

TERMS AND CONDITIONS

1. GUIDING PRINCIPLES

Buyer and Supplier will strive to communicate timely, openly, and honestly to accomplish the business objectives embodied in this Agreement. Buyer and Supplier will strive to continue a long-term business relationship by developing mutual trust, cooperation, and goodwill through their performance under this Agreement.

2. THE CONTRACT

2.1 *Formation.* Each purchase order that Buyer issues ("**Purchase Order**") is Buyer's offer to purchase the goods and services (collectively, "**Products**") identified in that Purchase Order. Upon acceptance, the Purchase Order together with this Agreement and the other Contract Documents will become a separate binding contract between Buyer and Supplier ("**Contract**"). Supplier will be deemed to have accepted a Purchase Order as issued upon the first to occur of (1) Supplier's written acceptance, (2) Supplier's failure to object in writing within 15 days after receiving the Purchase Order, (3) Supplier's commencement or continuation of work covered by the Purchase Order after receiving the Purchase Order, or (4) any other conduct that evidences Supplier's acceptance of the Purchase Order. This Agreement will become part of the Contract (i) when the Purchase Order is accepted, for Purchase Orders accepted on or after the date of this Agreement, and (ii) on the date of this Agreement, for Purchase Orders accepted before the date of this Agreement.

2.2 *Contract Documents.* The documents that comprise each Contract ("**Contract Documents**") consist of (1) any Letter of Intent executed by Buyer and Supplier related to the Products ("**Letter of Intent**"), (2) the Purchase Order, (3) this Agreement, (4) Buyer's Supplier Quality Assurance Manual and all drawings, specifications, inspection standards, and other quality documents incorporated in the Purchase Order or separately agreed to in writing (collectively "**Drawings and Specifications**"), (5) requirements of Buyer's customers that Buyer has furnished in writing to Supplier ("**Customer Requirements**") before a Purchase Order is accepted, and (6) any other documents incorporated in the Purchase Order or separately agreed to in writing. Any additional or different terms and conditions proposed by Supplier before or after receiving a Purchase Order, whether in

Supplier's quotation, acknowledgement, invoice, or otherwise, are unacceptable to Buyer, are expressly rejected by Buyer, and will not become part of the Contract. Specific terms and conditions on the face of a Purchase Order will take priority over any inconsistent provisions in this Agreement, and the provisions of this Agreement will take priority over any inconsistent printed provisions on the reverse side of a Purchase Order. Specific terms and conditions in Contract Documents (other than this Agreement) dated after the date of a Letter of Intent will take priority over any inconsistent provisions in the Letter of Intent.

2.3 *Changes.* Buyer reserves the right at any time to change a Contract by issuing (1) an amended Purchase Order, (2) new or additional Drawings and Specifications, (3) new or additional Customer Requirements, or (4) engineering instruction documents that specify or direct Supplier to make changes to Supplier's Drawings and Specifications, or to samples or descriptions of the Products, or otherwise change the scope of work covered by the Contract, including inspection, testing, or quality control ("**Contract Changes**"). Supplier will promptly implement each Contract Change. Within 10 business days after receiving a Contract Change, Supplier will notify Buyer whether the Contract Change will affect Supplier's costs or time needed for performance, and will provide any additional supporting documentation that Buyer may request. If the Contract Change will have a substantial impact on Supplier's costs, Buyer and Supplier will mutually agree after negotiation in good faith upon a reasonable price adjustment, which will be evidenced by an amended Purchase Order. Except for a Contract Change authorized in this **Section 2.3**, a Contract may be changed only by a written amendment executed by authorized representatives of Buyer and Supplier. Supplier may not make any change in the design, processing, packing, marking, shipping, or date or place of delivery of the Products without Buyer's written instruction or approval.

2.4 *Duration.* Unless sooner terminated by Buyer pursuant to **Section 12** or **13**, each Contract will continue for the term specified in the Contract Documents or, if no term is specified, until terminated by either Buyer or Supplier upon at least six months prior notice. Buyer may extend the term

of a Contract by notice to Supplier for the duration of any additional period that Buyer is obligated by the terms of its agreements with its customers to provide goods or services consisting of or incorporating the Products. Upon expiration or termination of a Contract, Supplier will (1) terminate all work under the Contract, (2) take actions necessary to protect Buyer's Property in Supplier's possession until Supplier receives disposal instructions from Buyer, and (3) upon Buyer's request, cooperate with Buyer in transferring the production of Products to a different supplier.

3. PRODUCTS

3.1 Quantity. If the Contract Documents do not specify fixed quantities or delivery schedules, they will be in accordance with Buyer's requirements and stated in Buyer's firm releases issued to Supplier from time to time ("**Releases**"). Estimated or forecast quantities in the Contract Documents or other estimates or forecasts provided by Buyer or its customers are not binding on Buyer, and the Releases may reflect quantities higher or lower than those estimated or forecast. Buyer may return over-shipments to Supplier at Supplier's expense. Unless otherwise specifically stated in the Contract Documents, the Contract is not exclusive and Buyer may purchase identical or similar goods and services from third parties.

3.2 Quality. Supplier will conform to Buyer's Supplier Quality Assurance Manual and the quality control and related standards and inspection systems (including TS 16949, QS-9000, ISO 9000, and ISO 14001) established or adopted by Buyer and (as directed by Buyer) its customers from time to time. Supplier will also participate in supplier quality and development programs of Buyer and (as directed by Buyer) its customers. Supplier will comply with the full requirements of industry Production Part Approval Processes (PPAP), as specified by Buyer and (as applicable) its customers, and will provide PPAP information to Buyer as requested. Supplier will promptly notify Buyer if Supplier has submitted information about the Products to any governmental authority, and provide to Buyer a copy of each such submittal upon Buyer's request.

3.3 Ingredients. If requested by Buyer, Supplier will promptly provide Buyer with a Material Safety Data Sheet and a list of the identity and quantity of each ingredient in the Products. Supplier will also

immediately notify Buyer of any changes in or additions to the ingredients.

3.4 Service Requirements. Supplier will make Products available to Buyer for Buyer's past-model service requirements for a period of 10 years after the end of the vehicle production program, or any longer period required by Buyer's customers. Buyer and Supplier will negotiate and determine the prices for Products for Buyer's service requirements based on the production Contract prices.

4. DELIVERY

4.1 Packing and Shipment. Buyer may specify the method of transportation and the type and number of packing slips and other documents to be provided with each shipment. Supplier will pack and ship Products in accordance with Buyer's instructions, including labeling and hazardous materials instructions. If Buyer has not provided packing or shipping instructions, Supplier will pack and ship Products in accordance with sound commercial practices. If the Products contain hazardous materials, Supplier will so notify Buyer and provide any special handling instructions necessary to prevent injury or damage while handling, transporting, processing, using, or disposing of the Products. If Supplier is required to use Buyer's returnable packaging, Supplier will be responsible for cleaning and returning the returnable packaging. If returnable packaging is not available, Supplier may use expendable packaging and, if so authorized by Buyer, Buyer will reimburse Supplier for the reasonable actual costs of expendable packaging.

4.2 Delivery Schedules. Time is of the essence and Supplier will deliver Products in strict accordance with Releases and the Contract terms. Unless otherwise stated in the Contract Documents, Products will be delivered F.O.B. Supplier's Dock and title will transfer upon receipt of the Products by the freight carrier. Unless the delay is caused solely by Buyer, if Products are not ready for delivery in time to meet Buyer's delivery schedules, Supplier will be responsible for additional costs of any resulting expedited or other special transportation required to meet Buyer's delivery schedules, in addition to the remedies provided in **Section 13.2**. Buyer will not be liable for premium freight costs unless specifically authorized in advance by Buyer.

5. PRODUCT WARRANTIES

Supplier expressly warrants and represents to Buyer, its successors and assigns, and to Buyer's customers and other users of Buyer's products, that all Products delivered to Buyer will (1) conform to the specifications, standards, drawings, samples, descriptions, and revisions that are part of the Contract Documents, (2) conform to all applicable Laws wherever the Products or vehicles or other goods or services incorporating Products are manufactured or sold, (3) be merchantable and free of defects in design (if not designed by Buyer), materials, and workmanship, and (4) be suitable for Buyer's and its customers' intended use. Supplier further expressly warrants and represents to Buyer, its successors and assigns, that Supplier will transfer to Buyer ownership and good title to Products delivered, free of all liens, encumbrances, and rights of third parties (except those created by Buyer). The foregoing warranties are in addition to those available to Buyer by Law. The warranty period is unlimited with respect to ownership of and title to Products. The warranty period for the other warranties above is the longer of (i) any warranty period specified in the Contract Documents, (ii) the longest warranty period offered by Buyer to its customers with respect to the Products, or (iii) any warranty period provided by applicable Laws.

6. NON-CONFORMING PRODUCTS

6.1 *Inspection.* Buyer and its customers may enter Supplier's facilities at any time to inspect the facilities and Buyer's Property, and to inspect and test the Products, work-in-process, component parts, and raw materials. Buyer's inspection or testing, whether during manufacture or before or after delivery, does not constitute acceptance of any Products, work-in-process, component parts, or raw materials. Buyer's acceptance, inspection, testing, or failure to inspect or test does not relieve Supplier of any of its responsibilities or warranties. Nothing in the Contract releases Supplier from its obligation to inspect and test the Products and the component parts and raw materials it procures, and to implement effective quality control procedures.

6.2 *Non-Conforming Products.*

(a) Supplier will notify Buyer immediately after it becomes aware that any of the Products do not conform to the warranties in **Section 5** or other Contract requirements or are otherwise defective. If non-conforming or defective Products are shipped to

and rejected by Buyer, the quantities under the Contract will be reduced unless Buyer otherwise notifies Supplier, and Supplier may not replace rejected Products without a new Release or other written direction from Buyer.

(b) In addition to the other remedies available to Buyer for non-conforming or defective Products, Buyer may (1) return any non-conforming or defective Products at Supplier's risk and expense for credit at the full invoice price plus transportation charges, including transportation from Buyer's customer, (2) require Supplier to replace non-conforming or defective Products, (3) correct non-conforming or defective Products, (4) require Supplier to correct non-conforming or defective Products or processes and notify Buyer of the corrective actions taken, (5) implement or require Supplier to implement containment, inspection, sorting, and other quality assurance procedures at Supplier's plant or at Buyer's or its customers' facilities, and/or (6) recover from Supplier all reasonable costs and expenses incurred by Buyer or its customers as a result of the non-conforming or defective Products or the actions authorized in this **Section 6.2**. Supplier may use temporary employees or a third party to implement containment, inspection, sorting, and other quality assurance procedures at Supplier's plant or at Buyer's plant or its customer's facilities only with Buyer's prior approval.

(c) In addition to the other remedies available to Buyer for non-conforming or defective Products, Buyer may require Supplier to participate at its expense in any recall or other field service action conducted by Buyer or its customers based in whole or in part on non-conforming or defective Products, including reimbursing Buyer for administrative, labor, and other expenses incurred by Buyer. Buyer and Supplier will jointly investigate the root cause of any non-conforming or defective Products and decide the reasonable amount of Supplier's reimbursement costs to Buyer after reviewing the possible effect of non-conforming or defective products provided by other suppliers and the aggregate amount of Buyer's purchases of Products from Supplier.

(d) Payment for non-conforming or defective Products does not constitute acceptance, does not limit or impair Buyer's right to assert any legal or equitable remedy, and does not relieve Supplier of its responsibility for defects and non-conforming Products, even if Buyer is aware of the non-conformance or defect at the time of payment.

7. PRICE AND PAYMENT

7.1 *Contract Price.* The price of Products is as stated in the Contract Documents. Buyer may request a review of Product prices at any time, and Supplier may request a review of Product prices on or before May 1 and November 1 of each year. Following a request for review, Buyer and Supplier will mutually determine whether Product price changes are appropriate based on Supplier's costs, opportunities for improved productivity and efficiency, and other relevant factors. Any mutually agreed price adjustments initiated by Buyer will be reflected on an amended Purchase Order and will become effective as agreed by the parties. Any mutually agreed price adjustments initiated by Supplier will be reflected in an amended Purchase Order and will become effective on the following July 1 (for May 1 adjustments) and January 1 (for November 1 adjustments).

7.2 *Payment.* Supplier will submit correct and complete invoices or other agreed billing communications with appropriate supporting documentation and other information required by Buyer promptly after delivery of Products, and Buyer may withhold payment until a correct and complete invoice or other required information is received and verified. Payment terms are as specified elsewhere in the Contract Documents. If no payment terms are specified, payment will be due 27 days after the end of the calendar month in which the Products are delivered and Buyer has received correct and complete payment information from Supplier. Supplier will accept payment by check or other cash equivalent, including electronic funds transfer. Buyer will pay Supplier in the currency specified in the Contract Documents or, if none is specified, in the currency of Supplier's shipping or service location.

7.3 *Setoff.* In addition to any right of setoff or recoupment provided by Law, all amounts due to Supplier will be considered net of indebtedness of Supplier and its affiliates or subsidiaries to Buyer and its affiliates or subsidiaries. Buyer may setoff against or recoup from any payment or other obligation owed to Supplier, in whole or in part, any amounts due to Buyer or its affiliates or subsidiaries from Supplier or its affiliates or subsidiaries. Buyer will endeavor to provide Supplier with advance notice of an impending setoff or recoupment and will in any event provide Supplier with a statement describing any setoff or recoupment taken by Buyer.

8. INDEMNIFICATION

To the fullest extent permitted by Law, Supplier will indemnify, hold harmless, and, if Buyer so requests, defend Buyer, its customers, and others who distribute, resell, or use the Products or the vehicles or component parts in which the Products are incorporated, together with their respective officers, directors, employees, agents, successors, and assigns, from and against all damages, claims, liabilities, losses, costs, and expenses (including property damage or personal or bodily injury suffered by Buyer, Supplier, their respective employees, subcontractors, or agents, or any third party, and including attorney's fees and other professional fees, settlements, and judgments) directly or indirectly arising out of or resulting from any alleged or actual (1) defective or non-conforming Products, (2) negligent or wrongful act or omission of Supplier or Supplier's employees, subcontractors, or agents, (3) breach of or failure by Supplier to comply with any of its warranties and representations, applicable Laws, or other Contract requirements, or (4) use of Buyer's Property or work performed at Buyer's or its customers' premises by Supplier or its employees or contractors. Supplier's obligations in this **Section 8** will apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability, or otherwise. Buyer will notify Supplier promptly after Buyer becomes aware of the basis for a claim under this **Section 8**. If the claim relates to an alleged defect in or failure of the Products, Buyer and Supplier will cooperate with each other to determine the root cause of the defect or failure and an equitable allocation of responsibility among all responsible parties.

9. COMPLIANCE WITH LAWS

Supplier will comply, and will assure that all Products and its subcontractors comply, with all applicable laws, rules, regulations, orders, conventions, ordinances, standards, and other governmental requirements (collectively "**Laws**") that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval, or certification of the Products, including Laws relating to protection of the environment, end-of-life disposal, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health or safety, and motor vehicle safety. Each Contract incorporates by reference all clauses required by applicable Laws.

10. INTELLECTUAL PROPERTY

10.1 *Buyer's Intellectual Property.* Buyer does not transfer to Supplier any patent, trade secret, trademark, service mark, copyright, trade dress, industrial design right, mask work, or other intellectual property rights ("***Intellectual Property***") of Buyer or its affiliates or customers ("***Buyer's Intellectual Property***"), whether embodied in Drawings and Specifications provided by Buyer or in other information, documents, or property that Buyer makes available to Supplier under a Contract, other than the right to use Buyer's Intellectual Property to produce and supply Products exclusively to Buyer.

10.2 *Supplier's Intellectual Property.*

(a) Supplier does not transfer to Buyer any Intellectual Property of Supplier or its affiliates ("***Supplier's Intellectual Property***"), whether embodied in Drawings and Specifications provided by Supplier or in other information, documents, or property that Supplier makes available to Buyer under a Contract, other than the right to use Supplier's Intellectual Property to produce and supply to Buyer's customers Buyer's products incorporating the Products.

(b) Supplier grants to Buyer, its affiliates and suppliers, and its direct and indirect customers and their affiliates and suppliers, a worldwide, nonexclusive, irrevocable, paid-up right and license to use and sublicense Supplier's Intellectual Property as needed to (1) use, modify, repair, reconstruct, or rebuild Products and to have Products modified, repaired, reconstructed, or rebuilt, or (2) use, modify, repair, reconstruct, or rebuild Tooling and Equipment that is or becomes Buyer's Property, and to have that Tooling and Equipment modified, repaired, reconstructed, or rebuilt.

(c) If Buyer terminates a Contract pursuant to **Sections 12** or **13** while the vehicles or component parts in which the Products are incorporated remain in production, Supplier grants to Buyer a temporary, non-exclusive, royalty-free, irrevocable, worldwide right and license to use and sublicense Supplier's Intellectual Property to obtain from alternate sources goods and services identical or similar to the Products for temporary use for as long as those vehicles or component parts in which the Products are incorporated remain in production.

10.3 *Confidential Information.* "***Confidential Information***" means trade secrets, Drawings and Specifications, notes, instructions, engineering data

and analyses, compositions of matter, financial, technical, and business data, and other non-public information or Intellectual Property, whether transmitted in writing, orally, electronically, visually, or otherwise, that is supplied or disclosed by Buyer or its affiliates or customers or by Supplier or its affiliates (the "***Disclosing Party***") to Buyer or Supplier or their respective affiliates (the "***Receiving Party***"), except for information that (1) has entered the public domain through no fault of the Receiving Party, (2) the Receiving Party can demonstrate was independently developed by the Receiving Party or was lawfully obtained from a third party, or (3) is required by Law to be disclosed. Confidential Information will be deemed confidential and proprietary to, and remain the sole property of, the Disclosing Party. The Receiving Party may not disclose the Disclosing Party's Confidential Information or use the Disclosing Party's Confidential Information for any purpose other than as contemplated under the Contract without the Disclosing Party's prior consent. The Receiving Party will restrict access to the Disclosing Party's Confidential Information to those employees and approved subcontractors who need the Disclosing Party's Confidential Information to perform the Receiving Party's obligations or exercise the Receiving Party's rights under a Contract, and then only if those employees and subcontractors have agreed in writing to similar confidential treatment. The Receiving Party will provide copies of these written agreements to the Disclosing Party upon request. The Receiving Party will use the same degree of care to safeguard the Disclosing Party's Confidential Information that it uses to protect its own confidential information from unauthorized access or disclosure, but not less than a reasonable degree of care. Upon request by the Disclosing Party, the Receiving Party will promptly return or certify to the Disclosing Party that it has destroyed the original and all copies of the Disclosing Party's Confidential Information received.

10.4 *Infringement.* Supplier will indemnify, hold harmless, and, if Buyer so requests, defend Buyer, its customers, and their respective successors and assigns, from and against all claims of actual or alleged direct or contributory infringement or inducement to infringe any Intellectual Property rights of third parties and all resulting damages, liabilities, losses, costs, or expenses (including attorney's and other professional fees, settlements, and judgments), related in any way to the Products

(including their manufacture, purchase, use, or sale) or the work performed by Supplier or its subcontractors under a Contract. If the sale or use of the Products is enjoined, or in Buyer's sole judgment is likely to be enjoined, Supplier will at Buyer's election and Supplier's expense procure for Buyer the right to continue using the Products, replace the Products with equivalent non-infringing goods or services, or modify the Products so they become non-infringing.

11. TOOLING AND EQUIPMENT

11.1 Buyer's Property.

(a) All tooling, fixtures, gauges, jigs, patterns, castings, cavity dies, and molds, and all related appurtenances, accessions, and accessories (collectively "**Tooling**"), and all equipment, containers, bins, racks, materials (whether or not modified, altered, or processed), component parts (to be incorporated into the Products), and other items of tangible personal property (collectively "**Equipment**") are and will remain the property of Buyer or its customers if (1) Buyer directly or indirectly furnishes the Tooling or Equipment to Supplier to perform the Contract, (2) the Tooling or Equipment is so designated in the Contract, or (3) Buyer purchases the Tooling or Equipment from Supplier or reimburses Supplier for all or a portion of the cost to acquire or manufacture the Tooling or Equipment ("**Buyer's Property**"). Buyer does not guarantee the availability or suitability of any Buyer's Property or the performance or accuracy of any Tooling or Equipment.

(b) Supplier assigns to Buyer all contract rights or claims in which Supplier has an interest with respect to Buyer's Property and will execute bills of sale, financing statements, or other documents requested by Buyer to evidence Buyer's or its customer's ownership of Buyer's Property. Supplier grants to Buyer a limited power of attorney to execute and record on Supplier's behalf any financing statement with respect to Buyer's Property that Buyer determines is advisable to reflect Buyer's interest in Buyer's Property. Supplier will indemnify, hold harmless, and, if Buyer so requests, defend Buyer and its customer against claims or liens adverse to Buyer's or its customer's ownership of Buyer's Property except those that result directly from the acts or omissions of Buyer or its customer. To the extent permitted by Law, Supplier waives any lien or

other rights that Supplier might otherwise have in any of Buyer's Property.

(c) Buyer's Property will be deemed to be personal property and Supplier will hold Buyer's Property on a bailment basis as a bailee-at-will. Supplier will not acquire any right, title, or interest in Buyer's Property, except for Supplier's limited right, at Buyer's unfettered discretion, to use Buyer's Property in the production of Products for Buyer. Supplier bears all risk of loss of and damage to Buyer's Property while in its care, custody, or control. Supplier will at its expense house, maintain in good and safe condition and repair (including ordinary wear and tear), and replace as necessary Buyer's Property, and may not use Buyer's Property for any purpose other than to perform the Contract. Supplier will conspicuously mark Buyer's Property as directed by Buyer, may not commingle Buyer's Property with the property of Supplier or any third party, and may not remove Buyer's Property from Supplier's premises without Buyer's approval. All replacement parts, additions, improvements, and accessories to Buyer's Property will become part of Buyer's Property without cost to Buyer, unless they can be and are removed before return to Buyer without damaging or impairing the functionality of Buyer's Property. Supplier will at its expense maintain all risk property perils insurance covering Buyer's Property for its full replacement value, naming Buyer and its customers as loss payees as their interests may appear.

(d) At Buyer's request at any time, Supplier will immediately release Buyer's Property to Buyer or deliver it to Buyer either (1) F.O.B. Supplier's plant, properly packed and marked in accordance with the requirements of Buyer's carrier, or (2) DDP (Incoterms 2000) at a location designated by Buyer, in which case Buyer will reimburse Supplier for the reasonable costs of delivery unless Supplier is then in Default. If Supplier fails to deliver Buyer's Property as and when requested, Supplier will be in Default and, in addition to all other available rights and remedies, Buyer and its customers and affiliates may enter Supplier's premises and take immediate possession of Buyer's Property without payment of any kind and without further notice or court hearings. Supplier expressly waives any right to additional notice or process and will provide Buyer or its nominees with immediate access to Buyer's Property.

11.2 Use of Buyer's Property or Premises.

(a) If Supplier utilizes Buyer's Property at any location or performs any work on Buyer's or its customers' premises, Supplier will, and will assure that its employees, contractors, and agents, (1) examine Buyer's Property and the premises to assure that they are safe for the requested work, (2) comply with all safety rules that apply to Buyer's Property and the premises, and (3) not possess, use, sell, transfer, or be under the influence of, alcohol or unauthorized, illegal, or controlled drugs or substances while using Buyer's Property or while on the premises.

(b) Prior to using Buyer's Property or commencing work on Buyer's or its customers' premises, Supplier will maintain and upon request furnish to Buyer a certificate evidencing (1) commercial general liability insurance with a combined single limit of at least \$1.0 million per occurrence for bodily injury and property damage, naming Buyer and its customers as additional insureds, and (2) worker's compensation insurance as required by applicable Laws.

11.3 Supplier's Property.

(a) Supplier will at its expense furnish, keep in good and safe condition and repair, and replace when necessary all Tooling and Equipment that is not Buyer's Property and that is needed to produce Products ("**Supplier's Property**"). Supplier will at its expense maintain all risk property perils insurance covering Supplier's Property for its full replacement value, naming Buyer as loss payee as its interests may appear.

(b) If Supplier uses Supplier's Property to produce goods or services identical or similar to the Products for other customers, including aftermarket customers, Supplier may not incorporate any of Buyer's or its customers' logos, trademarks, trade names, or part numbers in or on those goods or services, and may not claim or imply that those goods or services are equivalent to Products purchased by Buyer.

(c) Supplier grants to Buyer an irrevocable option to purchase and take possession of and title to Supplier's Property that is specific to the production of Products under the Contract upon payment to Supplier of its net book value less any amounts that Buyer has previously paid to Supplier for the cost of these items, or its fair market value, whichever is less. This option does not apply to Supplier's Property that is used to produce goods that are the

standard stock of Supplier or that Supplier sells in substantial quantities to others.

11.4 Tooling Orders. If a Contract is for the provision of Tooling, Buyer will have access to Supplier's premises and the premises of Supplier's toolmaker, prior and subsequent to payment, to inspect work performed and to verify charges submitted by Supplier. Supplier acknowledges that it is a bailee-at-will through Buyer for any Tooling that will be resold to Buyer's customers. The Contract price for the Tooling will be adjusted to credit Buyer with any amount by which the Contract price exceeds Supplier's actual costs as verified. Supplier will retain all Tooling cost records for at least two years after receiving final payment for the Tooling, and make them available to Buyer upon request. Unless otherwise specified in the Contract, Buyer will pay for Tooling when Buyer and (if applicable) Buyer's customers have approved the Tooling pursuant to their PPAP and other quality control procedures.

12. EARLY TERMINATION

12.1 Right to Terminate. Buyer may terminate all or any part of a Contract for any reason at any time prior to its expiration pursuant to **Section 2.4**, effective on the date specified in notice to Supplier, in addition to any other right to terminate provided elsewhere in the Contract and notwithstanding the existence of any Force Majeure Event.

12.2 Supplier's Obligations. Upon the effective date of early termination under **Section 12.1**, unless otherwise authorized by Buyer, Supplier will (1) terminate all work under the terminated portion of the Contract, (2) transfer title and deliver to Buyer the completed Products, work-in-process, and component parts and raw materials that Supplier produced or acquired in accordance with Releases issued by Buyer and which Supplier cannot use in producing goods for itself or for others, (3) verify and settle any claims by subcontractors for actual costs made unrecoverable by the termination and ensure the recovery of materials in the subcontractor's possession, (4) take actions necessary to protect Buyer's Property in Supplier's possession until Supplier receives disposal instructions from Buyer, and (5) upon Buyer's request, cooperate with Buyer in transferring the production of Products to a different supplier.

12.3 Buyer's Obligations. Upon the effective date of early termination under **Section 12.1**, subject to **Sections 12.4** and **12.5**, Buyer's entire obligation to

Supplier will be to pay Supplier liquidated damages consisting of the following amounts: (1) the Contract price for all completed Products that are transferred to Buyer, that conform to the requirements of the Contract, and that were not previously paid for, (2) Supplier's reasonable actual out-of-pocket cost of work-in-process and the component parts and raw materials that are transferred to Buyer and that conform to the requirements of the Contract, and (3) Supplier's reasonable actual out-of-pocket cost to settle claims of Supplier's subcontractors, protect Buyer's Property, and transfer production of Products to a different supplier.

12.4 Limitations. Buyer's obligations in **Section 12.3** apply only to a termination pursuant to **Section 12.1**, and then only if Buyer continues to comply with its Contract obligations through the termination effective date. Buyer's obligations in **Section 12.3** do not apply to expiration of the Contract by its terms or to any intervening termination under any other Contract provision, and will not exceed in the aggregate the obligation Buyer would have had to Supplier in the absence of termination under Releases issued by Buyer. If the termination results from a corresponding termination of Buyer's agreement with a customer, Buyer's obligations in **Section 12.3** will apply only if, when, and to the extent that the amounts claimed in Supplier's termination claim are accepted and paid by Buyer's customer. Unless Buyer expressly agrees to the contrary, Buyer is not in any event responsible for, and is not required to reimburse Supplier for, claims by Supplier or its subcontractors for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, Tooling, Equipment, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, general administrative burden charges, and completed Products, work-in-process, component parts, or raw materials that Supplier fabricates or procures in amounts that exceed those authorized in Releases issued by Buyer.

12.5 Termination Claims. Supplier must submit its termination claim to Buyer within 45 days after the effective date of termination (or any shorter period needed to meet Customer Requirements). Buyer may audit Supplier's records before or after payment to verify amounts requested in the termination claim. Buyer has no obligation to consider any termination claim that is submitted or modified after the period specified above or that does not comply with the requirements of this **Section 12**.

13. DEFAULT

13.1 Events of Default. Time is of the essence and Supplier will be in "**Default**" under a Contract if:

- (1) Supplier repudiates, threatens to breach, or breaches any Contract warranty, obligation, or requirement, except that for an actual breach that is capable of being cured, Supplier will be in Default only if Supplier does not cure the breach within 10 days after notice from Buyer specifying the breach;
- (2) Supplier fails to deliver or threatens not to deliver Products as and when required;
- (3) Supplier fails to make progress so as to endanger timely and proper completion or delivery of the Products and does not correct the failure within 10 days (or a shorter period of time specified by Buyer if reasonable under the circumstances) after receipt of notice from Buyer specifying the failure;
- (4) Supplier admits in writing its inability to pay its debts as they become due, becomes insolvent, commences a bankruptcy, insolvency, receivership, or similar proceeding, makes a general assignment for the benefit of creditors, or becomes a debtor in a bankruptcy, insolvency, receivership, or similar proceeding commenced by a third party;
- (5) Supplier fails to provide adequate assurance of performance under the Contract within three business days after demand by Buyer;
- (6) Supplier's financial condition is unsatisfactory to Buyer, acting reasonably; and/or
- (7) Supplier fails to provide assurance pursuant to **Section 14** that a Force Majeure Event will not delay or impair Supplier's performance for more than 30 days or if a Force Majeure Event delays or impairs Supplier's performance for more than 30 days.

13.2 Remedies.

- (a) Upon a Default and while that Default is continuing, Buyer may terminate all or any part of the Contract by notice to Supplier without incurring any liability to Supplier. Upon a termination pursuant to this **Section 13.2**, Supplier will (1) immediately cease all further work under the terminated portion of the Contract, (2) make available to Buyer for purchase at Buyer's option completed Products at the Contract price and work-

in-process, component parts, and raw materials at Supplier's actual cost, and (3) comply with any instructions from Buyer.

(b) Regardless of whether a Default has occurred or is continuing, Supplier will reimburse Buyer for all direct, indirect, special, incidental, and consequential damages (including professional fees) resulting from non-conforming or defective Products, breach of a Contract, a Default, or other acts or omissions of Supplier, including amounts charged by Buyer's customers and costs, expenses, and losses incurred directly or indirectly by Buyer or its customers (1) to inspect, sort, repair, or replace non-conforming or defective Products, (2) resulting from production slowdowns, delays, or interruptions, and (3) in conducting recall campaigns or other field service actions (including administrative costs, parts and labor costs, the cost of any extended warranties, and any fines or penalties).

(c) The rights and remedies reserved to Buyer in this **Section 13.2** and elsewhere in a Contract are cumulative with, and additional to, all other available legal and equitable rights and remedies.

(d) In any action brought by Buyer to enforce Supplier's obligations under the Contract, Buyer and Supplier acknowledge that Buyer does not have an adequate remedy at law and that Buyer is entitled to specific performance of Supplier's obligations under the Contract in addition to all other available rights and remedies.

14. FORCE MAJEURE

Any delay or failure of Buyer or Supplier to perform its obligations under a Contract will be excused if and to the extent (1) caused by an event or occurrence beyond the reasonable control of the affected person or entity and without its fault or negligence, including a labor dispute (a "*Force Majeure Event*"), and (2) the person or entity unable to perform gives notice of the non-performance (including its anticipated duration) to the other promptly (and in any event no more than three business days) after becoming aware that it has occurred or is likely to occur. During any Force Majeure Event affecting Supplier, Buyer may (i) purchase Products from other sources and reduce its Releases to Supplier accordingly without liability to Supplier, (ii) require Supplier to deliver to Buyer at Buyer's expense completed Products, work-in-process, component parts, and raw materials produced or acquired for work under the Contract, and (iii) require Supplier to provide Products from

other sources at the Contract prices and in quantities and at times requested by Buyer. At Buyer's request, Supplier will promptly provide adequate assurance that a Force Majeure Event will not delay performance for more than 30 days. If Supplier does not provide such assurance, or if the Supplier's non-performance exceeds 30 days, Buyer may terminate the contract by notice to Supplier before performance resumes.

15. LABOR CONTRACTS

Supplier will notify Buyer of (1) the contract expiration date at least six months before the expiration of a current labor contract that has not been extended or replaced, and (2) any change in the organization of Supplier's employees or any actual or threatened work stoppage or disruption affecting Supplier's employees, in each case as soon as possible and in any event within 10 days after it occurs. Buyer may thereafter direct Supplier in writing to manufacture up to 45 days of additional inventory of Products, specifying the quantities of Products required and any packaging and storage requirements. Supplier will use its best efforts to comply with Buyer's written directions prior to expiration of the current labor contract and until the current labor contract has been extended or a new contract completed. By authorizing the additional inventory, Buyer commits to buy the entire quantity of conforming Products requested and produced. Supplier is responsible for carrying costs, loss, or damage while in transit or storage, and any additional costs of manufacture.

16. ASSIGNMENT AND SUBCONTRACTING

Supplier may not assign, subcontract, or delegate a Contract or any right or obligation under a Contract without Buyer's prior consent. Regardless of whether an assignment or subcontracting is approved, Supplier will remain responsible for performance of the Contract and for the Products, including all related warranties and claims, unless Buyer otherwise agrees. Supplier will assure that its subcontractors comply with the applicable provisions of the Contract and that its contracts with subcontractors are consistent with the Contract, including **Sections 9, 10, 11, and 19.4**. Buyer may assign any right or obligation under a Contract to a third party at any time upon notice to Supplier and without its consent.

17. CUSTOMS

Transferable credits or benefits associated with Products purchased, including trade credits, export credits, or rights to the refund of duties, taxes, or fees, belong to Buyer unless otherwise prohibited by applicable Law. Supplier will provide Buyer with all information and records relating to the Products necessary for Buyer to (1) receive these benefits, credits, and rights, (2) fulfill any customs obligations, origin marking or labeling requirements, and certification or local content reporting requirements, (3) claim preferential duty treatment under applicable trade preference regimes, and (4) participate in any duty deferral or free trade zone programs of the country of import. Supplier will obtain all export licenses and authorizations and pay all export taxes, duties, and fees unless otherwise stated in the Contract Documents, in which case Supplier will provide all information and records necessary to enable Buyer to obtain those export licenses or authorizations.

18. DISPUTE RESOLUTION

18.1 Negotiation and Mediation. Buyer and Supplier will first endeavor to resolve through good faith negotiations any dispute arising under a Contract. If a dispute cannot be resolved through good faith negotiations within a reasonable time, Buyer or Supplier may request non-binding mediation by a mediator approved by Buyer and Supplier or, absent that approval, by the American Arbitration Association.

18.2 Arbitration. If mediation fails to resolve the dispute within 30 days after the first mediation session, either Buyer or Supplier may submit the dispute to binding arbitration by notice to the other. The arbitration proceedings will be conducted, and a single arbitrator will be selected, in accordance with the Commercial Arbitration Rules of the American Arbitration Association or other rules approved by Buyer and Supplier, and will be governed by the *United States Arbitration Act*, 9 U.S.C. §§1-16, and this **Section 18**. The arbitration will be conducted at an agreed location or at a location selected by the arbitrator if Buyer and Supplier are unable to agree. The arbitrator will issue a written opinion setting forth the basis for the arbitrator's decision, which may include an award of legal fees and costs. The arbitrator's award will be final and non-appealable absent fraud or manifest error, and judgment on the arbitrator's award may be entered in any court having

jurisdiction. While arbitration proceedings are pending, Buyer and Supplier will continue to perform their obligations under the Contract.

18.3 Litigation. Buyer and Supplier have selected binding arbitration as the sole means to resolve a dispute between them over monetary claims that cannot be resolved through mediation. Either Buyer or Supplier may pursue through litigation claims that also involve third parties who have not consented to arbitration, claims in litigation commenced by third parties, and claims for injunctive or other equitable or non-monetary relief.

19. MISCELLANEOUS

19.1 Advertising. During and after the term of a Contract, Supplier may not advertise or otherwise disclose its relationship with Buyer or Buyer's customers without Buyer's prior consent, except as may be required to perform the Contract or as required by Law.

19.2 Audit Rights. Supplier will maintain records related to each Contract in accordance with Supplier's document retention policies and applicable Laws, and in any event for at least two years after the records are created. Buyer and its customers and their representatives may audit Supplier's records related to a Contract at reasonable times at Supplier's usual place of business. Supplier will reimburse Buyer for its audit expenses if an audit uncovers material errors in the amounts charged. Supplier will also furnish to Buyer current financial statements (balance sheet, profit and loss statement, and cash flow statement) and other information concerning Supplier's financial condition that Buyer may reasonably request from time to time. Any documents or information disclosed pursuant to this **Section 19.2** will be subject to **Section 10.3**.

19.3 Electronic Communication. Supplier will comply with the method of electronic communication specified by Buyer from time to time, including requirements for electronic funds transfer, purchase order transmission, electronic signature, and communication.

19.4 Basic Working Conditions. When working on the Products or their component parts, Supplier may not (1) use forced labor, regardless of its form, (2) employ any person below the age of 15 unless it is part of a government-approved job training, apprenticeship, or other program that would be clearly beneficial to its participants, or (3) engage in

physically abusive disciplinary practices. Supplier will use only subcontractors that will adhere to the requirements of this **Section 19.4** and will monitor its subcontractors' compliance with these requirements.

19.5 Relationship of Buyer and Supplier. Buyer and Supplier are independent contractors, and nothing in any Contract makes either the agent or legal representative of the other for any purpose. Neither Buyer nor Supplier has authority to assume or to create any obligation on behalf of the other.

19.6 Waivers. The failure of either Buyer or Supplier to enforce any right or remedy provided in a Contract or by Law on a particular occasion will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy.

19.7 Entire Agreement. Each Contract constitutes the entire agreement between Buyer and Supplier with respect to its subject matter, and supersedes all prior oral or written representations or agreements by Buyer and Supplier with respect to the subject matter of that Contract, including Buyer's request for quotation and Supplier's quotation unless specifically incorporated in the Contract. Except as authorized in Section 2.3, no subsequent terms, conditions, understandings or agreements purporting to modify the terms of a Contract will be binding unless in writing and signed by both parties.

19.8 Severability. If any Contract provision is invalid or unenforceable under applicable Laws of any jurisdiction, that provision will be deemed reformed or deleted, as appropriate, in that jurisdiction, but only to the extent necessary to comply with applicable Laws. The remaining provisions of the Contract will remain in full force and effect.

19.9 Survival. Supplier's obligations to Buyer will survive expiration or termination of the Contract, except as otherwise provided in the Contract.

19.10 Interpretation. When used in this Agreement, "including" means "including without limitation" and terms defined in the singular include the plural and vice versa. Unless the context otherwise requires, "will" indicates that an action is mandatory, "may" indicates that an action is optional, and "may not" indicates that an action is prohibited. Buyer and Supplier acknowledge that they have negotiated this Agreement and the other Contract Documents with advice of legal counsel, as each party deemed appropriate, and that the Contract may not be construed against either Buyer or Supplier as the drafting party.

19.11 Notices and Consents. Any notice or other communication required or permitted in a Contract must be in writing and will become effective on the date of actual receipt if the date of actual receipt is a business day or on the next business day if the date of actual receipt is not a business day. Whenever the Contract requires the consent, approval, agreement, or authorization of Buyer or Supplier, the consent, approval, agreement, or authorization must be in writing signed by its authorized representative.

19.12 Governing Law. Unless otherwise agreed in writing, each Contract will be governed by and interpreted according to the internal laws of the jurisdiction from which Buyer issues the Purchase Order, as shown on the Purchase Order. The *United Nations Convention on Contracts for the International Sale of Goods* will not apply to any Contract.