

## MIDDLEVILLE ENGINEERED SOLUTIONS TERMS AND CONDITIONS OF PURCHASE

### 1. The Contract

**1.1** The Parties. “**Buyer**” is Middleville Engineered Solutions, LLC, a Michigan limited liability company, unless otherwise stated on the Order. “**Seller**” is the entity identified in the Order that is selling the Products or Services.

**1.2** Offer and Acceptance. Each purchase order and purchase order revision (the “**Order**”) issued by Buyer is an offer to Seller for the purchase of products and/or services and includes and is governed by the express terms contained on the face of this Order, these purchase order terms and conditions, and the terms contained in any addendum or supplement to this Order, any supplier manual provided by Buyer to Seller, and any other document incorporated by reference in this Order or in these purchase order terms and conditions (collectively, the “**Terms**”). The first occurring expression of acceptance of this Order by Seller, including Seller’s (i) written acceptance, (ii) commencement of work on the products subject to this Order (the “**Products**”), (iii) shipment of the Products, (iv) commencement of performance of all or any portion of the services subject to this Order (the “**Services**”), (v) failure to object to this Order, in writing, within ten (10) days of receipt of this Order, and (vi) conduct that indicates Seller’s acceptance, including preparation for Seller’s performance, shall constitute an acceptance of Buyer’s offer. If Seller objects, Seller’s objections are deemed waived if Seller subsequently commences work on the Products or Services without an express written modification made by Buyer as provided for in paragraph 35. Any acceptance of this Order is limited to and conditional upon Seller’s acceptance of the Terms. Any proposal for additional or different terms or any attempt by Seller to vary any of the Terms, whether in Seller’s quotation, acknowledgement, invoice, correspondence or otherwise, shall be deemed material and is hereby objected to and rejected by Buyer, but any such proposal or attempted variance shall not operate as a rejection of this Order if Seller accepts Buyer’s offer by commencement of work, shipment of the Products or performance of the Services, 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. This Order does not constitute an acceptance of any prior offer or proposal by Seller, and any reference in this Order to any such prior offer or proposal is solely to incorporate the description or specifications of the Products and the Services in such offer or proposal, but only to the extent that such description or specifications are not directly in conflict with the description and specifications in this Order. If this Order is found to be an acceptance of any prior offer or proposal by Seller, such acceptance shall be limited to the Terms. Any additional or different terms in such prior offer or proposal shall be deemed material and are hereby objected to and rejected by Buyer. Buyer may cancel all or any part of this Order at any time prior to Buyer’s actual knowledge of acceptance by Seller.

**1.3** Term. The manufacturing program covered by the Order has an estimated life (the “**Life of the Program**”). Unless a specific term is otherwise set forth on the Order, the term of the Order shall be for the Life of the Program. Seller acknowledges and agrees that the Life of the Program is an estimate only, that the Life of the Program may be terminated or extended at any time by Buyer or Buyer’s customers (whether direct or indirect). Any termination or extension of the Life of the Program shall serve to modify the time period of the Order related to that Program such that the Order (or portion(s) of the Order, as applicable) remains in effect for the Life of the Program. Such termination or extension shall not alter the other terms of the Order. Seller agrees that the Life of the Program is a definite duration. Seller has no right to terminate the Order on the grounds that it is a contract of indefinite duration.

**1.4** Payment. All invoices must show the Order number. Unless otherwise stated in the Order, the term of payment for all invoices will be Net sixty (60) days. Payment does not constitute acceptance of Products or Services. Pricing shall be as set forth in the Order and shall be firm for duration of the Order with the sole and limited exceptions of: (i) the extent the price is adjusted downward as provided by the terms of any productivity savings requirements; (ii) price adjustments, if any, agreed to by Buyer under the Order, or (iii) other adjustments agreed to in writing by Buyer. The price stated in the Order shall not be increased unless specifically authorized in writing by issuance of a revised Order signed by Buyer.

**2. Customer Requirements.**

**2.1** Where the Products or Services under this Order are or will be sold, or incorporated into products or services that are or will be sold by Buyer to an original equipment manufacturer of vehicles, whether directly or indirectly through an upper tier supplier, or any other third party customer (collectively, the “Customer”), Seller shall take such steps, provide such disclosure, comply with such requirements and do all other things as Buyer deems necessary or desirable and within Seller’s control to enable Buyer to meet Buyer’s obligations under the terms and conditions of any contract or purchase order or other document (the “Customer Terms”) that may be applicable to Buyer from time to time regarding its direct or indirect supply of such products or services to the Customer, including: delivery, packaging and labeling requirements; warranties and warranty periods; intellectual property rights and indemnification; confidentiality; access to facilities and records; and replacement and service parts. Buyer may, from time to time, in its sole discretion, provide Seller with information regarding the applicable Customer Terms, but, in any event, Seller shall be responsible for ascertaining the Customer Terms that may affect Seller’s obligations hereunder and hereby agrees to be bound to such Customer Terms.

**2.2** If there is any conflict between the provisions of the Customer Terms and any provisions of this Order, Buyer shall have the right to have the provisions of the Customer Terms prevail to the extent necessary or desirable to resolve such conflict.

**2.3** In the event that the Customer directly suffers an Insolvency Event (as such term is defined in subparagraph 24.1 and, in the course of any proceedings relating to such Insolvency Event and in connection with actual or threatened termination by the Customer of its contract(s) with Buyer (by rejection or otherwise), Buyer permits a reduction in the prices paid to Buyer for products incorporating the Products and/or the Services; then the prices paid to Seller for the Products and/or the Services from and after the date of such reduction will be automatically adjusted proportionally by the same percentage as the price paid to Buyer by the Customer, and this Order will otherwise remain in effect without modification.

**2.4** In the event Customer fails to pay Buyer for products incorporating the Products and/or Services supplied by Seller, Buyer reserves the right to assign Seller the right to collect such amounts from the Customer, in whole or in part, and Seller agrees to accept such assignment as payment for any invoices due from Buyer to Seller on a dollar for dollar basis as Seller’s sole and exclusive remedy.

**2.5** In addition to any other rights or remedies provided for in this Order, if the Customer directed, recommended or requested that Seller be the source from whom Buyer is to obtain the Products and/or the Services: (i) Buyer will pay Seller for the Products and/or Services only after and to the extent of, and in proportion to, Buyer’s actual receipt of payment from the Customer for those Products into which the Products and/or the Services are incorporated; (ii) any lengthening of the Customer’s payment terms to Buyer for those Products into which the Products and/or Services are incorporated will automatically lengthen the payment terms as between Buyer and Seller by the same amount of time; and (iii) within three (3) business days of any change in price, specifications or other terms negotiated or proposed between Seller and the Customer, Seller shall notify Buyer in writing and immediately adjust its invoices to reflect any price reduction, provided that no change will be binding on Buyer without Buyer’s specific written consent.

**3 Taxes.** No sales, use, excise, or other taxes, whether federal, state, or local, shall be added to the Order’s purchase price unless otherwise stated in the order.

**4 Packing and Shipping.**

**4.1** The Products are to be suitably prepared for shipment and must be labeled, packed and shipped as required by law and in accordance with Buyer’s specifications, as specified in this Order and/or in any written directions and/or instructions as may be provided by Buyer to Seller from time to time. If the Products are not shipped in accordance with Buyer’s specifications, Seller shall pay or reimburse Buyer for any excess costs occasioned thereby.

**4.2** Unless otherwise expressly stated in this Order, Seller shall not charge Buyer for labeling, packing, boxing or crating.

**5**        **Quantity.** If no quantity is specifically stated in the Order, or if the Order contains the term “Blanket,” Seller agrees, for the time period that each Order is in effect per paragraph 1.2, to sell to Buyer, and Buyer agrees to Purchase from Seller, 100% of the Products or Services covered by the Order that Buyer requires for the Life of the Program, at the price and terms contained in the order and these Standard Terms. If the Order states a different percentage or other portion of Buyer’s requirements, then such percentage or portion shall control over the percentage stated in this paragraph.

**6**        **Releases.** Periodically, during the Life of the Program, Seller will provide Products or services to Buyer, pursuant to individual releases (each a “Release”) issued by Buyer to Seller. Each release shall set forth the numerical quantity of Products and/or Services, the required delivery date, the delivery point, and any other pertinent details or instructions as Buyer may deem appropriate. Releases are part of the Order and are not independent contracts.

**7**        **Delivery.**

**7.1**       Time is of the essence. Seller shall deliver the Products or Services in the quantities and on the delivery dates and times specified in this Order. Seller shall immediately notify Buyer in writing if Seller is unable to deliver the Products or Services in the quantities and on the delivery dates and times specified in this Order. Products or Services delivered in excess of the quantities or in advance of delivery dates or times specified in this Order shall be at Seller’s risk and may be returned to Seller by Buyer, and all transportation charges both to and from the original destination shall be paid by Seller. Buyer may, upon notice to Seller, change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which shall entitle Seller to a modification of the price of the Products or Services covered by this Order.

**7.2**       Buyer shall not be required to make payment for any Products delivered to Buyer that are in excess of the quantities specified in this Order. Unless otherwise expressly stated in this Order, delivery dates within the first four (4) weeks after the date of issue of a Release are firm orders. The quantities and delivery dates for the next four (4) weeks (calendar weeks 5-8 after the issue date of the Release) are an authorized approval for raw material procurement. For any period beyond these time periods, the Release is a non-binding supply forecast only.

**7.3**       Seller warrants that any representation made in a quote or otherwise regarding its production capacity shall be considered a warranty that Seller can manufacture or produce the stated quantity of the Products or the Services without the imposition of overtime charges or other surcharges. Seller acknowledges that any estimates or forecasts of production volumes or Life of the Program, whether from Buyer or the Customer, are subject to change from time to time, with or without notice to Seller, and shall not be binding upon Buyer. Unless otherwise expressly stated in this Order, Buyer makes no representation, warranty, guarantee or commitment of any kind or nature, whether express or implied to Seller regarding Buyer’s quantitative requirements for the Products or the Services.

**7.4**       Unless the Order is for 100% of Buyer’s requirements of the Products or Services, Buyer shall not be required to purchase the Products or the Services exclusively from Seller.

**8**        **Delays in Delivery or Acceptance.**

**8.1**       If Seller fails or refuses to proceed with this Order or fails to deliver the Products or perform the Services within the delivery dates and times specified in this Order, Buyer may, without limiting or affecting its other rights or remedies available hereunder or at law, cancel the then remaining balance of this Order, unless the delay is an excusable delay (as defined in subparagraph 8.2). In addition, if Seller fails to meet the delivery dates or times of the Products, other than by reason of an excusable delay, Buyer may, without limiting or affecting its other rights or remedies available hereunder or at law, direct expedited shipment and/or incur premium freight or transportation costs, and Seller shall pay upon demand all excess costs incurred thereby, including additional handling charges and other expenses (whether related or not) resulting therefrom. Seller shall be responsible for all other direct, consequential, and incidental damages incurred by Buyer as a result of Seller’s failure to meet the delivery dates or times, other than by reason of an excusable delay, as defined in the subparagraph below, including the cost of any line shutdown, the cost of obtaining Products from an alternate source, and the time spent by Buyer’s employees and representatives in

addressing such failure. Buyer's actions in obtaining substitute or replacement products shall not limit the rights and remedies available hereunder or at law.

**8.2** The term "excusable delay" means any delay in making or accepting deliveries or performance which results without fault or negligence on the part of the party involved and which is due to causes beyond its reasonable control, such as acts of God or of a public enemy, any preference, priority or allocation order issued by government or any other act of government, fires, floods, epidemics, freight embargoes, explosions, riots, war, and terrorism. The term "excusable delay" shall not, however, mean or include any delay arising from or as a result of: (i) Seller's financial difficulties; (ii) a change in cost or availability of materials or components based on market conditions or supplier actions affecting Seller; or (iii) any labor strike or other labor disruption applicable to Seller or to any of its subcontractors or suppliers that are engaged in manufacturing or providing Products or services to Seller in connection with Seller's obligations under this Order.

**8.3** An excusable delay shall not constitute a default hereunder, provided that if Seller is subject to one or more excusable delays that persist for more than thirty (30) days in the aggregate, Buyer may cancel the then remaining balance of this Order, without limiting or otherwise affecting its other rights or remedies available hereunder or at law.

**8.4** Seller, at its expense, shall use its best efforts to mitigate any adverse effects or costs to Buyer due to any actual or potential delay, including: (i) the implementation of a production contingency plan; and (ii) upon Buyer's express written authorization, increasing Seller's inventory of finished Products to a level sufficient to sustain deliveries during such delay.

**8.5** Whenever any actual or potential delay threatens to delay deliveries or Seller's performance under this Order, Seller shall immediately give written notice thereof to Buyer. Such notice shall include all relevant information with respect to such delay, including the anticipated duration and impact of such delay. In addition, Seller will notify Buyer in writing: (i) at least sixty (60) days prior to the expiration of any labor contract or collective agreement; and (ii) as soon as Seller becomes aware of any actual or threatened labor strike or other labor disruption; in each case as may be applicable to Seller or to any of its subcontractors or suppliers that are engaged in manufacturing or providing Products or services to Seller in connection with Seller's obligations under this Order.

**8.6** Buyer may delay acceptance of delivery of the Products or performance of the Services by reason of an excusable delay, in which case Seller shall hold the Products and/or delay performance of the Services, at Buyer's direction, until the cause of the excusable delay has been removed.

**8.7** If, under the terms of this Order, Buyer grants Seller exclusive or "single source" rights to supply the Products or the Services to Buyer, such rights shall not restrict Buyer's right to procure Products or services similar to the Products or the Services in substitution therefor in the event of any excusable delay.

**8.8** Without limiting Seller's obligations hereunder, in the event of any supply allocation by Seller, including as a result of an excusable delay, Seller shall give preference to Buyer for all of the Products and the Services ordered under this Order.

## **9 Inspection.**

**9.1** Buyer has the right to inspect any and all of the Products, both prior to and after making payment therefor. Seller acknowledges and agrees that Buyer may choose not to perform incoming inspections with respect to the Products, without prejudice to any rights or remedies available to Buyer hereunder or at law, and Seller waives any rights to require Buyer to conduct such inspections.

**9.2** Buyer also has the right to inspect or test all materials and workmanship utilized by Seller in the performance of this Order, and Seller shall permit such inspection or testing by Buyer and/or the Customer to the extent practicable at all times and places, including during the period of manufacture. If any such inspection or testing is made on Seller's

premises, Seller shall provide, without additional charge, all reasonable facilities and assistance. Inspection and approval at Seller's premises do not preclude rejection or other relief for any defects subsequently discovered. Seller shall provide and maintain, without additional charge, a testing and inspection system (which shall include documented quality control and reliability procedures) acceptable to Buyer covering the materials and workmanship utilized in the performance of this Order.

**9.3** At Buyer's option, Buyer and/or the Customer may from time to time review and inspect Seller's testing, inspection, quality control and reliability procedures, as well as the records and data supporting the same. Seller shall comply with Buyer's most recently adopted quality control specifications, inspection standards and quality assurance manuals as may be supplied by Buyer to Seller directly, or as may be posted on Buyer's Website from time to time. Seller shall, if requested by Buyer, furnish certificates indicating such compliance.

**9.4** Buyer's payment for and/or acceptance of the Products or the Services shall not relieve Seller from any of its obligations and/or warranties under this Order. Subject to Buyer's rights under paragraph 10 regarding Buyer's title to the Products upon payment therefor, in no event shall payment for the Products or the Services be deemed to constitute acceptance by or on behalf of Buyer for any other purposes hereunder or at law.

**9.5** Seller will conform to the quality control standards and inspection systems, as well as related standards, policies and systems, that are established or required by Buyer and, to the extent directed by Buyer, the Customer. Seller agrees to meet the full requirements of industry Production Part Approval Processes (PPAP) as specified by Buyer and the Customer, as applicable, and agrees to present this information to Buyer upon request, at the level requested, unless otherwise specifically agreed by Buyer in writing.

**10 Materials, Equipment, Tools, and Facilities.**

**10.1** Unless otherwise expressly stated in this Order, Seller shall supply at its own expense all materials, equipment, tools, jigs, dies, fixtures, patterns, drawings, specifications, samples and facilities required to perform this Order (the "Seller's Property"). Seller grants Buyer an irrevocable option to take possession of and title to the Seller's Property that is used for the production of the Products, 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; provided, however, that this option shall not apply if the Seller's Property is used to produce Products that are the standard stock of Seller or if a substantial quantity of similar Products are being sold by Seller to others.

**10.2** Notwithstanding any other provision in this Order, Seller expressly acknowledges and agrees that: (i) all materials, parts, components, assemblies, equipment, tools, jigs, dies, fixtures, patterns, drawings, specifications, samples and facilities, including any replacements thereof, any materials affixed or attached thereto and any special tooling produced or procured by Seller for the performance of its obligations under this Order ("Tooling"), that are furnished to Seller, or that specifically paid for, in whole or in part, by Buyer (including pursuant to subparagraph 10.1) or by the Customer; and (ii) all of the Products that have been paid for, in whole or in part, by Buyer, whether or not Buyer has exercised its rights of inspection in respect thereof (all items in clauses (i) and (ii) above, collectively the "Buyer's Property"), shall be held by Seller on a bailment basis and remain the property of, with both title and the right of possession in, Buyer and without limitation to any rights and remedies available hereunder or at law. The Buyer's Property, while in Seller's custody or control or while in the custody or control of Seller's suppliers, contractors or agents, shall be held at Seller's risk, shall be kept insured by Seller at Seller's expense against loss or damage in an amount equal to the replacement cost thereof, and shall be subject to removal at Buyer's written request. Seller shall promptly notify Buyer of the location of the Buyer's Property, if located at any place other than Seller's facility. Unless otherwise expressly stated in this Order, Seller shall maintain accounting and property control records for the Buyer's Property in accordance with sound industrial practices. Seller shall, at Seller's expense, maintain the Buyer's Property in good condition and repair, and shall replace, at Seller's cost, any of the Buyer's Property if, as and when necessary or reasonably required. Buyer does not provide any warranties with respect to the Buyer's Property. Upon completion or termination of this Order, Seller shall retain on a bailment basis for Buyer, as aforesaid, the Buyer's Property still then in the physical possession of Seller, at Seller's expense, until disposition directions are received from Buyer. Upon receipt of Buyer's demand or disposition directions, Seller shall, at Seller's expense,

prepare the Buyer's Property for shipment, including disassembly and packing, and shall deliver it to such locations as may be specified by Buyer. The Buyer's Property shall be in the same condition as originally received by Seller, reasonable wear and tear excepted. If Buyer or Seller defaults under this Order, Seller shall upon Buyer's demand immediately deliver the Buyer's Property to Buyer and, if Buyer so requests, grant Buyer access to Seller's premises for the purpose of removing the Buyer's Property.

**10.3** All materials, supplies and services to be manufactured, produced or provided in conjunction with this Order must be in strict accordance with the specifications set forth in this Order or as otherwise specified by Buyer to Seller.

**10.4** Seller shall use the Buyer's Property solely for the purpose of performing its obligations under this Order.

**10.5** Seller will cooperate fully with Buyer's removal of Buyer's Property from Seller's premises. Seller shall assume all risk of death or injury to persons or damage to property arising from the use, maintenance, repair, and shipment of the Buyer's Property. Unless otherwise agreed to in writing by Buyer, Seller, at its own expense, shall keep Buyer's Property in good condition and repair, including repair necessitated by wear and tear and other usage by Supplier. In the event that it becomes necessary, as determined by either Buyer or Seller, to replace Buyer's Property due to normal use by Seller, or otherwise, said replacement tools shall be at the sole expense of Seller and said replacement tools shall be the property of Buyer. Buyer does not guarantee the accuracy of any Tooling or the availability or suitability of any supplies or material furnished by Buyer. Seller assumes sole responsibility for inspecting, testing, and approving all Tooling or other materials supplied by Buyer prior to any use by Seller. Supplier shall assume all risk of death or injury to persons or damage to property arising from the use, maintenance, repair, and shipment of the Tooling or other materials supplied by Buyer and hereby agrees to indemnify Buyer against the same. If Buyer and Seller enter into a specific tooling agreement with respect to certain Tooling, to the extent there is any inconsistency between this section and the terms of the specific tooling agreement, the terms of the specific tooling agreement shall prevail.

**10.6** Buyer will have the right to enter Seller's premises at reasonable times to inspect Buyer's Property and Seller's records pertaining thereto. 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 the Buyer's Property for any and all work, including, but not limited to, designing, manufacturing, improving, maintaining, servicing, using, assembling, fabricating, or developing the Buyer's Property. Seller hereby agrees to indemnify, defend, and hold Buyer harmless from and against any loss, liabilities, costs, expenses, suits, actions, claims, and all other obligations and proceedings, including, without limitation, all attorneys' fees and any other costs of litigation that are in any way related to releasing, terminating, or otherwise removing any such liens placed on the Buyer's Property. Seller will assign to Buyer any claims Seller has against third parties with respect to the Buyer's Property.

## **11 Changes.**

**11.1** Buyer reserves the right to make changes, or to cause Seller to make changes, to the drawings, specifications, sub-suppliers, sub-contractors, and other provisions of this Order. If any such change results in an increase or a decrease in the cost of, or the time required for, manufacturing or delivering the Products or performing the Services, an equitable adjustment may be made in the price or delivery schedule, or both, and this Order shall, subject to the agreement of Buyer and Seller, be modified in writing accordingly. No claim under this paragraph shall be asserted by Seller after fourteen (14) days following the notification of the change by Buyer.

**11.2** Seller shall not, without Buyer's prior written authorization, make any changes to specifications, designs, materials or part numbers (or other types of identification), any major changes in processes or procedures, or any changes in the location of the facilities used by Seller for the performance of its obligations under this Order.

## **12 Service and Replacement Parts.**

**12.1** Except as otherwise expressly agreed in writing, for fifteen (15) years after a vehicle design or specific part concludes production, Seller shall supply, and Buyer shall purchase, all of Buyer's requirements of "service parts" for

the same Products, Services, and component parts and materials, at the prices set forth in this Order plus any actual cost differential for special packaging. If the Products are systems or modules, Seller shall sell each component or part at a price that does not, in the aggregate, exceed the system or module price specified in this Order, less assembly costs, plus any actual cost differential for packaging. Seller's obligation with respect to service or replacement parts shall survive the termination or expiration of this Order.

**12.2** At Buyer's request, Seller shall make service literature and other materials available at no additional charge to support Buyer's service part sales activities.

### **13 Customs and Transportation.**

**13.1** Unless otherwise expressly stated in this Order, all Products shall be delivered by Seller "DDP - Buyer's plant" or "FOB - Buyer's plant" (as defined in Incoterms 2010), as applicable, in which case: (i) all transportation charges (including terminal switching charges) shall be at Seller's expense; and (ii) Buyer shall not be liable for any insurance, storage, parking or detention charges.

**13.2** Unless otherwise expressly stated in this Order, prices include customs duties and expenses, tariffs and all federal, provincial, state and local taxes (including all import taxes, excise taxes and sales taxes) applicable to the manufacture, sale or provision of the Products or the Services.

**13.3** Any reduction in Seller's cost resulting from a reduction in transportation charges, customs duties, import taxes, excise taxes and/or sales taxes from those in effect on the date of this Order shall be paid to Buyer by Seller as a reduction of the price.

**13.4** Seller agrees to fulfill any customs related obligations, including properly declaring the value of the Products and complying with the appropriate origin or labeling requirements. Upon request, Seller shall promptly furnish to Buyer all documents and other information required for customs drawback purposes, properly completed in accordance with applicable governmental regulations. Unless otherwise expressly stated in this Order, all customs drawback shall be reserved and retained for, or credited to, Buyer.

**13.5** Export licenses or authorizations necessary for the export of the Products shall be the responsibility of Seller unless otherwise expressly stated in this Order, in which case Seller shall provide such information as may be necessary to enable Buyer to obtain such licenses or authorizations. Seller shall undertake such arrangements as necessary for the Products to be covered by any duty deferral or free trade zone programs of the country of import.

**13.6** To the extent that any Products covered by this order are to be imported into the United States of America, Seller shall, upon Buyer's request, comply with all applicable recommendations or requirements of the United States Bureau of Customs and Border Protection's Customs-Trade Partnership Against Terrorism initiative or any successor or replacement initiative or program. To the extent that any Products covered by this Order are to be imported into Canada, Seller shall, upon Buyer's request, participate in the Canada Border Services Agency's Partners in Protection program or any successor or replacement initiative or program. Upon request, Seller shall certify in writing its compliance with the foregoing. Seller shall indemnify and hold Buyer harmless from and against all liabilities, demands, claims, losses, costs, damages, and expenses of any nature or kind (including legal and other professional fees) arising from or relating to Seller's non-compliance with the foregoing.

### **14 Price Warranties and Competitiveness.**

**14.1** Seller warrants the prices for the Products and the Services are, and shall remain, not less favorable to Buyer than the prices currently extended to any other customer of Seller for the same or substantially similar Products or services in the same or substantially similar quantities and delivery requirements. If Seller reduces the prices of such same or substantially similar Products or Services during the term of this Order, Seller shall reduce the prices of the Products and the Services under this Order correspondingly.

**14.2** Seller warrants that the prices in this Order shall be complete, and no surcharges, premiums or other additional charges of any type shall be added, without Buyer's prior written consent. Seller expressly assumes the risk of any event or cause (whether or not foreseen) affecting such prices, including any foreign exchange rate changes, increases in raw materials costs, inflation, increases in labor, and other manufacturing costs.

**14.3** Maintaining the competitiveness of the Products and/or Services is of the essence. "Competitiveness of the Products" is ensured if the Products or Services correspond to comparable Products or Services of competitors in terms of price, quality, durability and technology. If a comparable product or service is offered to Buyer at competitive prices and conditions, Buyer will notify Seller thereof in writing and will set a reasonable period of time for Seller to restore full competitiveness of the Products or Services. Seller will promptly prepare a catalogue of actions which Seller will take in order to restore competitiveness of the Products or Services and will furnish Buyer with such catalogue, together with a corrected proposal. Seller shall restore competitiveness of the Products or Services within the period of time set by Buyer. The obligation to maintain competitiveness shall be a material contractual obligation. In the event of any violation of such obligation, Buyer may demand adjustment or terminate the agreement in whole or in part for cause.

**15 Seller's Warranties.**

**15.1** Seller expressly warrants that (a) the Products and the Services, and (b) any special tools, dies, jigs, fixtures, patterns, machinery and equipment, that are obtained at Buyer's expense for the performance of this Order or are Buyer's Property shall: (i) conform to all drawings, specifications, samples and other descriptions furnished, specified or adopted by Buyer; (ii) comply with all applicable laws, regulations, rules, codes and standards of the jurisdictions in which the Products or the Services, and the products containing the Products and Services, are to be sold; (iii) be merchantable; (iv) be free from any defects in design, to the extent furnished by Seller or any of its subcontractors or suppliers, even if the design has been approved by Buyer; (v) be free from any defects in materials and workmanship; (vi) be fit, sufficient and suitable for the particular purpose for which Buyer intends to use the Products or the Services, including the specified performance in the component, system, subsystem and vehicle location and the environment in which they are or may reasonably be expected to perform; and (vii) be free of all liens, claims and encumbrances whatsoever. For the purposes of clause (vi) above, Seller acknowledges that Seller knows the particular purpose for which Buyer intends to use the Products or the Services. Seller further expressly warrants that, unless otherwise expressly stated in this Order, the Products are manufactured entirely with new materials and none of the Products is, in whole or any part, governmental or commercial surplus or used, remanufactured, reconditioned or of such age or condition so as to impair its fitness, usefulness or safety. The warranties in this subparagraph are referred to in this Order as the "Seller's Warranties."

**15.2** The Seller's Warranties are available to, and for the benefit of, Buyer, its subsidiaries and affiliates, their respective successors and assigns, the Customer and users of products containing the Products or the Services. The Seller's Warranties shall extend to future performance of the Products. The warranty period shall be five (5) years after the Products or Services are put into service by the end user, except that if Buyer is obligated to provide a longer warranty period pursuant to the Customer Terms or applicable law, such longer period shall apply. The Seller's Warranties shall be in addition to all other warranties available under applicable law.

**15.3** Seller shall indemnify and hold Buyer and the Customer, and their respective representatives, employees, agents, customers, invitees, subsidiaries, affiliates, successors and assigns, harmless from and against all liabilities, claims, demands, losses, costs, damages and expenses of any nature or kind (including consequential and special damages, personal injury, property damages, lost profits, recall or other Customer field service action costs, costs allocated under a Customer warranty allocation program, production interruption costs, inspection, handling and reworking charges, professional and other legal fees, and any other costs associated with Buyer's administrative time, labor and materials) arising from or as a result of: (i) any breach of the Seller's Warranties; and (ii) any other acts, omissions or negligence of Seller or of any of its subcontractors or suppliers in connection with Seller's performance of its obligations under this Order. No limitations on Buyer's rights or remedies in any of Seller's documents shall operate to reduce or exclude such indemnification.

**15.4** Seller acknowledges that Buyer may defend any claim brought by the Customer that the Products or Services are in breach of the Seller's Warranties or are otherwise defective and do not meet the contractual requirements of this Order. Seller agrees that Buyer's action to defend such claims is in the interest of both Buyer and Seller and is done to mitigate damages. Seller waives the right to argue that Buyer's defense of such claims in any way limits Buyer's right to seek indemnity from Seller or assert a claim against Seller that Seller has breached the Seller's Warranties or otherwise failed to meet the legal and contractual requirements of this Order.

**15.5** During the time period this Order remains in effect, Seller warrants that it will not supply the Products or Services directly to the Customer or the original equipment manufacturer of the vehicle into which the Products or the Services are incorporated without Buyer's prior written consent.

## **16 Defense and Indemnity.**

**16.1** To the fullest extent permitted by law, Seller agrees to indemnify, hold harmless, and defend Buyer and its affiliated companies, their respective directors, officers, employees, agents, and Customers ("Indemnitees") from and against any loss, liabilities, costs, expenses, suits, actions, claims, and all other obligations and proceedings, including, without limitation, all judgments rendered against, and all fines and penalties imposed upon, Indemnitees and all Indemnitee attorneys' fees and any other costs of litigation (collectively, "Liabilities") that are in any way related to Seller's performance or obligations under the Order, including claims arising out of a breach hereof or thereof, warranty claims, product recall claims, product liability claims, injuries to persons (including death), or damage to property caused by Seller, its employees, agents, subcontractors, or in any way attributable to the performance of Seller, including, without limitation, breach of contract, breach of warranty, or product liability. Seller's obligation to defend and indemnify under this section will apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability, or otherwise, except for claims that arise as a result of the sole negligence of Buyer. Seller agrees to indemnify, hold harmless, and defend Indemnitees from and against all Liabilities arising out of actual or alleged infringement, including infringement of any patent, trademark, or copyright relative to the Products or Services.

**16.2** If Seller provides Products or Services to Buyer on Buyer's premises, Seller will examine the premises to determine whether they are safe for such Products or Services and will advise Buyer promptly of any situation it deems to be unsafe. Seller's employees, contractors, and agents will not possess, use, sell, or transfer illegal drugs, medically unauthorized drugs, controlled substances, or unauthorized alcohol, and will not be under the influence of alcohol or drugs on Buyer's premises. Seller shall be exclusively responsible for, shall bear, and shall relieve Buyer from liability for all loss, expense, damage, or claims resulting from bodily injury, sickness, or disease, including death, at any time resulting therefrom, sustained by any person or persons, or on account of damage to or destruction of property, including that of Buyer, arising out of, or in connection with the performance of work on Buyer's premises, except that Seller shall not be responsible for or relieve Buyer from liability for claims arising from the willful misconduct or the sole negligence of Buyer.

## **17 Insurance.**

**17.1** Seller shall maintain and carry: (i) property and general liability insurance, including public liability, property damage liability, product liability and contractual liability coverages and professional liability coverage as Buyer may require based on the Products or Services; and (ii) workers' compensation and employers' liability insurance covering all employees engaged in the performance of this Order; in each case in such amounts and with such limits (subject to subparagraph 17.2) and with such insurers that are reasonably acceptable to Buyer and which are licensed to provide insurance coverage in the jurisdictions in which any Products are manufactured or Services are provided or otherwise are applicable to Seller. Each policy shall expressly state that it provides primary coverage to any other insurance coverage available to Buyer and shall include an endorsement under which the insurer waives any rights of subrogation it may have against Buyer.

**17.2** Unless otherwise expressly stated in this Order, Seller's liability insurance policies shall have combined single limits of no less than five million U.S. dollars (\$5,000,000 USD) per occurrence and in the aggregate; provided that such limits shall not limit Seller's liability under this Order. Seller's property insurance policies shall be written

on a “replacement cost” basis and Seller’s workers’ compensation policies shall be in compliance with applicable statutory requirements and limits.

**17.3** Seller shall furnish Buyer with certificates or other satisfactory proof of insurance confirming the foregoing insurance coverages within ten (10) days of Buyer’s request. Any such insurance and the certificates shall provide for terms and conditions satisfactory to Buyer whereby, among other things: (i) Buyer is designated as an Additional Insured or Loss Payee, as interests may appear, or as may be requested by Buyer from time to time; and (ii) each policy shall contain an endorsement that the coverage will not be cancelled or materially changed or amended in any way without at least thirty (30) days prior written notice to Buyer. Buyer shall have the right, but not the obligation, to maintain such insurance coverage prior to the expiration of such notice. The receipt or review of such certificates or other proof of insurance coverage at any time by Buyer shall not relieve Seller from its liability or its insurance obligations hereunder or reduce or modify such insurance obligations.

**18 Defective or Non-Conforming Products or Services.**

**18.1** If any of the Products or the Services fail to meet the Seller’s Warranties, Seller shall, upon notice thereof from Buyer at any time, promptly repair, replace or otherwise satisfactorily deal with the same in a manner acceptable to Buyer, all at Seller’s expense and without limiting or affecting Buyer’s other rights or remedies available hereunder or at law. The Seller’s Warranties shall also apply to such repaired, replaced or otherwise satisfactorily dealt with the Products or the Services.

**18.2** If Seller fails to repair, replace or otherwise deal with any defective or non-conforming Products or Services in a manner acceptable to Buyer, Buyer may, without limiting or affecting Buyer’s other rights or remedies available hereunder or at law, cancel this Order as to the particular Products or Services and/or cancel the then remaining balance of this Order.

**18.3** After notice to Seller, all defective or non-conforming Products shall be held at Seller’s risk. Buyer may, and at Seller’s direction shall, return such defective or non-conforming Products to Seller at Seller’s risk, and Seller shall promptly pay, upon Buyer’s demand, all transportation and other applicable charges, both to and from the original destination.

**18.4** Any payment made by Buyer for defective or non-conforming Products or Services shall be refunded by Seller, except to the extent that Seller promptly replaces or corrects the same at Seller’s expense.

**18.5** Neither Buyer, nor any of its subsidiaries or affiliates, or their respective successors, assigns, representatives, employees, agents or customers shall be liable for, or be obligated to indemnify or hold Seller, or any of its subsidiaries or affiliates, or their respective successors, assigns, representatives, employees, agents, subcontractors or suppliers harmless from and against any liabilities, claims, demands, costs, damages or expenses of any kind or nature (including personal injury, property damage, consequential or special damages) arising from or as a result of the improper, unsafe or defective materials, workmanship or design of the Products or the Services.

**19 Infringement and Proprietary Rights.**

**19.1** Seller, at its expense, will indemnify and hold Buyer and all others harmless with respect to every claim that may be brought against Buyer or others that use the Products or Services delivered under the Order, for any alleged infringement of any present or future patent, copyright, industrial design right, or other proprietary right related to one of the Products or Services under the Order, or the manufacture, sale, or use of Products alone, or in combination, by reason of their content, design or structure. Seller will investigate and defend or otherwise handle every such claim and, at Buyer’s request, assist Buyer and all others in their investigation, defense, or handling of any such claim. Seller will pay all expenses and damages or settlement amounts that Buyer, Buyer’s Customers, and all others using Buyer’s product may sustain by reason of each such indemnified claim. Seller’s obligations will apply even though Buyer furnishes all or any portion of the design and specifies all or any portion of the processes used by seller;

**19.2** Seller grants to Buyer a nonexclusive, royalty free, permanent, paid-up, irrevocable license related to the Products or services under the Order with a right to Buyer to grant a sublicense to rebuild and have rebuilt Products under the Order;

**19.3** Seller will neither assert nor transfer to another a right to assert against Buyer and/or any of Buyer's affiliates, dealers, Customers, or suppliers thereof, any intellectual property right of seller that is applicable to any works of authorship related to the Products or services under the Order; and

**19.4** Seller will not sell, transfer, or otherwise dispose of any Products or services that incorporate any trademark, patentable invention, copyright work, industrial design, or other material that is subject of any intellectual property right of Buyer or any of Buyer's affiliates to any party other than Buyer, except where specifically authorized by Buyer in writing.

**19.5** To the extent that Seller creates or develops any patents, industrial designs, technical information, know-how, processes of manufacture or other intellectual property in the performance of Seller's obligations under this Order (collectively "Inventions"), Seller shall: (i) assign to Buyer each Invention (whether or not patentable) that is conceived or first reduced to practice by Seller, or by any person employed by or working under the direction of Seller, in the performance of Seller's obligations under this Order; and (ii) promptly disclose in an acceptable form to Buyer all such Inventions and cause Seller's employees to sign any papers necessary to enable Buyer to obtain title to such Inventions, and to file for intellectual property protections for such Inventions.

**19.6** Seller shall not manufacture or provide, or offer to manufacture or provide, any Products or Services that are based in whole or in part upon Buyer's intellectual property and/or the drawings or specifications regarding the Products or the Services, or any derivative thereof, whether for its own purposes (other than to satisfy its obligations under this Order), for the Customer or any other third parties, without Buyer's prior written consent. The foregoing restriction shall not apply regarding "off-the-shelf" or "catalogue" Products or services that have been routinely manufactured or provided by Seller and developed by Seller, in each case prior to this Order and independently of its relationship with Buyer.

## **20 Confidential Information.**

**20.1** Seller shall consider and treat all Information (as defined in subparagraph 20.2) as confidential and shall not disclose any Information to any other person, or use any Information itself for any purpose other than pursuant to and as required by this Order, without Buyer's prior written consent. Buyer retains all rights with respect to the Information, and Seller shall not acquire, nor attempt to obtain, any patent, trademark, copyright, license or other rights regarding the Information. Seller shall not allow any Information to be reproduced, communicated or in any way used, in whole or in part, in connection with services or Products furnished to others, without Buyer's prior written consent.

**20.2** For the purposes of this Order, "Information" means all drawings, reproductions, specifications, designs, engineering instructions, photographs, reproducible copy, parts lists, plans, reports, working papers, computations and other information furnished by Buyer and shall include all terms and conditions and any other information relating to this Order.

**20.3** Seller shall not advertise or otherwise disclose the fact that Buyer has contracted to purchase the Products or the Services from Seller without Buyer's prior written consent.

**20.4** Unless otherwise expressly stated in this Order and except as may be agreed in a prior written agreement between Buyer and Seller, no commercial, financial or technical information furnished or disclosed in any manner or at any time by Seller to Buyer shall be deemed to be secret or confidential, and Seller shall have no rights against Buyer or the Customer with respect to any use or disclosure of such information.

**21 Compliance with Code of Conduct and Laws.**

**21.1** Seller's performance of its obligations under this Order shall be in compliance with all of Buyer's policies and all federal, provincial, state and local laws, ordinances, rules, codes, standards and regulations that are applicable to this Order, including but not limited to the United States Foreign Corrupt Practices Act, the Canadian Corruption of Foreign Public Officials Act, the Arms Export Control Act, the International Traffic in Arms Regulations, the Export Administration Act and the Export Administration Regulations, including the requirement for obtaining any export license or agreement, if applicable (collectively, "Laws"). Seller shall furnish Buyer with certificates of compliance, where required under such applicable Laws or when requested by Buyer. Each invoice rendered to Buyer under this Order shall constitute written assurance by Seller that Seller has fully complied with all applicable Laws. Seller will participate in or respond to, at Seller's expense, any audit, investigation, inquiry, certification or screening process reasonably requested by Buyer or its third-party vendors to verify Seller's compliance with this paragraph.

**21.2** Seller shall package, label and transport the Products and their containers, in particular those which constitute a health, poison, fire, explosion, environmental, transportation or other hazard, in compliance with all applicable Laws in effect in the place to which the Products are shipped or as otherwise specified by Buyer.

**21.3** Seller represents that: (i) neither it nor any of its subcontractors or suppliers will either engage in or permit substandard working conditions in the supply of the Products or the Services under this Order; (ii) child labor or underage labor, as defined by applicable law, will not be utilized; (iii) it will not allow any form of forced or compulsory labor; (iv) workers, without fear of reprisal, intimidation or harassment, shall have the right to associate freely and join labor unions and workers' councils or to otherwise refrain from joining such organizations as they so choose, in accordance with applicable laws; (v) workers shall be protected against any form of harassment and discrimination in any form, including but not limited to gender, age, religion, disability and political beliefs; (vi) workers shall have a safe and healthy workplace that meets or exceeds all applicable standards for occupational health and safety; (vii) workers shall be compensated with wages and benefits that comply with applicable law, including minimum wages, overtime hours and legally mandated benefits and (viii) working hours shall comply with all applicable laws regulating hours of work.

**21.4** Upon request, Seller shall furnish Buyer with such written verification or information as Buyer deems necessary to certify the origin of any ingredients or materials in the Products. Seller shall also promptly furnish to Buyer all documents and other information requested by Buyer so that Buyer may comply in a timely manner with all applicable laws governing consumer protection, conflict minerals, or similar materials or ingredients.

**21.5** Seller shall indemnify and hold Buyer, its subsidiaries and affiliates, their respective successors, assigns, representatives, employees and agents, and the Customer harmless from and against all liabilities, claims, demands, losses, costs, damages and expenses of any kind and nature (including personal injury, property damage, consequential and special damages) arising from or as a result of Seller's failure to comply with this paragraph 21.

**22 Termination for Convenience.**

**22.1** In addition to any other rights of Buyer to terminate this Order, Buyer may, in its sole discretion, upon five (5) days prior written notice to Seller or, if applicable, such shorter period as may be required by the Customer, terminate this Order for convenience or any other reason, in whole or in part at any time, and notwithstanding the existence of any excusable delay or other events or circumstances affecting Seller. Buyer's notice to Seller may be given by facsimile, e-mail or other form of electronic transmission, and shall state the extent and effective date of termination. Seller may not terminate this Order for convenience or any other reason, except as otherwise expressly provided in this Order.

**22.2** Upon receipt of notice of termination from Buyer, Seller shall, to the extent directed by Buyer or its representatives: (i) stop work under this Order and any other orders related to work terminated by such notice; and (ii) protect all property in Seller's possession or control in which Buyer has or may acquire an interest, including the Buyer's Property. Seller shall promptly submit to Buyer any claims relating to such termination, and in any event

within twenty-one (21) days (unless Buyer agrees otherwise) from the effective date of such termination. Buyer has the right to audit and inspect Seller's books, records and other documents relating to any termination claims.

**22.3** Buyer shall, in addition to making payment of the price specified in this Order for the Products and/or the Services delivered or performed and accepted by Buyer prior to the effective date of termination, pay to Seller the following amounts, without duplication: (i) the price specified in this Order for the Products and the Services manufactured or provided in accordance with the terms of this Order but not previously paid for; and (ii) the actual costs of work-in-process and parts and raw materials incurred by Seller in performing its obligations under this Order, to the extent such costs are reasonable in amount and are properly allocated or apportioned under generally accepted accounting principles to the terminated portion of this Order. Buyer shall not be obligated to make any payment for: (x) the Products, the Services, or work-in-process or parts or raw materials inventory that are manufactured, provided or procured by Seller in amounts in excess of those authorized in any Release, that are damaged or destroyed or that are not merchantable or useable; (y) any undelivered Products that are in Seller's standard stock or that are readily marketable; or (z) work-in-process or parts or raw materials inventory that can be returned to Seller's suppliers or subcontractors for credit. Payments made in connection with a termination of this Order shall not exceed the aggregate price for the Products or Services that would be manufactured or provided by Seller under any Release outstanding at the effective date of termination. Except as provided in this subparagraph, Buyer shall not be liable for and shall not be required to make payments to Seller, directly or indirectly (whether on account of claims by Seller's subcontractors or otherwise), for any loss arising from or attributable to failure to realize anticipated revenue, savings or profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment costs or rental, unamortized depreciation cost or general and administrative burden charges from a termination of this Order. In the event of a termination of this Order by Buyer as a result of Buyer ceasing to be a supplier to the Customer for the vehicle program for which Buyer issued this Order, Buyer shall only be obligated to compensate Seller for any costs under this paragraph if, when and to the extent that the Customer reimburses Buyer for such costs.

**23 Termination Upon Seller's Default or Change of Control.**

**23.1** Buyer may terminate this Order, in whole or in part, for default occasioned by Seller's: (i) breach of any term of this Order; (ii) failure to perform in accordance with the requirements of this Order; or (iii) failure to make progress so as to endanger timely and proper delivery of the Products or completion of the Services. Seller shall be liable for all costs, damages and expenses caused by or resulting from its default under this Order.

**23.2** Buyer may terminate this Order, in whole or in part, in the event of a change of control of Seller. For the purposes of this Order, a "change of control" includes: (i) any sale, lease or exchange of a substantial portion of Seller's assets used in connection with Seller's performance of its obligations under this Order; (ii) any sale or exchange of a sufficient number of shares of Seller, or of any affiliate that controls Seller, to effect a change in management of Seller; or (iii) the execution of a voting or other agreement of control in respect of Seller, or of any affiliate that controls Seller. Seller shall notify Buyer in writing within ten (10) days of any change of control of Seller, and Buyer may terminate this Order by giving written notice to Seller at any time up to sixty (60) days after Buyer's receipt of Seller's notice of change of control.

**23.3** Any termination under this paragraph shall be without liability to Buyer, except for the Products delivered or the Services performed by Seller and accepted by Buyer. If Buyer's termination under this paragraph is determined by a final, unappealable judgment to be improper, then such termination shall be deemed a termination for convenience under paragraph 22.

**24 Termination Upon Insolvency, Bankruptcy, Etc.**

**24.1** Either party may terminate this Order, without liability to the other party: (i) in the event of the insolvency, bankruptcy, reorganization, receivership or liquidation by or against the other party; (ii) in the event that the other party makes an assignment for the benefit of its creditors or ceases to carry on business in the ordinary course; or (iii) if a receiver is appointed regarding the other party or all or part of its property (collectively, an "Insolvency Event"). In the event of such termination, the other party shall be liable for all costs, damages and expenses suffered by the

party that terminates this Order. Any such termination shall not affect the entitlement of Buyer with respect to the Buyer's Property.

**24.2** In the event that Buyer does not terminate this Order upon the occurrence of an event in subparagraph 24.1 regarding Seller, Buyer may make such equitable adjustments in the price and/or delivery requirements under this Order as Buyer deems appropriate to address the change in Seller's circumstances, including Seller's ongoing liability to perform its obligations regarding warranty, defective Products or Services or other requirements under this Order.

**25 Transition of Supply.**

**25.1** In connection the expiration or termination of the Order for any reason, Seller will cooperate with Buyer in the transition of supply of the Products and/or the Services, including the following: (i) Seller will continue production and delivery of all Products and/or Services as ordered by Buyer, including building a bank of Products sufficient to support the transition of supply, as determined by Buyer in its sole discretion, at the prices and other terms stated in this 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 the Products and/or Services as needed; (ii) 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, tooling and process detail and samples of the Products and/or Services and components; and (iii) subject to Seller's reasonable capacity constraints, Seller shall provide special overtime production, storage and/or management of extra inventory of the Products, extraordinary packaging and transportation and other special services (collectively, "Transition Support") as expressly requested by Buyer in writing.

**25.2** If the transition of supply occurs for reasons other than Buyer's termination of this Order pursuant to paragraphs 25 or 26, Buyer shall, at the end of the transition period, pay the reasonable, actual cost of Transition Support as requested by Buyer and incurred by Seller, provided that Buyer has approved Seller's estimate of such costs prior to Seller incurring such amounts.

**26 Right to Audit and Financial Review.**

**26.1** Seller grants to Buyer and to Buyer's authorized agents and representatives access to all pertinent information, including books, records, payroll data, receipts, correspondence and other documents, for the purpose of auditing Seller's charges under this Order and compliance with its terms, during the term of this Order and for an additional five (5) years after the final payment under this Order. Seller shall preserve such information for such period (or longer, if required by applicable law). In addition, all work, materials, inventories and other items provided for under this Order must at all times be accessible to Buyer and to Buyer's authorized agents and representatives, including parts, tools, fixtures, gauges and models. Seller shall segregate its records and otherwise cooperate with Buyer so as to facilitate any such audit.

**26.2** If such audit shows any price discrepancy or Seller's noncompliance, Seller shall reimburse Buyer for such discrepancy or other loss caused by its noncompliance with this Order, together with interest at an annual rate of twelve percent (12%) (or such maximum rate allowed by applicable law, if lower), plus the cost of such audit.

**26.3** Buyer, or a third party designated by and acting on behalf of Buyer, may at any time review the financial condition of Seller and its affiliates, and Seller shall fully cooperate in such review and shall make its financial managers available for discussions during reasonable business hours. Buyer and any such designated third party shall keep confidential any non-public information about Seller and its affiliates obtained in such financial review and shall use such information only for purposes of such financial review, except as otherwise needed to enforce this Order.

**27 Buyer's Website.**

**27.1** Buyer's internet website (or such other website as may be directed through links available on such website) as specified on the face of this Order ("Buyer's Website") may 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 Order. Buyer may

periodically update such requirements by posting revisions thereto on Buyer's Website. In the event of any inconsistency between this Order and Buyer's Website, the terms of this Order shall prevail, unless the requirements specified on Buyer's Website expressly provide otherwise.

**27.2** Buyer may modify these purchase order terms and conditions from time to time by posting revised purchase order terms and conditions to Buyer's Website. Such revised purchase order terms and conditions shall apply to all purchase orders, purchase order revisions, and Releases issued on or after the effective date thereof. Seller shall review Buyer's Website periodically.

**28** **Independent Contractor.** The relationship of Seller to Buyer is that of an independent contractor, and nothing contained in the Order, any Customer Agreement, or otherwise shall be deemed to create any other relationship, including, but not limited to, an employment, partnership, agency, or joint venture relationship between Seller and Buyer. Neither party shall have any authority to employ any person as agent or employee for or on behalf of the other, or to bind, or attempt to bind, the other to any obligation with any third party. Seller has and retains full control and supervision over the performance of its obligations under the Order and over the employment, direction, compensation, and discharge of all of Seller's employees, agents, and subcontractors that Seller utilizes in the performance of such obligations. Each party is and shall be responsible for its own acts and omissions and those of its employees, agents, and subcontractors;

**29** **Subcontracts.** Seller will ensure that the terms of its contracts with its sub-suppliers and sub-contractors provide Buyer and the Customer with all of the rights specified in this Order.

**30** **Assignments.**

**30.1** Seller shall not assign this Order or any portion hereof or work hereunder or any interest herein, except with Buyer's prior written consent.

**30.2** Buyer shall have the right to assign this Order or its interest herein, without Seller's consent, to any of its affiliates or to any purchaser or successor to Buyer's business.

**31** **Nonsolicitation of Employees.** Seller shall not, and shall cause each of its shareholders, officers, directors, employees, agents, representatives and advisors not to, engage, solicit or recruit for employment or services, in each case, either on a full time or part time basis, or in a consultancy or other non-employee role, any employee of Buyer or encourage or induce any such individual to leave his or her employment or relationship with Buyer, whether for itself or any other person.

**32** **Right of Buyer to Perform.**

**32.1** If Seller fails to perform any of its obligations under this Order, Buyer and its agents may, without limiting or affecting its other rights and remedies available hereunder or at law, but shall not be obligated to, perform such obligations without waiving or releasing Seller from such obligations. Where applicable, Buyer and its agents shall be entitled to enter upon Seller's premises to perform, or to remove tooling and all materials necessary to perform, such obligations. All costs, damages and expenses incurred directly or indirectly by Buyer in connection with the foregoing, including legal and other professional fees and Buyer's administrative time, labor and materials, shall be paid by Seller to Buyer on demand or, at Buyer's sole option, may be set off against and deducted from any amounts then owing by Buyer to Seller.

**32.2** The provisions of MCL 440.1308 apply regardless of whether the Order is for Products or Services. By making any payment or other performance under protest or with a reservation of rights, Buyer preserves, and does not waive, all rights, claims, defenses, and arguments against Seller. Any payment under protest shall not be construed against Customer's ability to obtain injunctive relief.

**33** **Remedies.**

**33.1** The remedies reserved in this Order shall be cumulative and not alternative and may be exercised separately or together, in any order or combination, and are in addition to any other remedies provided for or allowed by law, at equity or otherwise.

**33.2** Seller expressly acknowledges and agrees that any failure of Seller to deliver the Products or provide the Services on the delivery dates and times as specified in this Order will cause irreparable harm to Buyer and that Buyer shall be entitled to equitable relief, including injunction without bond or escrow, in such event.

**33.3** If Buyer breaches any term in the Order or in any Customer Terms, Buyer shall not be liable for any incidental, consequential, indirect, or any other special damages of Seller, including, but not limited to, Seller's lost profits, attorney fees, and any and all costs of any litigation. Any action against Buyer arising out of the Order must be filed within one (1) year after Seller's claim accrues.

**34** **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 this 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.

**35** **Modifications.** No modification of this Order, including any waiver of or addition to any of the Terms, shall be binding upon Buyer, unless made in writing and signed by Buyer's authorized representative.

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

**37** **Notices.**

**37.1** Except as otherwise expressly stated in this Order, any notice given or other communication sent under this Order shall be in writing and shall be properly delivered to its addressee by hand, prepaid courier, registered mail, e-mail (receipt confirmed) or facsimile (receipt confirmed) at the applicable address noted on the face of this Order. Any notice or communication given, as provided herein, shall be deemed to have been received at the time of its delivery if delivered by hand, on the business day following its dispatch if transmitted by courier, e-mail or facsimile or on the third business day following its mailing if transmitted by registered mail. Either party may notify the other party, in the manner provided for herein, of any change of address, for the purpose of giving notices or sending communications under this Order.

**37.2** Seller's failure to provide any notice, claim or other communication to Buyer in the manner and within the time periods specified in this Order shall constitute a waiver by Seller of any and all rights and remedies that otherwise would have been available to Seller upon making such notice, claim or other communication.

**38** **Entire Agreement and Amendment.** The Order contains all terms between Seller and Buyer with regard to the subject matter of the Order and supersedes all prior oral or written representations, agreements, or other communications between Seller and Buyer. The contract evidenced by the Order may be amended only by a writing signed by Seller and an officer of Buyer. Any Order issued under protest or with a reservation of rights, whether stated in the Order or in another writing, shall not supersede any prior Order, and the prior Order shall remain the contract.

**39** **Survival.** The obligations of Seller to Buyer, which, by their nature, are intended to survive the expiration or termination of this Order, including without limitation paragraphs 15-19, shall survive termination or expiration of this Order, except as otherwise expressly stated in this Order.

**40** **Governing Law and Jurisdiction.**

**40.1** This Order shall be interpreted and enforced in accordance with the laws of the State of Michigan, exclusive of the choice of law rules. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Order.

**40.2** Seller and Buyer agree that any action arising out of the sale of Products or Services in accordance with this Order will be brought, heard and decided in Barry County, Michigan or the Federal Court for the Western District of

Michigan. Buyer submits to personal jurisdiction in Michigan and waives any argument or defense that the court stated in this section are an inconvenient or improper forum.