. (d) To assure the timely delivery of Supplies, Seller will, upon written request from Buyer, manufacture Supplies in excess of Buyer's current Orders to serve as a reserve for shipment, at such inventory reserve level as may be set by Buyer from time to time, to meet Buyer's requirements and to meet any unforeseen delays due to any reason whatsoever. Until such reserve Supplies are purchased by Buyer from Seller, they shall remain the property of Seller, and shall be held by Seller at its sole risk and expense.

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

**4. Invoicing and Pricing; Freight.**

(a) Except as expressly stated on the Order, the price of Supplies stated on the Order is complete and includes storage, handling, packaging and all other expenses and charges of Seller, and no

surcharges, premiums or other additional charges of any type shall be added without Buyer's express written consent. Incoterms 2000 (including DDP Buyer's designated facility) will apply to all shipments except those entirely within the USA. Except as otherwise stated in the Order, Supplies will be shipped FCA (loaded) at Seller's final production location, using Buyer's transportation. Prices are not subject to increase, unless specifically stated in the Order or an Agreement, and Seller assumes the risk of any event or cause affecting prices, including without limitation, 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.

(b) All invoices for the Supplies must reference the Order number, amendment or release number, Buyer's part number, Seller's part number where applicable, quantity of pieces in the shipment, number of cartons or containers in the shipment, bill of lading number, currency and other information required 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.

(c) Buyer will pay proper invoices complying with all of the terms of the Order, subject to adjustments, set-offs, discrepancies and other unresolved issues.

(d) The total price includes all duties and taxes except for any governmentally imposed value added tax (VAT) imposed by a non-USA jurisdiction, which must be shown separately on Seller's invoice for each shipment. Buyer is not responsible for any business activity taxes, payroll taxes or taxes on Seller's income or assets. Seller will pay all premium freight costs over normal freight costs if Seller needs to use an expedited shipping method to meet agreed delivery dates due to its own acts or omissions. Seller will pay any costs incurred by Buyer, including costs charged by Customer(s) to Buyer, as a result of Seller's failure to comply with shipping or delivery requirements.

(e) Seller represents and warrants that the prices are, and will remain, no less favorable to Buyer than any price which Seller presently, or in the future, offers to any other customer for the same or substantially similar goods and/or services for substantially similar quantities. If Seller offers a lower price for the same or substantially similar goods and/or services to any other customer during the term of the Order, then Seller will immediately offer Buyer the same price as offered to Seller's other customer.

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

**5. Packaging and Shipping.** (a) Seller will: (i) properly pack, mark, and ship Supplies according to the requirements of Buyer, the involved carriers and the country of destination; (ii) route the shipments according to Buyer's instructions; (iii) label or tag each package according to Buyer's instructions; (iv) provide papers with each shipment showing the Order number, amendment or release number, Buyer's part number, Seller's part number (where applicable), number of pieces in the shipment, number of containers in the shipment, Seller's name and number, and the bill of lading number; and (v) promptly forward the original bill of lading or other shipment receipt for each shipment according to Buyer's instructions and carrier requirements. (b) Seller will reimburse Buyer for any liabilities, expenses and costs incurred as a result of improper packing, marking, routing, or shipping. In no event will shipping documents attached to or contained in the shipment display pricing information or any of Buyer's proprietary information. If Buyer provides no packing requirements, Seller will pack the Supplies in accordance with sound commercial practices.

**6. Customs; Related Matters.** 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, if applicable, Customers) to receive these benefits or credits. Seller agrees to fulfill any customs- or NAFTA-related obligations, origin marking or labeling requirements, and local content origin requirements. Export licenses or authorizations necessary for the export of Supplies are Seller's responsibility unless otherwise stated in the Order or an Agreement, in which case Seller will provide the information necessary to enable Buyer to obtain the licenses or authorizations. Seller will furnish any documentation and information necessary to comply with the applicable country's rules of origin requirements. If Supplies are manufactured in a country other than the country in which Supplies are delivered, Seller will mark Supplies "Made in [country of origin]." Seller will provide to Buyer and the appropriate governmental agency the documentation necessary to determine the admissibility and the effect of entry of Supplies into the country in which Supplies are delivered. Seller warrants that any information that is supplied to Buyer about the import or export of Supplies is true and that all sales covered by the Order will be made at not less than fair value under the anti-dumping laws of the countries to which the Supplies are exported. To the extent any Supplies covered by this Order are to be imported into the United States of America, Seller shall comply with all applicable recommendations or requirements of the Bureau of Customs and Border Protection's Customs-Trade Partnership Against Terrorism ("C-TPAT") initiative. Upon request, Seller shall certify in writing its compliance with the C-TPAT initiative.

**7. Inspection; Non-Conforming Goods/Services; Audit.** Buyer may enter Seller's facility to inspect the facility, Supplies, materials, and any of Buyer's property related to the Order. Buyer's inspection of Supplies, whether during manufacture, prior to delivery, or within a reasonable time after delivery, does not constitute acceptance of any work-in-process or finished goods. Buyer's acceptance, inspection, or failure to inspect does not relieve Seller of any of its responsibilities or warranties. Nothing in the Order releases Seller from the obligation of testing, inspection and quality control. If defective Supplies are shipped to and rejected by Buyer, the quantities under the Order will be reduced unless Buyer otherwise notifies Seller. Seller will not replace reduced quantities without a

new Material Release from Buyer. In addition to other remedies available to Buyer: (i) Seller agrees to accept return, at Seller's risk and expense at full invoice price, plus transportation charges, and to replace defective Supplies as Buyer deems necessary; (ii) Buyer may have corrected at any time prior to shipment from Buyer's plant Supplies that fail to meet the requirements of the Order; and/or (iii) Seller will reimburse Buyer for all reasonable expenses that result from any rejection or correction of defective Supplies. Seller will document corrective actions within a commercially reasonable period after receipt of a defective sample and will take whatever measures necessary to correct the defect. Payment for nonconforming Supplies is not an acceptance, does not limit or impair Buyer's right to assert any legal or equitable remedy, and does not relieve Seller's responsibility for latent defects. Upon reasonable notice to Seller, either Buyer or its direct or indirect customers may conduct audits at Seller's production facility for the purpose of quality, cost or delivery verification. 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.

**8. Payment.** Except as otherwise provided in these Terms, Buyer will pay proper invoices on the payment terms stated in the Order or an Agreement, if any. Such payment terms apply to the date Supplies are received at the facility designated by Buyer or, in the case of services, the date that Buyer receives Seller's invoice following completion of the services. If no payment term appears on the Order or in an Agreement, Buyer will pay Seller for the Supplies on net sixty (60) days. Invoices for tooling must be issued only as approved, as provided in the Order. Buyer may withhold payment pending receipt of evidence, in the form and detail requested by Buyer, of the absence of any liens, encumbrances, or claims on Supplies provided under the Order. Payment will be made in the currency expressly stated in the Order; if no such currency is noted, payment will be made in U.S. Dollars. Payment will be made by mailing on or before the due date unless otherwise expressly agreed by Buyer.

**9. Changes.** (a) Buyer reserves the right at any time, by written notice to Seller, to make changes, or to require Seller to make changes, to drawings, specifications, sub-suppliers, samples or descriptions of Supplies. Buyer also reserves the right to otherwise change the scope of the work covered by the Order, including work with respect to such matters as inspection, testing or quality control. Buyer may also direct the supply of raw materials from itself or from third parties. Seller will promptly make any such requested change. In order for Seller to request a reasonable difference in price or time for performance as a result of such a change, Seller must notify Buyer of its request in writing within ten days after receiving notice of the change. Buyer can request additional documentation from Seller relating to any change in specifications, price or time for performance. After receiving all requested documentation, Buyer may, in its sole discretion, equitably adjust the price or time for performance. If Seller does not provide timely notice to Buyer that a requested change may result in a difference in price or time for performance, Buyer's requested change will not affect the price or time for performance. (b) Seller will not make any change relating to Supplies – including without limitation, in the Supplies' contents, design, specifications, processing, packing, marking, shipping, price or date or place of delivery – except at Buyer's written instruction or with Buyer's written approval. Any changes by Seller to any Order or to the Supplies covered by the Order without the prior written approval of an authorized representative of Buyer shall constitute a

breach of the Order.

**10. Warranties.** (a) Seller expressly warrants and guarantees to Buyer, to Buyer's successors, assigns and Customers, and to users of Buyer's products, that all Supplies delivered or provided to Buyer will: (i) be world-class, competitive Supplies in terms of price, quality, delivery and technology, and conform to the specifications, standards, drawings, samples, descriptions and revisions as furnished to or by Buyer; (ii) conform to all applicable laws, orders, regulations and standards in countries where Supplies or vehicles or other products incorporating Supplies are to be sold; (iii) be merchantable and free of defects in design (to the extent designed by Seller or any of its subcontractors, agents or suppliers, even if the design has been approved by Buyer), materials and workmanship; (iv) be selected, designed (to the extent designed by Seller or any of its subcontractors, agents or suppliers, even if the design has been approved by Buyer), manufactured and assembled by Seller based upon Buyer's stated use and be fit and sufficient for the purposes intended by Buyer, and (v) be free of all liens, claims and encumbrances whatsoever. Seller further expressly warrants that, unless otherwise expressly stated in the Order, the Supplies are manufactured entirely with new materials, none of the Supplies is, in whole or in part, governmental or commercial surplus or used, remanufactured, reconditioned or of such age or condition so as to impair its fitness, usefulness or safety, and the Supplies are free from latent defects or conditions that would give rise to a defect regardless of whether the defect or condition was known or discoverable during the warranty period. These warranties are intended to provide Buyer with protection from any and all warranty claims brought against Buyer by Customers, including Customer-required warranties relating to the Supplies or any products into which such Supplies are incorporated. All such Customer-required warranties are incorporated herein by reference. The foregoing warranties are in addition to those available to Buyer by law. (b) The warranty period is the longest of: four years from the date Buyer accepts the Supplies; the warranty period provided by applicable law; or the warranty period offered by Buyer Customer(s) to end-users for Supplies installed on or as part of vehicles, and provided further that if Buyer or any Customer voluntarily or pursuant to a government mandate, makes an offer to owners of vehicles (or other finished products) on which the Supplies, or any parts, components or systems incorporating the Supplies, are installed to provide remedial action or to address a defect or condition that relates to motor vehicle safety or the failure of a vehicle to comply with any applicable law, safety standard or corrective service action ("Remedial Action"), the warranty shall continue for such period of time as may be dictated by Customer(s) or the federal, state, local or foreign government where the Supplies are used or provided, and Seller shall fully comply (among other matters) with the requirements under Section 13 below. (c) Buyer's approval of any design, drawing, material, process or specifications will not relieve Seller of these warranties.

**11. Service and Replacement Parts.** If the Supplies are utilized by Buyer for the production of automotive parts or systems, Seller will supply Buyer's written "replacement parts" and "service parts" orders for the same Supplies, component parts and materials at the price(s) set forth in the Order plus any actual cost differential for special packaging during the applicable vehicle program production life, and fifteen (15) years after a vehicle design concludes production or a specific part concludes production (unless a different period is agreed in writing by the parties or stated in Buyer's applicable

Statement of Work or Supplier Standards Manual). If the Supplies are systems or modules, Seller will sell each component or part 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. For an additional ten years, or so long as the related Customer requires service parts, whichever is longer (or a different period if agreed in writing by the parties or stated in Buyer's applicable Statement of Work or Supplier Standards Manual), Seller will sell Supplies to Buyer in order to fulfill Buyer's past model service and replacement parts requirements, at price(s) based on the most recent price(s) under the Order, taking into account actual, documented differences in the cost of materials, packaging, and costs of production after any of Buyer's current model purchases have been completed, as mutually and reasonably agreed by the parties. At Buyer's request, Seller will make service literature and other materials available at no additional charge to support Buyer's service part sales activities. Unless otherwise expressly agreed in writing by an authorized representative of Buyer or Buyer removes tooling from Seller necessary for the production of service parts, Seller's obligations under this Section 11 shall survive termination or expiration of the Order for any reason.

**12. 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. Seller will reimburse Buyer for any incidental, consequential or other damages (including lost profits) caused or required by Seller's breach or by nonconforming Supplies, including without limitation costs, expenses and losses incurred directly or indirectly by Buyer or Customer(s): (i) in inspecting, sorting, storing, reworking, repairing or replacing the nonconforming Supplies; (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 death) or property damage caused by the nonconforming Supplies. Buyer's damages include reasonable attorneys' fees and other professional fees, settlements and judgments incurred by Buyer and other costs associated with Buyer's administrative time, labor and materials. In any action brought by Buyer to enforce Seller's obligations in connection with the production or delivery of Supplies or transition support, or for possession of property, Seller 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 reasonable attorneys' fees.

**13. Customer Requirements.** (a) Seller agrees to comply with the applicable terms and conditions of any agreements ("Customer Purchase Orders") received by Buyer from a third party ("Customer"), or directly or indirectly applicable to Buyer, pursuant to which Buyer agrees to supply to Customer, or to incorporate into goods supplied to Customer, Supplies purchased by Buyer from Seller. The terms "Customer" and "Customer Purchase Orders" also include, where applicable, the final equipment manufacturer of goods or services into which the Supplies are or will be incorporated, as well as any intermediate entities in the supply chain between Buyer's direct Customer and such final equipment manufacturer, and related terms and conditions of such Customers. Buyer may in its discretion supply Seller with information regarding Customer Purchase Orders. Seller will be responsible for ascertaining how such disclosed Customer Purchase Order affects Seller's obligations

under the Order, and Seller will meet all such disclosed Customer Purchase Order terms and conditions to the extent within Seller's control. In the event of a conflict between the Order or these Terms and the terms of the Customer Purchase Order, Buyer will determine, in its sole and absolute discretion, which terms will supersede and apply to Seller. Seller will do everything within its control to enable Buyer to meet the terms and conditions of Customer Purchase Orders, including without limitation, cost and productivity terms and price reductions. By written notice to Seller, Buyer may elect to have the provisions of this Section prevail over any conflicting term between Buyer and Seller. (b) If a Customer directed, recommended, requested, suggested or otherwise identified Seller as the source from which Buyer is to obtain the Supplies ("Direct Supply Relationship"), then notwithstanding the particular payment terms otherwise applicable to the Order or anything to the contrary in the Order: (1) in no event will Seller have a right to receive payment from Buyer for the Supplies except following, and in proportion to, Buyer's actual receipt of payment for those goods in which the specific Supplies are incorporated, and (2) any lengthening of applicable payment terms to Buyer will automatically lengthen the payment terms as between Buyer and Seller by an identical amount of time, and Buyer may, at its option and on notice to Seller, otherwise revise its payment terms for Supplies to take into account any other change in the payment terms of Buyer's Customer(s) for the Supplies under the Order; (3) within three business days of any change in price, specifications or other terms negotiated or proposed between Seller and 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; and (4) (without limiting any other rights and remedies of Buyer) Seller will indemnify and hold harmless Buyer from any liabilities, claims, demands, losses, damages, costs and expenses (including without limitation attorneys' fees and other professional fees) incurred by Buyer arising from or relating to the Supplies supplied by Seller – and including without limitation any charges or set-offs (including without limitation interim field service action cost recovery debits) taken by Customer against Buyer by reason of alleged defects in Supplies, even if such set-offs by Customer are before final determination of (and subject to adjustment based upon) whether and to what extent defects in Supplies were a cause of the related remedial action undertaken and related costs/damages incurred by Customer. (c) If any requirement imposed by any Order on Seller is found to be unenforceable or a gap otherwise exists or is created in the terms applicable to any Order through operation of law, conflict in terms or otherwise, the corresponding requirement(s) of Customer shall be applicable to and binding on Seller for the benefit of Buyer. Seller acknowledges that it is familiar with the applicable industry terms of Customer(s) that would apply in such event.

**14. Indemnification.** (a) To the fullest extent permitted by law, Seller will defend, indemnify and hold harmless Buyer, Customers, and dealers and users of the products sold by Buyer (or the vehicles in which they are incorporated) and all of their respective agents, customers, invitees, subsidiaries, affiliates, successors and assigns, against all damages, losses, claims, liabilities and expenses (including reasonable attorneys' and other professional fees, settlements and judgments) arising out of or resulting from any defective Supplies, or from any negligent or wrongful act or omission of Seller or Seller's agents, employees or subcontractors, or any breach or failure by Seller to comply with any of Seller's representations or other terms and conditions of an Order (including any part of these Terms) – including without limitation the cost of recall campaigns, Customer field service

actions or other corrective service actions that, in Buyer's or Customer's reasonable judgment, are required because of nonconformities in some or all of the Supplies provided by Seller hereunder, and including without limitation interim set-offs or charges (such as interim field service action cost recovery debits) by Customers attributable to Supplies but subject to adjustment based on final determination of whether and to what extent the damages, losses, claims, liabilities and expenses were attributable to defects or other failures of Supplies or Seller to comply with its obligations under one or more Orders. Buyer has the right to be represented by and actively participate through its own counsel in the defense and resolution of any indemnification matters, at Seller's expense. The indemnification obligations of Seller set forth in this Agreement, including this Section, are independent of and in addition to any insurance and warranty obligations of Seller. (b) If Seller performs any work on Buyer's or Customer's premises or utilizes the property of Buyer or Customer, whether on or off Buyer's or Customer's premises, to the fullest extent permitted by law, Seller will indemnify and hold Buyer and Customer, and their respective agents, successors and assigns, harmless from and against any liability, claims, demands or expenses (including reasonable attorneys' and other professional fees, settlements and judgments) for damages to the property of or personal injuries (including death) to Buyer, Customers, their respective employees or agents, or any other person or entity to the extent arising from or in connection with Seller's work on the premises or Seller's use of Buyer's or Customer's property, except for any liability, claim or demand arising out of the sole negligence of Buyer.

**15. Insurance.** Prior to commencing work on Buyer's premises or utilizing Buyer's property, Seller will maintain and, upon request, furnish to Buyer a certificate evidencing:

(1) Commercial general liability including products/completed operations, and if necessary commercial umbrella insurance with a limit of not less than \$5,000,000 each occurrence and general aggregate. CGL insurance shall be written on ISO occurrence form CG 00 01 01 96 or equivalent, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under contract. (2) All risk property perils insurance covering the full replacement value of Buyer's property while in Seller's care, custody, or control and naming Buyer as loss payee, and

(3) Worker's compensation insurance as required by applicable law. Seller waives all rights against Buyer and its agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by the above insurance policies. Seller shall obtain endorsements to affect this waiver. All insurance coverage required shall be at the sole cost and expense of Seller. All deductibles shall be assumed by, for the account of, and at the Seller's sole risk. Seller shall furnish evidence of insurance satisfactory to Buyer and permit any authorized representative of Buyer to examine Seller's original insurance policies if requested. Coverage should be written with carriers of A.M. Best ratings of no less than A- VIII, or as otherwise acceptable to Buyer. Should Seller at any time neglect or refuse to provide the insurance required herein, or should such insurance be cancelled, Buyer shall have the right to procure the same and the cost thereof shall be deducted from monies then due or thereafter to become due to Seller. Seller shall not commence work under this order until all of the insurance required herein shall have been obtained and evidenced to Buyer .

**16. Insolvency.** (a) The Order may be terminated immediately by Buyer without liability to Buyer

if any of the following or comparable events occur, and Seller will reimburse Buyer for all costs incurred by Buyer in connection with any of the following, including without limitation attorneys' and other professional fees: (i) Seller becomes insolvent; (ii) Seller files a voluntary petition in bankruptcy; (iii) an involuntary petition in bankruptcy is filed against Seller; (iv) a receiver or trustee is appointed for Seller; (v) Seller needs accommodations from Buyer, financial or otherwise, in order to meet its obligations under the Order; (vi) Seller executes an assignment for the benefit of creditors; (vii) Seller fails to meet the credit underwriting standards of Buyer's credit insurance program, or (viii) Seller is unable promptly to provide Buyer with adequate reasonable assurance of Seller's financial capability to perform any of Seller's obligations under the Order on a timely basis. In the event that this Order is not terminated in accordance with the immediately preceding sentence, upon the occurrence of an event described in the immediately preceding sentence, Buyer may make equitable adjustments in the price, payment terms, and/or delivery requirements under this Order as Buyer deems appropriate to address the change in Seller's circumstances, including Seller's continuing ability to perform its obligations regarding warranty, nonconforming Supplies or other requirements under this Order. (c) Seller agrees that if Seller experiences any delivery or operational problems, Buyer may, but is not required to, designate one or more representatives to be present in Seller's applicable facility to observe Seller's operations. Seller agrees that if Buyer provides to Seller any accommodations (financial or other) that are necessary for Seller to fulfill its obligations under this Order, Seller will reimburse Buyer for all costs, including attorneys' and other professionals' fees, incurred by Buyer in connection with such accommodation and will grant access to Buyer to use Seller's premises and machinery, equipment, and other property necessary for the production of the Supplies covered by this Order. Notwithstanding anything contained in this Section 16 to the contrary, financial information provided by Seller to Buyer hereunder pursuant to a Direct Supply Relationship may be provided to the Customer if Seller fails to provide Buyer with adequate reasonable assurance of Seller's financial capability to perform any of Seller's obligations under the Order on a timely basis.

**17. Termination for Breach or Nonperformance.** (a) Buyer may terminate all or any part of the Order, without liability to Seller, if Seller: (i) repudiates, breaches or threatens to breach any of the terms of the Order (including without limitation Seller's warranties and world-class supplier provisions); (ii) fails or threatens not to deliver Supplies or perform services in connection with the Order; (iii) fails to make progress or to meet reasonable quality requirements so as to endanger timely and proper completion or delivery of Supplies and does not correct the failure or breach within 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 Seller in accordance with the terms of such other Order (whether or not such other Order is related to the Order); (iv) enters or offers to enter into a transaction that includes a sale of a substantial portion of its assets used for the production of Supplies for Buyer or a merger, sale or exchange of stock or other equity interests that would result in a change in control of Seller, or (v) fails to remain competitive with respect to quality, technology, delivery, service or pricing of the Supplies. Seller will notify Buyer within ten days after entering into any negotiations that could lead to the situation specified in subsection (iv) above, provided that upon Seller's request, Buyer will enter into an appropriate nondisclosure agreement related to information disclosed to Buyer in relation to

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

**18. Termination.** 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 20, by giving at least 14 days written notice to Seller. Upon receipt of notice of termination, and unless otherwise directed by Buyer, Seller will: (a) promptly terminate all work under the Order on the effective date of termination; (b) transfer title and deliver to Buyer the finished Supplies, the work in process, and the parts and materials that Seller reasonably produced or acquired according to quantities ordered by Buyer and that Seller cannot use in producing goods for itself or for others; (c) 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; (d) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest until disposal instruction from Buyer has been received; and (e) upon Buyer's request, cooperate with Buyer in transferring the production of Supplies to a different supplier, including as described in Section 19. Upon termination by Buyer under this Section, Buyer will be obligated to pay only the following: (i) the Order price for all finished Supplies in the quantities ordered by Buyer that conform to the Order for which Seller has not been paid; (ii) Seller's reasonable actual cost of merchantable and useable work-in-process and the parts and materials transferred to Buyer under part (b) above; (iii) Seller'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 limited to the amount of the firm quantities of Supplies and raw materials/components specified in Material Releases issued by Buyer and then currently outstanding; (iv) Seller's reasonable actual cost of carrying out its obligation under subsection (d), and (v) if applicable, amounts due in connection with Transition Support under Section 19(b). Notwithstanding any other provision, 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. Buyer's obligation upon termination under this Section will not exceed the obligation Buyer would have had to Seller in the absence of termination. Seller will furnish to Buyer, within one month after the date of termination (or such shorter period as may be required by Customer), its 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. Buyer will have no obligation for payment to Seller under this Section if Buyer terminates the Order or any portion thereof because of a default or breach by Seller, and any termination shall be without prejudice to any claims which Buyer may have against Seller. 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 Seller for any costs under this Section if, when and to the extent that the Customer reimburses Buyer for such costs.

**19. Transition of Supply.** (a) In connection with the expiration or termination of the Order by either party, in whole or in part, or Buyer's other decision to change to an alternate source of Supplies (including but not limited to a Buyer-owned or -operated facility) ("alternative supplier"), Seller will cooperate in the transition of supply, including the following: (i) Seller will continue production and delivery of all Supplies as ordered by Buyer, at the prices and other terms stated in the Order, without premium or other condition, during the entire period reasonably needed by Buyer to complete the transition to the alternate supplier(s) including, at Buyer's request, providing a sufficient bank of Supplies covered by the Order, such that Seller's action or inaction causes no interruption in Buyer's ability to obtain Supplies as needed; (ii) at no cost to Buyer, Seller (A) will promptly provide all requested information and documentation regarding and access to Seller's manufacturing process, including on-site inspections, bill-of-material data, tooling and process detail and samples of Supplies and components, (B) will provide all notices necessary or desirable for Buyer to resource the Order to an alternative supplier, (C) when requested by Buyer, will return to Buyer all of Buyer's Property in as good condition as when received by Seller (reasonable wear and tear excepted); and (D) will comply with Seller's obligations relating to Seller's Property in Section 23, and in relation to subcontracts; and (iii) subject to Seller's reasonable capacity constraints, Seller will provide special overtime production, storage and/or management of extra inventory of Supplies, extraordinary packaging and transportation and other special services (collectively, "Transition Support") as expressly requested by Buyer in writing. (b) If the transition occurs for reasons other than Seller's termination or breach, Buyer will, at the end of the transition period, pay the reasonable, actual cost of Transition Support as requested and incurred, provided that Seller has advised Buyer prior to incurring such amounts of its estimate of such costs. If the parties disagree on the cost of Transition Support, Buyer will pay the agreed portion to Seller and pay the disputed portion into third-party escrow for disbursement by arbitration.

**20. Force Majeure.** Any delay or failure of either party to perform its obligations will be excused if and to the extent that the party is unable to perform specifically due to an event or occurrence beyond its 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 (whether valid or invalid); embargoes; fires; floods, earthquakes, explosions; natural disasters; riots; wars; sabotage; inability to obtain power; or court injunction or order. Seller's inability to perform as a result, or delays caused by, Seller's insolvency or lack of financial resources is deemed to be within Seller's

control. The change in cost or availability of materials or components based on market conditions, supplier actions, or contract disputes or any labor strike or other labor disruption applicable to Seller or any of its subcontractors or suppliers, will not excuse Seller's performance (under theories of force majeure, commercial impracticability or otherwise), and Seller assumes these risks. 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: (a) purchase Supplies 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 Supplies 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 Supplies to Buyer for a period of at least 30 days during any anticipated labor disruption or resulting from the expiration of Seller's labor contracts. If upon request of Buyer, Seller fails to provide within ten (10) days (or such shorter period as Buyer requires) adequate assurance that any delay will not exceed thirty (30) days, or if any delay lasts longer than thirty (30) days, Buyer may terminate the Order without liability and Seller shall reimburse Buyer for costs associated with the termination.

**21. Intellectual Property Rights.** Buyer may have valuable intellectual property rights in tooling, documents and information provided to Seller (the "Intellectual Property Rights"). Intellectual Property Rights include trademarks, trade dress, patents, copyrights, trade secrets and industrial design rights. Seller may use the Intellectual Property Rights of Buyer only in the production and supply of the Supplies to Buyer. Seller will indemnify and defend Buyer, and its customers, against claims, liabilities, losses, damages, costs and expenses, including reasonable legal fees, arising out of the actual or alleged infringement by the Supplies of a third-party intellectual property right. Seller will investigate, defend, and otherwise handle any such claim. At Buyer's request, Seller will assist Buyer in its investigation, defense or handling of any such claim. Seller will pay all costs, expenses, damages and settlement amounts that Buyer, or its customers, may sustain by reason of an indemnified claim. Seller's indemnification obligations will apply even if Buyer furnishes all or a portion of the design and specifies all or a portion of the processing used by Seller, unless otherwise agreed to in writing signed by Buyer's authorized representative.

**22. Buyer's Property; Confidentiality.** (a) Buyer will own the tooling, jigs, dies, gauges, fixtures, molds, patterns, supplies, materials and other equipment and property used by Seller to manufacture, store and transport the Supplies ("Property") if (1) the Property is so designated in the Contract, or (2) Buyer or its customer has provided or paid for the Property ("Buyer's Property"). Seller will assign to Buyer contract rights or claims in which Seller has an interest with respect to Buyer's Property and execute bills of sale, financing statements or other documents requested by Buyer to evidence its or its customer's ownership of Buyer's Property. Seller will indemnify and defend Buyer against claims or liens adverse to Buyer's or its customer's ownership of Buyer's Property except those that result from the acts or omissions of Buyer or its customer. Seller will hold Buyer's Property on a bailment basis and

will be responsible for loss or damage to Buyer's Property while in its possession or control. Seller waives any lien or similar right it may have with respect to Buyer's Property. (b) Seller will (1) at its expense, maintain Buyer's Property in good condition and repair throughout the useful life of Buyer's Property, (2) use Buyer's Property only for the manufacture, storage and transport of Supplies for Buyer unless Buyer otherwise approves in writing, (3) at Buyer's request, mark Buyer's Property as belonging to Buyer or its customer, and (4) not remove Buyer's Property from Seller's premises without Buyer's written approval. All replacement parts, additions, improvements, and accessories to Buyer's Property will become part of Buyer's Property. (c) Seller will immediately return to Buyer upon request, and Buyer may retake immediate possession of, Buyer's Property and other property of Buyer or its customers at any time, with or without cause and without payment of any kind unless otherwise provided in the Contract. As requested by Buyer, Seller will either (1) release the requested Property and other property to Buyer, properly packed and marked in accordance with the requirements of Buyer's carrier, or (2) deliver the requested Property and other property to a location designated by Buyer. Trade secrets, specifications, drawings, notes, instructions, engineering data and analyses, compositions of matter, financial data, and other technical and business data which are supplied or disclosed by Buyer in connection with the Order that are marked or otherwise identified as confidential or where their confidential nature is apparent at the time of disclosure ("Confidential Information"), will be deemed confidential and proprietary to, and remain the sole property of, Buyer. Seller may not disclose Confidential Information or use Confidential Information for any purpose other than as contemplated under the Order without, in each case, Buyer's written consent. Confidential Information will not include information that (1) is or becomes generally available to the public other than as a result of a violation of this Section 22 by the receiving party, (2) was obtained by the receiving party on a non-confidential basis from a third party who had the apparent right to disclose it, or (3) is legally required to be disclosed. Seller will use the same degree of care (but not less than a reasonable degree of care) to safeguard Confidential Information that it uses to protect its own confidential information from unauthorized access or disclosure. Upon request by Buyer, Seller will promptly return or destroy the original and all copies of Confidential Information received.

**23. Seller's Property.** Seller, at its expense, will furnish, keep in good working condition capable of producing Supplies meeting all applicable specifications, and replace when necessary, all materials, machinery, equipment, tools, jigs, dies, gauges, fixtures, molds, patterns, blueprints, designs, specifications, drawings, photographic negatives and positives, art work copy layout and other items that are not Buyer's Property and that are necessary for the production of Supplies under any Order ("Seller's Property"). Seller will insure Seller's Property with full fire and extended coverage insurance for its replacement value. If Seller uses Seller's Property to produce goods or services similar to Supplies for other customers, including aftermarket customers, such goods or services will not incorporate any of Buyer's Property, 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, or configured for, Buyer. Seller grants to Buyer an irrevocable option to take possession of and title to Seller's Property that is special for production of Supplies under an Order (including, by way of example, and without limitation, Seller's Property specially designed or configured for the

manufacture or assembly or other processing of Supplies), 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, or (if applicable) any such other amount as may be required by applicable law. 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 are being sold by Seller to others. Buyer's option rights under this Section with respect to Seller's Property are intended to be subject to Buyer's rights and elections under 11 USC Section 365(n), as and to the extent that such Seller's Property represents embodiments of intellectual property.

**24. Tooling.** (a) Seller will provide to Buyer, as requested, access to Seller's premises and all documentation relating to the tooling, prior and subsequent to payment, to inspect work performed and to verify charges submitted by Seller against the Order. For any tooling or parts thereof that Seller obtains from any third party, Seller will provide Buyer with such access and documentation to the ultimate production source. Seller will have ninety (90) days from the date Buyer notifies Seller of Buyer's intention to audit Seller to provide the requested access and copies of requested documentation for Buyer's exclusive use and records. Any information submitted following such ninety (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 Seller's actual cost as verified. If Seller's primary business is to fabricate tooling, Seller 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. Seller will invoice Buyer for (and Buyer will only be obligated to pay) the lower of Seller'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 Seller'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 Seller by any third party relating to such tooling. If Seller does not provide such access and documentation, Buyer may determine in its reasonable discretion an appropriate adjustment based on information available to Buyer, including estimated costs, and Seller shall be responsible for Buyer's costs in determining such estimated costs. Seller 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 Seller as a result of such audit. Seller will retain (and cause its tooling sub-suppliers to retain) all cost records for a period of three years after receiving final payment of the charges. All tools are to be made to Buyer's specifications (or, where directed by Buyer, those of Customers). 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 DDP Buyer's facility – Freight Collect, and Seller should not prepay or add freight charges. (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 Supplies to be provided by Seller to Buyer under this Order that constitute tooling, Seller 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 reimbursement or other payment from the Customer. (c)

To the extent permitted by applicable law, any payments made by Buyer for Buyer-owned tooling are expressly intended by Buyer to be held in trust for the benefit of any subcontractor(s) used by Seller to produce the Buyer-owned Tooling that are covered by such payments and Seller agrees to hold such payments as trustee in express trust for such subcontractor(s) until Seller has paid the subcontractor(s) in full for the Buyer-owned Tooling. Seller acknowledges and agrees that such subcontractor is an intended third party beneficiary of the terms of this Section 24(c) relating to the express trust and as such, such tooling subcontractor shall have the right to enforce these terms of this Section 24(c) directly against Seller in subcontractor's own name. Seller agrees that Buyer has no obligation to Seller or Seller's tooling subcontractor under this Section other than making the payment to Seller in accordance with a Tooling Purchase Order. In the event Seller's tooling subcontractor brings an action against Seller under this Section, Seller agrees that it will not join Buyer in any such action.

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

**26. Information Disclosed to Buyer.** Seller agrees not to assert any claim against Buyer, Customers, or their respective suppliers, with respect to any technical information that Seller has disclosed or may disclose to Buyer in connection with the Supplies covered by the Order, except to the extent expressly covered by a separate written confidentiality and/or license agreement signed by Buyer or by a valid patent expressly disclosed to Buyer prior to or at the time of the Order.

**27. Hazardous Materials & Restricted Substances.** Seller shall notify Buyer of all "hazardous materials" (as that term is defined in applicable federal, state and local statutes) which are contained in the Supplies. Seller shall furnish Buyer with copies of all applicable "Material Safety Data Sheets" for Supplies no later than the initial shipment date under this order. Seller shall also comply with all laws, orders and regulations pertaining to the use, storage, transportation and disposal of restricted, toxic and hazardous materials. For Supplies that are incorporated into Buyer's customers' products, Seller shall disclose restricted, toxic and hazardous materials information to Buyer upon request. Such disclosure shall include, but is not limited to, Seller's entry of parts information into the International Material Data System ("IMDS") and forwarding such information to Buyer (IMDS ID #2199). At a minimum, Seller shall disclose those materials listed on the IMDS International List of Reportable Substances.

**28. Conflict Materials Law.** Seller represents and warrants that Seller is in full compliance with all "Conflict Materials Laws" as they presently apply to Seller or the Supplies. Seller covenants to keep current on, and remain in compliance with all such laws and related regulations as they may be extended or amended. Seller shall immediately notify Buyer of any known or suspected use of Conflicts Materials in the Supplies.

**29. Government Contracts.** If this order is placed in support of a government contract, Seller will comply with all applicable government requirements for government subcontractors, including but not limited to any applicable provisions of the Federal Acquisition Regulations (FAR).

**30. 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 Supplies 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.

**31. 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.

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

**33. Assignment.** (a) Seller may not, without Buyer's prior written consent (on the face of an Order or in a signed writing by an authorized representative of Buyer), (i) assign or delegate (including without limitation by subcontract) its obligations under the Order, or (ii) enter or offer to enter into a transaction that includes a sale of a substantial portion of its assets used for the production of the Supplies for Buyer or a merger, sale or exchange of stock or other equity interests that would result in a change of control of Seller. In the event of any approved assignment (including without limitation subcontract), sale or delegation authorized by Buyer, Seller retains all responsibility for Supplies, including all related warranties and claims, unless otherwise expressly agreed in writing by Buyer. (b) With Buyer's prior written consent, Seller may make an assignment of receivables due or to become due to a single financial institution; provided, however, that any such assignment shall be subject to

set-off (see Section 25 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 Seller with our without consent.

**34. Sales Tax Exemption.** The Supplies purchased under the Order are identified as industrial processing and may be exempt from sales taxes. In such case, the tax identification number and/or other exemption information are stated in the Order or as otherwise provided by Buyer.

**35. Governing Law; Arbitration; Jurisdiction.** The Order is to be construed according to and will be governed by the laws of the State of Michigan of the United States of America. The provisions of the United Nations Convention on Contracts for the International Sale of Goods, and any conflict-of-laws provisions that would require application of another choice of law, are hereby excluded. The arbitration provisions of this Section will be governed by the United States Federal Arbitration Act. At Buyer's option, exercised by written notice any time before or within 30 days following the service of process in a legal action, any dispute regarding the Supplies, the Order, the validity of the Order or any of these Terms, or any other matter between the parties (other than requests for equitable or injunctive relief or specific performance) will be resolved by binding arbitration, conducted in the English language using a single arbitrator as follows: (a) the arbitration will be conducted under the commercial arbitration rules of the American Arbitration Association (AAA) and under Rules 26 through 37 of the U.S. Federal Rules of Civil Procedure, in a location agreed by the parties; (b) if the parties cannot agree on a location within 30 days of either party's written request for arbitration, the arbitration will be conducted in Oakland County, Michigan, U.S.A.; and (c) the arbitrator will be selected from an AAA list using the AAA-recommended selection method. The arbitrator will issue written findings of fact and conclusions of law. Each party will bear equally the costs and expenses of AAA and of the arbitrator, and each party will bear its own costs and expenses – provided, however, (1) that the failure by one party to pay its share of arbitration fees constitutes a waiver of such party's claim or defense in the arbitration, and (2) that the arbitrator may award attorneys' fees and costs to the substantially prevailing party. In no event will any party be awarded punitive or exemplary damages or any other damages not measured by the prevailing party's actual damages. All arbitration proceedings shall be confidential, except to the extent that disclosure is necessary to enforce an arbitration award in a court of competent jurisdiction. Any proceeding to enforce this arbitration agreement, including any proceeding to confirm, modify, or vacate an arbitration award, may be commenced in any court of competent jurisdiction. Notwithstanding the above, the arbitrator shall not have the power to commit errors of law, fact, or legal reasoning, and the award may be vacated or corrected by a court of competent jurisdiction, provided, however, that the appealing party must first post an appropriate bond and that the prevailing party in any such action will be entitled to its attorneys' fees and costs. In all other cases, including if this arbitration agreement is held for any reason to be unenforceable, or upon any request for equitable or injunctive relief, any litigation against Buyer (except for small-claims court actions) may be commenced only in the state or federal courts located in Oakland County, Michigan, U.S.A., provided that Buyer may elect to bring an action against Seller in any court having proper jurisdiction over Seller.

**36. Language; Severability; No Implied Waiver.** The parties acknowledge that it is their wish that these terms and all documents relating thereto be in the English language only. 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. 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.

**37. Survival.** The obligations of Seller to Buyer survive termination of the Order, except as otherwise provided in the Order.

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

**39. Entire Agreement; Modifications; Buyer's Website.** (a) Except as described in Section 1, the Order, together with the attachments, exhibits, supplements or other terms of Buyer specifically referenced therein, constitutes the entire agreement between Seller and Buyer with respect to the matters contained in the Order. The Order may only be modified (1) by a written amendment executed by authorized representatives of each party or, (2) for changes within the scope of Section 9, by a purchase order amendment issued by Buyer. (b) Buyer may modify these Terms from time to time by posting revised terms and conditions to Buyer's internet or such other website as may be directed through links available on such website or as specified on the face of an Order ("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 Orders issued or Supplies shipped by Seller on or after the effective date thereof. Seller shall be responsible to review Buyer's Website periodically. (c) Buyer's Website may also contain specific additional requirements for certain items covered by this Order, including labeling, packaging, shipping, delivery and quality specifications, procedures, directions and/or instructions. Any such requirements shall be deemed to form part of the 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.

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

**41. Battle of the Forms Not Applicable.** The parties have agreed and it is their intent that the so called “battle of the forms” Section 2-207 of the Uniform Commercial Code as promulgated and enacted in the U.S.A. and choice of law State shall not apply to these Terms or to any invoice or acceptance form of Seller relating to these Terms. It is the parties’ intent that these Terms shall exclusively control the relationship of the parties, and in the event of any inconsistency between any invoice or acceptance form sent by Seller to Buyer and these Terms, these Terms shall control.

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