

## STANDARD PURCHASE ORDER TERMS AND CONDITIONS

### 1. Acceptance, Entire Agreement, and Modification.

A. Each purchase order (as may be amended or revised, "Order") issued by NYX, LLC, its affiliates, or subsidiaries ("Buyer") is an offer to the seller identified on the Order ("Seller") for the purchase of goods and/or services (collectively, "Goods") and includes and is governed by these Standard Purchase Order Terms and Conditions ("Terms and Conditions"). All goods (including Tooling, defined below), products (tangible and intangible), and services to be provided under the Order are included in the term Goods. The Order does not constitute an acceptance of any offer or proposal made by Seller. Any offer or proposal made by Seller is specifically rejected. Buyer and Seller are sometimes referred to collectively as "Parties," and individually as "Party."

B. Acceptance of the Order will be strictly limited to the terms of the Order and these Terms and Conditions. Seller accepts the Order, including these Terms and Conditions, by (i) accepting the Order in writing; (ii) commencing any work or performance under the Order; or (iii) any other conduct that recognizes the existence of a contract with respect to the subject matter of the Order. Buyer rejects any additional or inconsistent terms and conditions offered by Seller at any time and irrespective of Buyer's acceptance of or payment for the Goods. Any offer or proposal made by Seller or any attempt by Seller to vary any of the Terms and Conditions, whether in Seller's quotation form, acknowledgement form, invoice, correspondence, or otherwise, will be deemed material and is rejected by Buyer. The Parties have agreed, and it is their intent that, the battle of the forms under Section 2-207 of the Uniform Commercial Code will not apply to the Order or these Terms and Conditions or to any invoice or acceptance form relating to the Order or these Terms and Conditions. The Parties agree that the Order and these Terms and Conditions will exclusively control the relationship of the Parties.

C. The Order, together with these Terms and Conditions, and the attachments, exhibits, Customer Terms (defined below), specifications and supplements specifically referred to in the Order, are intended by the Parties as a complete and exclusive statement of the terms of their agreement, and hereby supersedes all prior written or oral agreements between the Parties. Any other purchasing or supplier manuals, guidelines, and requirements available and updated from time to time on Buyer's website or otherwise are incorporated by reference into the Order and these Terms and Conditions. Seller is obligated, on a weekly basis, to check Buyer's website for updated Terms and Seller accepts any changes thereto by (i) continuing performance after an amendment to these Terms and Conditions, or (ii) if Seller does not object to any amendment to these Terms and Conditions within a period of seven days after such Terms and Conditions are updated on Buyer's website or otherwise provided to Seller. No course of prior dealings between the Parties and no usage of trade may be used by Seller to supplement or explain any term used in the Order or these Terms and Conditions. Any terms or conditions included on any quotation, invoice, acknowledgement or otherwise are expressly not incorporated into the Order and will have no force or effect whatsoever. To the extent of any conflicts or inconsistencies between the Order, these Terms and Conditions, and any incorporated purchasing and supplier manuals, and guidelines, these Terms and Conditions will control.

D. Seller acknowledges that the Goods may be sold, or incorporated into products or services that may be sold by Buyer to upper tier suppliers or original equipment manufacturers of motor vehicles, or any other third-party customer

(collectively, "Customers," and individually, "Customer"). Seller will take such steps, provide such disclosures, comply with such requirements, and do all other things as Buyer deems necessary or desirable to enable Buyer to meet Buyer's obligations under the terms and conditions of any contract, purchase order, or other document with its Customers ("Customer Terms") that may be applicable to Buyer from time to time in respect of 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, provide Seller with information regarding the applicable Customer Terms, but, in any event, Seller will be responsible for ascertaining the Customer Terms that may affect Seller's obligations hereunder. If there is any conflict or inconsistency between the provisions of the Customer Terms and any provision of the Order, or these Terms and Conditions, Buyer will have the right to have the provisions of the Customer Terms prevail to the extent Buyer deems necessary or desirable to resolve such conflict or inconsistency.

E. Any modification of these Terms and Conditions or an Order must be expressly stated in the Order or in a writing signed by the general counsel of Buyer ("Authorized Representative") expressly referring to the Order and evidencing and intent to modify the terms of the Order or these Terms and Conditions. No oral modification or other type of communication, including by email, will be binding on Buyer.

## **2. Invoices.**

Before any payment will be made by Buyer for the Goods, all invoices, packing slips, and advance shipping notices for Goods shipped pursuant to the Order must reference the Order number, Buyer's part number, quantity of pieces in the shipment, number of cartons or containers, Seller's name and number, the bill of lading number, and any other requirements of Buyer. Buyer reserves the right to return all invoices or related documents submitted incorrectly, and payment terms begin as of the date of the last correct invoice or advanced shipping notice received. Where Goods are not supplied in accordance with the Order, Buyer will be entitled to withhold payment until Seller has fulfilled its obligations in full.

## **3. Price and Taxes.**

A. The purchase price ("Price") for each Good and payment terms are set forth in the Order. If payment terms are not stated in the Order, Seller's invoices will be payable on the first Friday following the later of 60 days after the date of Buyer's receipt of the Goods or Seller's invoice.

B. Seller warrants and agrees that the Price fixed and complete, and is not subject to increase for any reason, including, but not limited to, increases in raw material or component costs (because of tariffs or otherwise), labor costs, or overhead costs. The Price may be subject to mandatory decrease if so provided in the Order. Seller is solely responsible for any and all material surcharges, transport and unloading charges and costs, packaging, labeling, customs charges and costs, taxes, tariffs, duties, storage, handling, insurance charges and costs, boxing and crating, and any other charges related to the Goods. By accepting the Order, Seller accepts the risk of any increase in costs and any other eventuality that may result in a loss to Seller, including, without limitation, with respect to tariffs. Seller may not, under any circumstances, increase the Price or refuse to perform or deliver for any reason including because of

increased costs, loss of anticipated profits, inaccurate or erroneous data used in Seller's quotations, unrealized assumptions, unforeseen circumstances (including, without limitation, tariffs), regulations, industry changes, or any other reason.

C. In addition to any right of setoff or recoupment provided or allowed by law, all amounts due Seller, or any of Seller's subsidiaries or affiliates, will be considered net of indebtedness or obligations of Seller, or any of Seller's subsidiaries or affiliates, to Buyer, or any of Buyer's subsidiaries or affiliates, and Buyer may setoff against, or recoup from, any amounts due or to become due from Seller, or any of Seller's subsidiaries or affiliates, to Buyer, or any of Buyer's subsidiaries or affiliates, however and whenever arising. If Buyer reasonably feels itself at risk, Buyer may withhold and recoup a corresponding amount due Seller or any of Seller's subsidiaries or affiliates to protect against such risk.

#### **4. Buyer's Property.**

A. All right, title and interest to all supplies, materials, Tooling, equipment, designs, drawings, specifications (including the Specifications as defined in Section 16), spare parts, trial parts, ancillary products, unique computer software required to manufacture Goods or Tooling, tool models and prints, items owned by Buyer and all other items furnished by Buyer or its Customers to Seller for use in Seller's performance of the Order, including used in the manufacture of the Goods, or for which Buyer or its Customers have reimbursed Seller or have agreed to reimburse Seller (collectively, "Buyer's Property"), will at all times be and remain the property of Buyer or its Customers. "Tooling" means any tool, die, jig, fixture, mold, pattern, template, gage, testing device, supplies, materials, or other items, including those that are purchased by Buyer or specially constructed for Buyer's or its Customer's use in the manufacture of the Goods, or parts for specific models, assemblies, or products.

B. Seller will bear the risk of loss of and damage to Buyer's Property. Seller will: (i) properly house and maintain Buyer's Property on Seller's premises; (ii) not use Buyer's Property for any purpose other than for performance under the Order; (iii) prominently mark Buyer's Property as property of Buyer; (iv) refrain from commingling Buyer's Property with the property of Seller or with that of a third party; (v) adequately insure Buyer's Property against loss or damage, including but not limited to maintaining full fire and extended coverage insurance for replacement value and naming Buyer as the loss payee and an additional insured; (vi) ensure that Buyer's Property does not become subject to any liens or other claims; and (vii) not move Buyer's Property to another location whether owned by Seller or a third party without the prior written consent of the Authorized Representative, and will obtain waivers from third parties (landlords, processors, etc.) acceptable to Buyer at Buyer's request. Buyer will have the right to enter Seller's premises at any time to inspect and recover Buyer's Property and Seller's records pertaining to it.

C. Seller expressly waives and releases, and agrees not to file or otherwise assert, prosecute or suffer to permit, any statutory, equitable or other liens, including but not limited to any molder liens, moldbuilder liens, special tool liens, artisan's liens, warehouseman's liens, and the like that Seller has or might have on or in connection with Buyer's Property or the Goods. Seller specifically waives any and all liens for work performed, including but not limited to, designing, manufacturing, improving, maintaining, servicing, using, assembling, fabricating, or developing Buyer's Property and Goods, and for amounts owed or that may become owing by Buyer. Seller hereby agrees to indemnify, defend, and hold Buyer harmless from and against any loss, liabilities, costs,

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expenses, suits, actions, claims, and all other obligations and proceedings, including without limitation, all actual attorneys' fees, costs of litigation, settlement costs, and all other costs and expenses that are in any way related to releasing, terminating, or otherwise removing any lien placed on Buyer's Property or the Goods.

D. Without limiting Buyer's remedies, at Buyer's demand, Seller will assign to Buyer any claims Seller has against third parties with respect to Buyer's Property or the Goods.

E. Seller is a bailee at will with respect to Buyer's Property, and Buyer has an absolute right to take possession of Buyer's Property at any time. Upon written request, Seller will immediately deliver Buyer's Property at Buyer's option Ex Works at Seller's facility, according to Incoterms 2010 if applicable, and properly packed and marked in accordance with the requirements of the carrier and Buyer. Seller will cooperate with Buyer's removal of Buyer's Property from Seller's premises and will remain responsible for any damage to Buyer's Property that arises prior to Buyer taking possession or accepting delivery of Buyer's Property.

F. Unless otherwise agreed to in writing by Buyer's Authorized Representative, Seller, at its own expense, will maintain, repair, and refurbish Buyer's Property in first class condition including repair necessitated by wear and tear and other usage by Seller. All replacement parts, additions, improvements, accessories, secondary equipment and materials for Buyer's Property will become Buyer's Property upon their incorporation into or attachment to Buyer's Property. Seller will pay all personal property taxes for Buyer's Property in Seller's possession or under its control.

G. Buyer has not made and does not make any representations, guarantees, or warranties of any Buyer's Property or any designs, drawings, specifications (including the Specifications), data, supplies, or materials furnished by it. Buyer expressly disclaims any warranty or representation whatsoever either express or implied, as to the fitness, condition, merchantability, design, or operation of Buyer's Property, including its fitness for any particular purpose. Seller assumes the sole responsibility for inspecting, testing, and approving all of Buyer's Property, and for verifying function, accuracy, precision, availability, and suitability of Buyer's Property, and any other materials supplied by Buyer prior to any use by Seller.

H. Buyer will not be liable for, and Seller will assume all risk of, death or injury to persons, or damage to property arising from the use of, maintenance, repair, assembly, disassembly, testing, shipping, or storage of Buyer's Property, including any materials supplied by Buyer. 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 actual attorneys' fees, costs of litigation, settlement costs, and all other costs and expenses relating to Seller's use of, maintenance, repair, assembly, disassembly, testing, shipping, or storage of Buyer's Property. Seller agrees that it will comply with obligations in these Terms and Conditions to promptly release Buyer's Property notwithstanding any offsetting claim that it may have against Buyer.

I. Seller will not, in any manner, advertise or publish that Seller has contracted to furnish Buyer with Good or use any trademarks or trade names of Buyer without the Authorized Representative's prior written consent.

**5. Material, Lot Control, and Traceability.**

Seller will maintain lot control traceability in such a manner that each shipment pursuant to the Order will be traceable through the manufacturing process and with respect to materials contained therein.

**6. Drawings and Data.**

All drawings, data, designs, engineering instructions, models, specifications (including the Specifications), or other technical information, written, oral, or otherwise, supplied by or on behalf of Buyer in connection with the performance of the Order, and all information obtained therefrom or as a result thereof, will be and will remain the property of Buyer, and will be included in the definition of Buyer's Property. Unless otherwise specified by Buyer, all such information is confidential, and Seller agrees to protect the confidentiality of the information as set forth in Section 27.

**7. Test Data.**

Prior to shipping the Goods to Buyer, Seller will provide Buyer with material certifications, statistical process control data, and all required test data as specified on the prints or other technical standards, math data, drawings, designs, and any other information relating to the Goods that evidences Seller's compliance with the specifications (including the Specifications), the Order, and these Terms and Conditions. Seller represents and warrants that all testing data and other items provided to Buyer will be true, accurate, and correct in all respects. Seller is expected to invest in and own its facilities, machinery, and other capital equipment necessary to be a world class supplier of Goods.

**8. Changes.**

A. During the performance of the Order, Seller may not make any changes in the design of the Goods to be furnished by Seller under the Order, terminate or modify the Order or any Release issued under it, or obtain an adjustment in Price for any reason without the advance request to, and written approval by the Authorized Representative. Buyer may, at any time, amend the Order or otherwise make changes to the Order, including but not limited to changes in any one or more of the following: (i) drawings, designs or Specifications for the Goods; (ii) method of shipment or packing; (iii) place or time of inspection, delivery, or acceptance; (iv) the amount of any Buyer's Property; (v) reasonable adjustments to delivery schedules; and (vi) any terms and conditions. Buyer's changes are effective only if made in writing and signed by the Authorized Representative of Buyer. Any changes are strictly limited to the changes expressly set forth in writing by the Authorized Representative. The changes will not result in any increase in the Price or extension of Seller's time for performance under the Order and will not otherwise relieve Seller of any of its obligations except as agreed by Buyer's Authorized Representative in writing.

B. If Buyer requests a change, Seller may provide Buyer with written notice of a request for an adjustment of the Price, extension of Seller's time for performance, or reimbursement of costs resulting from changes within five calendar days after Buyer's notice to Seller of the changes. Seller will provide Buyer with such additional information as Buyer may reasonably request (including invoices) in order to permit Buyer to evaluate Seller's request. After auditing Seller's request, Buyer may, in its sole discretion, make an equitable adjustment in Price (up or down), extend Seller's time for performance, or agree to reimburse Seller for costs. Seller may request reimbursement

only for actual costs incurred by Seller as a direct result of the changes as determined by Buyer in its sole discretion. In no event will Seller be entitled to any adjustment or reimbursement for overhead costs, financing expenses, lost business, or any non-direct cost or expense. Where the cost of property rendered obsolete or excess as a result of the changes is included in Seller's request for reimbursement, Seller's request may include no more than 4 weeks of raw materials and 1 week of work in process or finished Goods, and, if the request is granted, Buyer will have the right (but not the obligation) to take title to such items and prescribe the manner of disposition of them. Nothing in this section excuses Seller from timely performance of all its obligations under the Order as changed. If any materials used by Seller in making the Goods become unavailable, Seller agrees to locate a source for, and propose to Buyer, alternative materials for use in making the Goods. Buyer will, in its sole discretion, determine whether the use of such alternative materials is acceptable.

C. Buyer will receive the full benefit of all discounts, premiums, and other favorable terms of payment customarily offered by Seller to its customers. If Seller's costs for the materials used in the Goods during the term of the Order decrease, Seller agrees to promptly provide to Buyer a corresponding reduction in the Price.

## **9. Stop Work Orders.**

Buyer may at any time, by a written notice to Seller ("Stop Work Order"), stop all or part of the work under the Order until further written notice from Buyer. Buyer may, with respect to all or any part of the work covered by the Stop Work Order, either cancel the Stop Work Order or terminate the Order in accordance with the termination provisions of these Terms and Conditions. If a Stop Work Order has a material effect on cost or delivery, Seller may submit to Buyer a claim for equitable adjustment, and Buyer, after reviewing Seller's claim, may make an equitable adjustment in the Price or the delivery schedule, or both in Buyer's sole discretion. It will be the responsibility of Seller to submit a written claim for equitable adjustment to Buyer in writing within five calendar days after the Stop Work Order. The claim may include only actual costs incurred by Seller as a direct result of the Stop Work Order as determined by Buyer in its sole discretion.

## **10. Deliveries and Shipments.**

A. Seller will make deliveries under the Order in accordance with Buyer's requirements described in each Release. "Release" means any written or electronic notification to Seller, including any notice under any EDI system authorizing, directing, or requiring Seller to ship Goods under the Order. Time is of the essence for each Order and Release, and Seller's obligations relating to time for production and/or delivery of the Goods are integral parts of and conditions of the Order. Seller will not procure, fabricate, assemble, or ship any Goods except to the extent authorized by Buyer in written Releases. Unless otherwise specified on the face of the Order, no variation on the quantity of any Goods is authorized and Buyer may reject any delivery that varies in the quantity authorized for shipment. Goods shipped in advance of Buyer's delivery schedule may be returned at Seller's expense. All shipments of Goods will be FOB Buyer's plant or other designated place of delivery specified by Buyer in the Order or otherwise in writing.

B. If delivery of the Goods is likely to be delayed, Seller will notify Buyer in advance immediately after the event that may cause a delay or as soon as Seller has knowledge of a possible delay, whichever is earlier. Notice is a separate obligation of

Seller and does not release Seller from its liabilities for all costs, losses, and consequential damages resulting from incomplete or delayed delivery, and is without prejudice to Buyer's other available rights and remedies including under these Terms and Conditions and at law and equity.

C. Seller acknowledges and agrees that money damages would not be a sufficient remedy for any actual, anticipatory, or threatened breach of the Order by Seller with respect to its delivery of Goods to Buyer and that, in addition to all other rights and remedies which Buyer may have at law, equity, or under these Terms and Conditions, Buyer is entitled to specific performance, a temporary restraining order, preliminary and/or permanent injunctive relief, or any other equitable relief as a remedy for any breach by Seller, without proof of actual damages and without bond or other security being required.

D. Seller will be responsible for all Buyer's costs and losses due to Seller's failure to follow Buyer's shipping instructions. Buyer reserves the right to revise or amend the shipping instructions. If delivery is late, Seller must ship at its sole expense all late shipments by express or other priority methods of delivery as may be specified by Buyer. Seller is responsible for all costs and damages incurred by Buyer as a result of or caused by actual or threatened late delivery, directly or indirectly, including, but not limited to, production line shutdowns of Buyer or Buyer's Customers, and all costs and expenses to expedite delivery and mitigate damages.

#### 11. Quantity/Duration.

A. Subject to these Terms and Conditions, Buyer will purchase from Seller, and Seller will supply to Buyer, Buyer's requirements for the Goods unless otherwise expressly stated to the contrary in the Order or other agreement signed by an authorized representative of Buyer. If the Order expressly provides that Buyer will purchase less than 100% of Buyer's requirements for the Goods, Buyer will have the right to obtain a portion of the Goods from another source. Buyer is not required to purchase Goods from Seller if Seller is in default of the Order or these Terms and Conditions, or after the Order has been terminated in accordance with these Terms and Conditions. Continued purchasing by Buyer after a default by Seller is not a waiver or election of remedies and will be without prejudice to all of Buyer's rights and remedies.

B. Unless otherwise stated in the Order, the duration of each Order will be for the life of the program(s) into which the Goods ultimately are incorporated, including by the Customers, and any extensions of the program(s), plus applicable service and replacement parts requirements, which will extend fifteen (15) years after the completion of the program(s) for which the Goods are incorporated ("Duration"). Seller agrees to continue producing and delivering parts to Buyer under the Order and these Terms and Conditions for the entirety of the Duration, without any right to modification (including to the Price) based on changed market conditions or otherwise. Seller acknowledges that it bears the risk of (i) any extension of the life of the program(s) beyond the length contemplated when the Order is entered into, and (ii) the program(s) being cancelled. Buyer and Seller acknowledge that this subsection does not affect or otherwise change Buyer's right of termination as set forth in these Terms and Conditions.

C. From time to time and in connection with quotations, requisitions, and Orders, Buyer may provide Seller with estimates, forecasts, or projections of its future volume or quantity requirements for the Goods and/or the Duration of a program ("Projections"). Projections are not binding on Buyer. Seller acknowledges that

Projections, like any other forward-looking projections, are based on a number of economic and business factors, variables, and assumptions, some or all of which may change over time, and may or may not be accurate at the time they were made or later. Buyer makes no representation, warranty, guaranty, or commitment of any kind or nature, express or implied, regarding any Projections or other estimate, forecast, or projection provided to Seller, including as to its accuracy or completeness. Seller accepts that Projections may not be accurate, and that actual volume or duration could be less than or greater than the Projections. Seller acknowledges that this risk, and possible reward, is an aspect of the automotive industry.

**12. Customs and Origin.**

For customs purposes, Seller will prepare and expedite any and all required forms and submit them to Buyer within five calendar days of Seller's receipt of the forms. Seller will attach to the shipping documents a commercial invoice in duplicate. Should additional documents be required in order to provide proof of the intended use of the Goods delivered or for any other purpose, Seller must timely procure all of the required documents for Buyer and make them available to Buyer at Seller's sole cost and expense. Seller is bound by and warrants the accuracy of all invoices, documents, and information furnished to Buyer by Seller or its agent for export, entry, or other purposes.

**13. Electronic Data Interchange.**

At Buyer's request, Seller will connect to Buyer's electronic data interchange ("EDI") system and will comply with Buyer's guidelines and policies with respect to the EDI system.

**14. Inspection, Risk of Loss, Acceptance or Rejection, and Quality Control.**

A. Title to and risk of loss or damage to the Goods passes from Seller to Buyer at the time of delivery of the Goods to Buyer at Buyer's designated location.

B. Buyer reserves the right to inspect the Goods. Buyer may reject any Goods that are defective, damaged, non-conforming, or in breach of Seller's representations or warranties at any time. Payment to Seller will not be construed as acceptance by Buyer or agreement by Buyer that the Goods conform to the Order or these Terms and Conditions. Any inspection or testing by Buyer does not limit the continuing validity and enforceability of any of Seller's representations or warranties or relieve Seller of its obligations under the Order and these Terms and Conditions. Buyer may revoke acceptance if Buyer subsequently determines that the Goods are non-conforming or Buyer accepted the Goods with the expectation that any non-conformity would be cured, and Seller fails to timely cure. In the event of Buyer's rejection of any Goods or revocation of acceptance, for whatever reason, risk of loss or damage will be treated as never having passed to Buyer and as having rested at all times with Seller. Defective or nonconforming Goods may be returned to Seller for full credit and at Seller's sole risk, cost, and expense, including transportation to and from Buyer.

C. At any time during normal business hours, including the period of manufacture, Buyer and its Customers may inspect and/or test the Goods at the plants where Seller's work is being performed or where the Goods are being produced, manufactured, designed, and/or stored, including the facilities of Seller's suppliers, and Seller will provide, without additional charge, facilities and assistance for safe and convenient inspection and testing. Any inspection does not obviate any warranty or



constitute acceptance of the Goods or otherwise relieve Seller of its obligations under the Order and these Terms and Conditions. Nothing in this section will limit Buyer's rights of entry and inspection under Section 34.

D. Seller will provide and maintain quality control and inspection systems acceptable to Buyer. Additionally, Seller agrees to comply with the requirements stated in the International Automotive Task Force ("IATF") 16949 and International Organization for Standardization ("ISO") 9001 Standard, or any other applicable standard. Buyer reserves the right at its discretion to revise or amend its quality control and inspection systems at any time.

E. Seller must adhere to the most current automotive industry guidelines and methods, including without limitation, those provided by the Automotive Industry Action Group, Advanced Product Quality Planning, and Product Part Approval Process ("PPAP"). Seller must provide a control plan that identifies pass-through, critical, and safety characteristics upon submission for PPAP. Any Seller whose products or services are used in automotive applications, or upon request by Buyer, is required to submit IMDS information to Buyer.

**15. Notice of Labor Disputes.**

Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Order, Seller will immediately give written notice to Buyer, including all relevant information with respect to the delay or potential delay. Seller further agrees to notify Buyer in writing at least sixty calendar days prior to the expiration of any collective bargaining agreement to which Seller or any of Seller's suppliers are party. Seller agrees to insert the substance of this section in all purchase orders and subcontracts relating to the Order that are issued by Seller to Seller's suppliers.

**16. Warranties.**

A. Seller represents and warrants that all Goods and services furnished hereunder are and will be: (i) in strict compliance with the specifications, samples, drawings, designs, or other requirements (including performance specifications) approved or adopted by Buyer ("Specifications"); (ii) merchantable, of good material and workmanship, and free from all defects including but not limited to, design, workmanship, and materials; (iii) selected, designed, manufactured, assembled, and installed (as applicable) by Seller based on Buyer's intended use, and fit and sufficient for the use and purpose intended by Buyer; (iv) in strict compliance, as of the date of delivery, with all applicable industry standards, quality control and inspection standards including but not limited to, IATF 16949, ISO 9001 Standard, all similar quality system standards, and all statutes, rules and regulations, of any kind or nature, including those promulgated by any government or governmental agency in the United States and in countries in which the Goods furnished hereunder and/or the products, into which such Goods are to be incorporated, are to be used; (v) free from all liens and encumbrances; and (vi) free from all patent, trademark, copyright, trade secret, or other intellectual property right infringement or claims.

B. Approval by Buyer of Seller's designs, drawings, Specifications, and samples does not waive or limit any warranty. Seller will reimburse Buyer for all costs (including incidental and consequential damages, such as plant downtime charges incurred by Buyer's Customers, cost of replacement parts, dealer handling charges, and

any other expenses) incurred by Buyer as a result of Seller's breach of any warranty. There are no exclusions, limitations, or disclaimers of warranties. Notice of breach of warranty will be sufficient if given by Buyer within 180 calendar days after discovery by Buyer. Notice may be given orally or in writing.

C. As to each of the Goods, each of Seller's warranties in the Order and these Terms and Conditions begins on the date of delivery to Buyer and continues until the last to occur of the following: (i) the expiration of all warranties made by Buyer to its Customer(s) including those concerning Buyer's product incorporating the Goods; (ii) the expiration of the longest time period which Buyer's Customer may be required, by contract or law, to repair or replace the Goods, including Buyer's or Customer's product incorporating the Goods (iii) 5 years after delivery. The statute of limitations period applicable to any breach of warranty will be the longest statute of limitations period for breach of contract, products liability, or indemnity claims in any jurisdiction of the United States or, in the case of any Recall, the longest time period dictated by the U.S., federal, state, or foreign government where the Goods are used.

D. Seller warrants that it will sell Goods to Buyer at a cost equal to, or less than what Seller charges for such goods and services Seller offers to Buyer's Competitors. "Competitor" means any upper and/or lower tier manufacturer in the automotive industry that supplies goods to an original equipment manufacturer either directly or indirectly, including through an upper tier manufacturer. If Seller provides goods and services to an original equipment manufacturer or a Competitor at a price lower than the Price in the Order, Seller is obligated to notify Buyer and take steps necessary to Sell the Goods to Buyer at the same or lower price.

E. All warranties are intended to provide Buyer with protection from any and all warranty claims brought against Buyer by its Customers or otherwise. This includes, but is not limited to, meeting any Customer-required warranties relating to the Goods or products into which the Goods are incorporated. All such Customer-required warranties are incorporated by reference and Seller agrees to abide by all of those warranties as if the Seller were directly liable to Buyer's Customers.

F. Seller will immediately notify Buyer in writing if Seller learns of any facts, circumstances, or conditions, the existence of which causes or threatens to cause imminent breach of any warranties or interruption in Seller's production of Goods.

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

## **17. Defective or Nonconforming Goods/Breach of Warranty, Remedies.**

A. In the event of Seller's delivery of defective or nonconforming Goods, Seller's breach of any warranty, or other breach of Seller's obligations under the Order and these Terms and Conditions, or under any other documents, manuals, and specifications (including the Specifications) referenced and incorporated in the Order

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and/or these Terms and Conditions ("Breach"), Buyer may exercise one or more of the following remedies:

(i) Buyer may recover from Seller any costs of removing the Goods from property, equipment, or products in which the Goods have been incorporated, and any additional costs of reinstallation, reinspection, and retesting;

(ii) Buyer may return the Goods at Seller's risk and expense (or otherwise dispose of the Goods at Seller's sole expense; and

(a) recover from Seller the Price paid for the Goods;

(b) purchase, manufacture, or have manufactured the same or similar Goods, and recover from Seller all costs and expenses, including any costs and expenses incurred in expediting the manufacture and delivery of the replacement Goods, including all launch and start-up costs, if applicable; or

(c) require Seller, at Seller's sole expense, to promptly replace or correct the Goods and, pending redelivery, to pay to Buyer any amount previously paid for such Goods; and

(iii) accept or retain the Goods and equitably reduce the Price based on (a) the loss in value resulting from the Breach and (b) all costs and expenses, including actual attorneys' fees, incurred or likely to be incurred by Buyer as a result of the Breach.

B. In addition to Buyer's remedies set forth above, Seller is liable to Buyer for injunctive relief, lost profits, and all special, incidental, and consequential damages resulting in any way from a Breach by Seller or otherwise caused by Seller, including whether the losses or damages are caused directly or indirectly by Seller. Exercise by Buyer of any or all of its rights under this section is not an election of remedies. All remedies are cumulative of all rights of Buyer under the Order, these Terms and Conditions, and any other agreement with Seller, and Buyer's rights at law and equity.

C. The indemnification and hold harmless provisions set forth in these Terms and Conditions apply to any Breach by Seller under this section, and enforcement of such provisions is an additional remedy of Buyer.

D. Upon receipt of notice of defective or nonconforming Goods, Seller must quarantine any Goods with the same or similar defects or nonconformities and conduct a root cause analysis and implement final corrective action within five calendar days after receipt of notice.

**18. Grounds for Insecurity; Adequate Assurance of Performance.**

When, in Buyer's good faith opinion, reasonable grounds for insecurity arise with respect to Seller's performance, Buyer may demand from Seller adequate assurance of future performance. If Buyer requests assurance of performance from Seller and Seller fails to provide assurances to Buyer within twenty-four hours that Buyer, in its sole discretion, deems adequate, Buyer may, at its option, treat the Order as repudiated by Seller. In the event of repudiation, Buyer will have all rights and remedies provided in

these Terms and Conditions, in addition to all other rights and remedies provided in the Order, any other agreement with Seller, and at law or equity. Without limitation, any breach (including a Breach) by Seller under the Order or any other contract or agreement between Buyer and Seller (or any of their respective affiliates), or any breach of warranty by Seller constitutes reasonable grounds for Buyer's insecurity. Seller agrees that if Seller repudiates any Order or Release, Buyer may, in its sole discretion, elect to treat only that Order or Release as repudiated, or may elect to treat all Orders and Releases between Buyer and Seller as repudiated.

**19. Recall.**

Seller agrees to take any and all steps necessary to comply with any Recall. The term "Recall" means any systematic or limited effort to identify and locate Goods, suspected, believed to be, or known to be defective and installed in vehicles or vehicle components, and to replace, repair, modify, or correct such Goods regardless of whether the recall is initiated by Buyer, Buyer's Customer, any governmental or regulatory body, or any other entity. Seller is responsible for all costs arising from compliance with any Recall.

**20. Termination.**

**A. Termination for Convenience.**

(i) In addition to any other rights of Buyer to cancel or terminate the Order or any Releases issued under the Order, Buyer may at its option immediately terminate all or any part of the Order or any Release issued under the Order for Buyer's convenience, at any time and for any or no reason by giving written notice to Seller. Upon receipt of a notice of termination, Seller, unless otherwise directed by Buyer, is required to: (a) terminate promptly all work under the Order; (b) transfer title and deliver to Buyer the finished work, the work-in-progress, and the parts and materials that Seller procured or acquired in accordance with the Order and issued Releases; (c) settle claims by subcontractors, if any, only for actual costs that are rendered unrecoverable by the termination; and (d) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest, including Buyer's Property. If Buyer provides a notice of termination with a prospective termination date, Seller must continue producing and delivering Goods under Buyer's Releases until the termination date, and must cease all purchases, production, and other work under the Order except as necessary to meet Releases through the effective date of termination.

(ii) Upon termination for convenience, Buyer is obligated to pay to Seller only the Price for all conforming Goods that have been completed in accordance with a firm Release that meet all Specifications and warranties stated in the Order and these Terms and Conditions. Buyer will not be liable for and will not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, financing costs, product development and engineering costs, facilities and equipment, rearrangement costs or rentals, unamortized depreciation costs, or general and administrative burden charges arising from the termination of the Order.

(iii) To make a claim under this subsection, Seller must submit a comprehensive termination claim to Buyer with sufficient supporting data to permit Buyer's audit within 10 calendar days from the effective date of termination and must thereafter promptly furnish all supplemental and supporting information that Buyer requests. Buyer or its agent will have the right to audit and examine all books, records, facilities, work material, inventories, and other materials and information relating to any termination claim by Seller. Payment under this subsection will constitute the only liability of Buyer if the Order is terminated by Buyer for its convenience. Failure by Seller to timely submit a termination claim under this subsection constitutes an irrevocable waiver and release by Seller of any and all costs, expenses, claims, damages, charges, and losses incurred by Seller under and relating to the Order. In no event will Buyer be liable in any amount greater than the Price stated in the Order.

B. Termination for Default.

Buyer reserves the right to terminate the Order in whole or in part for default if: (i) Seller breaches or defaults under the Order or these Terms and Conditions (including a Breach), fails to perform in accordance with any of the requirements of the Order, or to make progress so as to endanger performance under the Order or these terms and Conditions; (ii) Seller breaches or defaults under any other agreement between Buyer and Seller; (iii) Seller breaches any warranty to Buyer under the Order, these terms and Conditions, or any other agreement, and, if Seller has a right to cure, Seller fails to promptly cure on demand; or (iv) Seller becomes insolvent or suspends its operations or if any petition is filed or proceeding commenced by or against Seller under any state or federal law related to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors. Any termination for default will be with no liability whatsoever by Buyer to Seller except for completed Goods manufactured, delivered, and accepted by Buyer in accordance with these Terms and Conditions, payment for which may be setoff by Buyer against any damages claimed by Buyer against Seller. Buyer may require Seller to transfer title and deliver to Buyer any and all Goods and other property produced or procured by Seller for performance under the Order and Seller will be credited with the reasonable value of the Goods or property, not to exceed Seller's actual cost. Seller will be liable for damages caused by or resulting from its default including, but not limited to, excess of cost of procurement or replacement goods by Buyer. Buyer will retain, in addition, all other rights arising from Seller's default provided under these Terms and Conditions, and at law and equity.

C. Because Buyer's commitments to its Customer(s) are made in reliance on Seller's commitments under this and each Order, Seller has no right to terminate the Order. By accepting the Order, Seller accepts all risks of performance. Seller acknowledges that any attempt by Seller to terminate or repudiate the Order would cause irreparable harm to Buyer and agrees that Buyer is entitled to specific performance of Seller's obligations under the Order without placing a bond or offering any proof of damages or harm.

D. Upon the expiration or earlier termination of the Order for whatever reason, Seller agrees to take such action as may be reasonably required by Buyer to accomplish the transition from Seller to an alternative supplier, including, without limitation the actions set forth below. The term "alternative supplier" expressly includes, but is not limited to, a Buyer-owned or operated facility. Among other things:

(i) Seller will provide all notices necessary or desirable for Buyer to resource the Order to an alternative supplier;

(ii) Seller will provide a sufficient bank of Goods covered by the Order, as determined by Buyer in its sole discretion, to ensure the orderly transition to any alternative supplier chosen by Buyer;

(iii) Seller will immediately return to Buyer (a) all Buyer's Property and any other property furnished by or belonging to Buyer or any of Buyer's Customers in as good condition as when received by Seller, and (b) all drawings, specifications (including the Specifications), data, and other information provided by Buyer to Seller or produced by Seller in connection with its performance under the Order; and

(iv) Seller will, at Buyer's option, for the benefit of Buyer, the alternative supplier or any other designee of Buyer: (a) assign any or all supply contracts or orders for raw material or components relating to the Order; (b) sell, at no more than the lesser of Seller's cost or the Price in the Order, any or all inventory and work in process relating to the Order, and (c) sell, at the lower of (I) the depreciated value, (II) the unamortized cost of such items less any amounts Buyer previously has paid to Seller for the cost of such items, or (III) fair market value, any or all of Seller's property relating to the Order including, without limitation, machinery and equipment.

E. Termination of the Order or any Release does not affect Seller's warranties and obligations under these Terms and Conditions including as to Goods previously delivered and obligations not dependent upon the delivery of Goods.

F. Notwithstanding anything to the contrary, Buyer's obligation to Seller upon termination of the Order will not exceed the obligation Buyer would have had to Seller under issued Releases in the absence of termination of the Order.

## **21. Limitation of Seller's Remedies and Damages.**

A. In no event will Buyer be liable to Seller for anticipated profits or for special, incidental, or consequential damages. This limitation of liability provision applies notwithstanding the type of Order (requirements or otherwise). Buyer's liability for termination is limited as set forth in these Terms and Conditions. Any other claim of any kind or any loss or damage arising out of or in connection with or resulting from each Order, the Goods, or any other agreement between Buyer and Seller is strictly limited to the Reasonable Obsolescence, if any, created by the event giving rise to the claim. Buyer and Seller agree that "Reasonable Obsolescence" means the following amounts without duplication: (i) the Order Price for all finished and completed conforming non-defective Goods that are authorized under outstanding firm Releases that have not been previously paid for; and (ii) Seller's reasonable cost of the usable and merchantable work in process and raw materials/components transferred to Buyer in accordance with the termination and that are covered by outstanding firm Releases from Buyer. Buyer will not be liable for, and will not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for any other alleged losses or costs, whether denominated as loss of anticipated profit, recoupment of investment, unabsorbed overhead, interest on claims, financing costs, damages, product development and engineering costs, facilities and equipment rearrangement costs or

rental, unamortized depreciation costs, general and administrative burden charges resulting from termination of the Order, or otherwise.

B. Seller's obligations under the Order are independent of Buyer's obligations. Seller's sole remedy for any breach or default by Buyer is the commencement of an action against Buyer for damages limited as set forth above. Seller may not under any circumstances stop work or suspend performance under the Order, cancel or terminate the Order, delay shipments, or take any other action that could interfere with production of product by Buyer or the operation of any of Buyer's or its Customer's facilities.

C. Notwithstanding the payment and Price terms applicable to the Order or Buyer's prior dealings or course of performance in paying the Price within the time specified in the Order, Seller acknowledges that Buyer is not obligated to pay for the Goods or any portion thereof before and until Buyer receives payment in full from its Customer(s) for the Goods or the products that incorporate the Goods.

## **22. Force Majeure.**

In the event of fire, accidents, government acts (excluding tariffs), war, acts of terrorism, riots, or any other extraordinary event beyond either Party's reasonable control that prevents the manufacture, transportation, delivery, acceptance, or Buyer's prompt utilization of the Goods covered by the Order, the affected Party may suspend performance by written notice effective when received by the other Party, until such event and the consequences of such event of force majeure will have terminated or have been reduced to an extent that performance under the Order is possible, or until the affected Party is able to perform despite the event of force majeure. The notice of an event of force majeure must contain the reason for any delay which the notifying Party considers to be an event under the provisions of this section. An event of force majeure does not include tariffs or events within the total or partial control of the Party giving notice including, but not limited to, poor business judgment or estimates, material cost increases, currency fluctuations, labor shortages, Seller's or its supplier's financial condition, insolvency, or lack of access to capital, or unanticipated engineering or technical difficulties. Furthermore, Seller specifically agrees that labor disputes, labor disruptions, and strikes at its facility or by its workforce at its facility do not constitute a force majeure. If any such force majeure will cause Seller to fail to deliver or otherwise perform under the Order for a period of ten calendar days or more, Buyer may terminate the Order immediately and find an alternative source (including an alternative supplier) for the Goods to be provided hereunder, all without liability or obligation to Seller. Nothing in this section limits Buyer's right to terminate for convenience at any time.

## **23. Patent, Trademark, Copyright, and Intellectual Property, Indemnification.**

A. Seller grants to Buyer a worldwide, nonexclusive, royalty-free, irrevocable, and fully assignable license to use, repair and have repaired, to reconstruct and have reconstructed, to make or have made the Goods. At no additional cost to Buyer, Seller assigns to Buyer all right, title and interest in and to all trademarks, copyrights, patents, trade secrets, industrial design rights, drawings, data, designs, engineering instructions, models, specifications, or other technical information, written, oral or otherwise, in the Goods and any related products and information prepared for Buyer in connection with the Order. Technical information and data furnished to Buyer in connection with the Order are disclosed on a non-confidential basis. To the extent that, by operation of law, Seller owns any intellectual property rights in or related to the Goods, Seller hereby

assigns to Buyer all rights, title and interest, including trademark, copyright patent, and trade secret rights, in the Goods at no additional cost to Buyer. Seller agrees to ensure that all subcontractors to Seller have contracts with Seller in writing consistent with the terms of this section.

B. Seller further agrees to defend, hold harmless and indemnify Buyer, its successors, assigns, employees, and agents, against all claims, demands, losses, suits, damages, liability, and expenses (including actual attorneys' fees) arising from any suit, claim or action for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright, industrial design right, or any other intellectual property right by reason of (i) the manufacture, use, repair, or sale of the Goods including infringement arising out of compliance with specifications furnished by Buyer (including the Specifications); (ii) breach by Seller of this section; or (iii) for actual or alleged misuse or misappropriation of a trade secret or intellectual property right resulting directly or indirectly from Seller's actions. Seller further agrees to waive any claim against Buyer, including any hold harmless or similar claim, in any way related to a claim asserted against Seller or Buyer for patent, trademark, copyright or industrial design right infringement or the like, including claims arising out of compliance with Specifications furnished by Buyer or Buyer's Customers. Upon becoming aware of any claim, demand, suit, or action, Buyer will notify Seller and Seller, at Buyer's option and at Seller's sole expense, will undertake defense of the claim, demand, suit or action through counsel approved by Buyer, provided that Seller must first obtain authorization from Buyer before any settlement is made of the claim, demand, suit or action. In the alternative, Buyer may elect to undertake the defense of the claim, demand, suit or action, to the extent it is asserted against Buyer, and Seller agrees to reimburse Buyer on a monthly basis for all expenses, actual attorneys' fees, and other costs incurred by Buyer.

#### **24. Indemnification and Insurance.**

A. In addition to all indemnification obligations in the Order, these Terms and Conditions, and any other agreement between Buyer and Seller, Seller agrees to indemnify and hold harmless Buyer, its employees, attorneys, agents, Customers, and invitees from and against all liability, demands, claims, losses, costs, damage and expenses, including actual attorneys' fees (collectively, "Claims") by reason of or on account of property damages, personal injury, death or any other Claims arising out of, as result of, or in connection with the performance of the Order and/or the Goods, including Claims which are occasioned by any defect in the Goods and/or Breach of the Order, these Terms and Conditions, and Claims caused, directly or indirectly, by any acts of Seller, its employees, agents, subcontractors, and invitees. Seller waives the application of the doctrine of comparative negligence and other doctrines that may otherwise allocate the liability covered by Seller's indemnity. Upon becoming aware of any Claim, Buyer will notify Seller and Seller, at Buyer's option, and at Seller's sole expense, will undertake defense of the Claim(s) through counsel approved by Buyer. Seller will first obtain written authorization from Buyer before settlement is made of the Claim(s), including any terms that admit the existence of a defect in Goods or a failure of Buyer to fully and faithfully perform its obligations. In the alternative, Buyer may elect to undertake defense of the Claim(s), to the extent it is asserted against Buyer, and Seller agrees to reimburse Buyer on a monthly basis for all expenses, actual attorneys' fees, and other costs incurred by Buyer. Buyer will have no obligation to Seller arising from its failure to notify Seller of any Claim.



B. Seller agrees to procure and maintain, at its sole expense, insurance with reputable insurance companies sufficient to cover Seller's liabilities under the Order, including all contingent liabilities to Buyer and third parties, including Customers. Buyer is entitled to require certain specific insurance coverage, including products liability, employer's liability, workman's compensation, general liability, public liability, property damage liability, completed operations liability, recall liability, business interruption, and contractual liability, in the amounts and on terms acceptable and approved by Buyer. Seller agrees to procure all required insurance with Buyer as a named loss payee and additional insured at Seller's sole cost and expense. Seller must provide to Buyer proof of such insurance upon Buyer's request. Such policies will provide cancellation only upon written notice to Buyer. Failure by Buyer to request proof of insurance from Seller does not constitute a waiver of the requirements in this section.

## **25. Compliance with Laws.**

A. Seller agrees to comply with all applicable international, federal, state and local laws, executive orders, rules, and regulations during the performance of the Order. Seller warrants that: (i) all Goods sold or furnished under the Order will conform to and comply with Occupational Safety and Health Administration ("OSHA") standards and regulations and all applicable Federal Motor Vehicle Safety Standards; (ii) the Goods have been manufactured or furnished in accordance with the Fair Labor Standards Act and regulations issued thereunder, the Dodd-Frank Wall Street Reform and Consumer Protection Act and regulations issued thereunder, or any successor statutes, and the Restriction of Hazardous Substances Directive; and (iii) for each chemical product or product containing a chemical substance purchased under the Order, Seller will furnish to Buyer a Safety Data Sheet ("SDS") in conformance with OSHA state and local requirements. Seller further warrants that all chemical substances delivered under the Order will conform to and comply with the Toxic Substances Control Act and regulations issued thereunder. Seller agrees to indemnify and hold Buyer and its Customers harmless for any loss, damage, or expenses sustained because of Seller's non-compliance with any applicable law.

B. Seller warrants that it will, where applicable: (i) comply with the North American Free Trade Agreement, the North American Free Trade Agreement Implementation Act, and any other applicable trade agreements; (ii) make all sales hereunder in compliance with the United States Anti-Dumping Law; (iii) comply with Article XII of the Civil Rights Act including EEOC regulations; (iv) comply with The Equal Opportunity Clause in Section 202 Executive Order No. 12466, amended, relative to Equal Employment Opportunity, and the implementing rules and regulations of the Office of Federal Contract Compliance, and Section 503 of the Rehabilitation Act; (v) comply with the Bureau of Customs and Border Protection's Customs-Trade Partnership Against Terrorism initiative; (vi) not permit the use of slavery, forced, involuntary or coerced labor, child labor, human trafficking, or sex trafficking by itself or any employee, agent, subcontractor in the operation or support of its business or the manufacture and distribution of products to Buyer; and (vii) upon request, promptly furnish certificates of local value added in accordance with government regulations pertaining thereto.

C. Seller agrees to indemnify and hold Buyer and its Customers harmless for any losses, damages, or expenses, including actual attorneys' fees, sustained because of Seller's non-compliance with the requirements of this section, or breach of any warranty in this section.

## **26. Assignment, Subcontracting.**

Seller may not assign or subcontract the Order or any work to be performed under the Order without advance written authorization by the Authorized Representative. Any attempted assignment of the Order or the work to be performed, in whole or in part, or of any other interest in the Order without the Authorized Representative's written consent is void and of no effect. Any assignment of monies due or to become due is void and of no effect to the extent that it attempts (A) to impose upon Buyer obligations to the assignee additional or different from Buyer's obligations to Seller under the Order, (B) to preclude Buyer from dealing solely and directly with Seller in all matters pertaining to the Order, including the negotiation of amendments or settlements of amounts due, or (C) to preclude Buyer from any right of setoff or recoupment arising out of this or any other transaction. In the event of any such assignment of monies due or to become due, Seller will promptly submit to Buyer a written notice of assignment and a true copy of the instrument of assignment with Buyer. Seller agrees not to subcontract for any complete or substantially completed materials, supplies and/or services called for by the Order without the prior written approval by the Authorized Representative. If Seller does use subcontractors, Seller must disclose the identity of each subcontractor and their scope of work to Buyer and ensure that all of its subcontractors are contractually bound to the Order and these Terms and Conditions so that Buyer has full recourse against the subcontractor to the same extent as against Seller. Such recourse does not relieve Seller of any of its duties, obligations, or liabilities under the Order and these Terms and Conditions.

**27. Confidentiality.**

Notwithstanding any separate confidentiality and non-disclosure agreements, Seller agrees to safeguard, preserve, and maintain the confidential nature of all know-how, trade secrets, and other confidential information disclosed to it by Buyer, including the Specifications, and all other intellectual property. Seller agrees to treat all information received by it from Buyer or Buyer's Customers as confidential unless the information is or becomes public knowledge without the fault of Seller or Buyer's Authorized Representative expressly states in writing that the information is not confidential. Seller will not disclose or otherwise make available to third parties any drawings, models, Specifications, patterns, samples, and similar objects without the prior written consent of the Authorized Representative. Seller agrees to include these confidentiality obligations to Buyer in any and all contracts with subcontractors. The terms of this provision will survive the expiration or termination of the Order.

**28. No Waiver.**

The rights and remedies of Buyer set forth in the Order and these Terms and Conditions are in addition to any other rights and remedies provided in law or equity. The failure by Buyer to exercise any rights or remedies under the Order is not a waiver of any other rights or remedies. Any delay by Buyer in exercising any rights or remedies is not a waiver or release of those rights or remedies and will not prejudice Buyer's exercise of its rights and remedies at any time. No course of dealing between Seller and Buyer modifies or waives any rights or remedies. The exercise of any right or remedy by Buyer is not an election of remedies. Every right and remedy of Buyer provided in the Order and these Terms and Conditions is cumulative, concurrent and in addition to any other further rights and remedies available in law or in equity.

**29. Choice of Law and Construction.**

The construction, interpretation and performance of the Order and these Terms and Conditions, and all transactions under or related to the Order, are governed by the law of the State of Michigan, without regard to principles of conflicts of law and subject to Section 39. The United Nations Convention on the International Sale of Goods is expressly excluded. Buyer may provide various translated versions of these Terms and Conditions for informational purposes only. However, the English language version of these Terms and Conditions will apply in the event of any disagreement over the meaning or construction of any translated version of these Terms and Conditions.

**30. Attorneys' Fees.**

If Buyer institutes or defends against a proceeding or lawsuit requiring interpretation or enforcement of the Order and/or these Terms and Conditions and prevails, Buyer will be entitled to recover its actual attorneys' fees and all costs. For purposes of this section, Buyer is deemed to prevail in any action it institutes if Buyer obtains a judgment or final order in its favor on any count or claim brought by Buyer, and Buyer is deemed to prevail in any action it defends if Buyer obtains a judgment or final order in its favor on any count or claim brought against Buyer.

**31. Identification of Components.**

Seller agrees to furnish to Buyer in writing, upon request, all information which Buyer is required to furnish to its Customers, concerning the description and identification of all components and materials incorporated into the Goods. Seller's purchase orders and contracts with its suppliers and subcontractors must include the same requirement and must also provide that this requirement be included in all purchase orders and contracts with all lower-tier suppliers, so that Seller will be able to obtain and provide to Buyer detailed information concerning every component and material incorporated in each of the Goods.

**32. Severability.**

These Terms and Conditions are severable and if any term, condition, or portion of any term or condition is stricken or declared illegal, invalid, or unenforceable for any reason whatsoever, the legality, validity, or enforceability of the remaining Terms and Conditions will not be affected thereby.

**33. Relationship of Parties.**

Seller and Buyer are independent contracting Parties and nothing in the Order makes either Party the agent, joint venturer, or legal representative of the other for any purpose whatsoever, or grants either Party any authority to assume or create any obligation on behalf of or in the name of the other. There are no third-party beneficiaries to the Order other than Customers.

**34. Rights of Entry and Inspection.**

Buyer has the right to enter Seller's facility at any time during normal business hours or, in the event of a Seller shutdown, at any time, to inspect the facility, Goods, materials and any property of Buyer. Seller agrees that Buyer may, without the necessity of a court order, enter upon Seller's property at any time and remove property belonging to Buyer or any Customer of Buyer, including, without limitation, Buyer's Property, the Goods, inventory, and any of Seller's property that Seller has sold or

agreed to sell to Buyer under the Order. Seller agrees to fully cooperate with Buyer in the removal of all of these items. Buyer's inspection of the Goods whether during manufacture, prior to delivery or within a reasonable time after delivery, does not constitute acceptance of any work in process or finished Goods.

**35. Electronic Communications and Electronic Signatures.**

Seller will comply with any method of electronic communication specified by Buyer, including requirements for electronic funds transfer, purchase order transmission, production Releases, electronic signature, and communication.

**36. Tooling Specific Provisions.**

A. Seller agrees to use computer aided design ("CAD") to perform and provide complete color scans with overlays to the Goods being produced by the Tooling including core, cavity, all critical features, and datum features for both the Goods being produced by the Tooling and the Tooling, and any other items requested by Buyer.

B. Seller will provide Buyer with a minimum of three (3) production trial runs ("PTR") for each Tool. Each PTR will produce at least 50 separate Goods that are to be produced by the Tooling. Seller will be liable for all costs under this section, including any shipping costs. All Tooling must be accompanied by flow analysis report certified by an expert approved by Buyer and final cool and warp reports with respect to the Goods being manufactured by the Tooling. Seller may not ship or invoice Tooling until it has performed, at a minimum, an 8 hour, uninterrupted, and continuous PTR that produces Goods that do not contain any Tooling related defects at the location and equipment as indicated on the Order or otherwise specified by Buyer ("Home Line Press"). Seller agrees that all Tooling will include protection sensors and metered valve gates unless Buyer agrees otherwise via written approval from an engineer designated by Buyer with respect to the Tooling ("Tooling Engineer").

C. Seller acknowledges that it is required to have an onsite representative ("Tooling Representative") available for Tooling support. The Tooling Representative is required to (a) attend an initial 8 hour PTR on the Home Line Press; (b) participate in all dimensional and appearance approval validations, including any pre-grain and post-grain events; (c) provide onsite support during any PTRs to support production validation; (d) participate in grain approval, scribe lines, assembly, logistics, or re-assembly during grain process or otherwise; and (e) provide any additional support for Tooling related processes as reasonably requested by Buyer. Seller further acknowledges that it is required to employ a program manager acceptable to Buyer in its sole discretion that has a minimum of five years of relevant experience ("Program Manager"). A Program Manager will be assigned by Seller to each item of Tooling beginning at the initiation of feasibility studies.

D. In addition to all of Seller's obligations under the Order and these Terms and Conditions, Seller is liable for all damages and costs to Buyer resulting from Tooling that does not meet all of Buyer's requirements under the Order, the Tooling Standards, and the Terms and Conditions, including the Specifications. "Tooling Standards" means any purchasing or supplier manuals, guidelines, and addendums that relate to an Order for Tooling, which are available and updated from time to time on Buyer's website, and are expressly incorporated herein. Buyer may debit Seller for all costs and damages it incurs as a result of Seller's breach of the Order, the Terms and Conditions, and the Tooling Standards related to Tooling that does not meet its requirements, including the

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Specifications, including any incidental and consequential damages, injuries, and any other damages incurred by Buyer or its Customer(s), including for line or build stoppages and any other production delays. Seller will reimburse Buyer for costs related to Buyer's completion of any of Seller's obligations and, in addition to Buyer's other setoff rights under these Terms and Conditions and at law, Buyer may reduce, or otherwise offset, against the price under the Order for its performance of Seller's obligations. This section does not limit any of Buyer's other rights or remedies in the Terms and Conditions or at law.

E. Seller agrees to maintain all relevant documentation related to Tooling, including but not limited to, design, manufacturing, specifications, inspections, validations, and any other documentation that Buyer or its Customer, from time to time, may request Seller to preserve. Seller agrees to prepare and maintain a folder or other commercially acceptable form of document organization for each separate item of Tooling ("Tooling Folder"). The Tooling Folder must contain all information regarding timing status, manifold, program management, and any other documents related to Tooling validation, processing, or quality. Seller agrees to keep the Tooling Folder confidential and acknowledges that it is liable for any breach of this section as provided by these Terms and Conditions.

F. Seller is responsible for all costs of any changes or modifications (such as gate fixes, pulls, blushes, vestige, etc.) that might be required to meet Buyer's or Customer's Tooling Standards ("Tooling Alterations"). Seller may submit improvements and cost items other than Tooling Alterations to the Tooling Engineer, and Buyer will determine whether to approve the improvements and costs items in its sole discretion.

G. Seller agrees to perform the following with respect to each item of Tooling (collectively, "Validation Requirements"):

- i. design for manufacturing ("DFM"), Tool Cool lubricant, or another commercially acceptable tool lubricant subject to Buyer's approval, tool warp analysis, and product feasibility assessments;
- ii. for first time shot molding processes such as T0, T1, and T2, and any additional shots ("Shots") needed to close all open Tooling performance and product quality related issues;
- iii. any and all dimensional, appearance, and physical quality requirements as specified by Buyer or its Customers;
- iv. meet the cycle time as quoted and specified by Buyer or its Customers ("Required Cycle Time") consistently and with process capability of 1.67 or better, subject to Buyer's approval; and
- v. every Tool must run trouble-free, as determined by Buyer or its Customer, for 3,000 dry run cycles at the Required Cycle Time.

Buyer reserves the right to increase, limit, supplement, or otherwise amend the Validation Requirements, including so that Buyer can meet its obligations to its Customers.

VI. Each Order for Tooling is a separate Order and any disputes related to such Order are a separate and distinct issue from any other Order for Tooling

with Seller, and such disputes that may arise from time to time, will not affect, limit, or abridge Seller's obligations with respect to any other Order for Tooling or otherwise. Notwithstanding the above, Seller's acceptance of the Order, as provided in these Terms and Conditions, obligates Seller to negotiate additional Orders for Tooling in good faith. Buyer may submit requests for quotes ("RFQs") to Seller and may request additional information regarding feasibility and timing. Seller must respond to any RFQs marked urgent within 24 hours.

vi. Notwithstanding the payment terms in the Order, or any progress payments or otherwise by Buyer to Seller, Buyer will have no obligations under an agreement to pay for Tooling unless: i) Seller completes all Required Validations; ii) Seller meets the Required Cycle Time to Buyer and Customer's satisfaction; iii) the Tooling conforms to the after action review samples and Customer's Production Part Approval Process; d) the Part Submission Warrant is properly executed and approved by Customer(s); and e) Buyer receives payment in full for Tooling or related end goods from its Customer.

### **37. Non-Solicit, Non-Disparagement.**

Seller agrees that during the Restricted Period (defined below), it will not, without the written consent of the Authorized Representative, directly or indirectly, including causing, encouraging, directing, or soliciting any other person to, (A) contact, approach, or solicit for the purpose of offering employment to or hiring (whether as an employee, consultant, agent, independent contractor, or otherwise) or actually hire any person who is or has been employed or retained in the operation of the Buyer's business by the Buyer during the period commencing two years before the date of the beginning of the relationship between the Parties and ending on the date three years after a termination under these Terms and Conditions ("Restricted Period"), or (B) induce, interfere with, or solicit, or attempt to induce, interfere with, or solicit, any person that is a current or former Customer, supplier, or other business relation of the Buyer into any business relationship that might harm the Buyer's business, including in any manner seeking to perform work (including by Seller or in association with any person) for any current, former, or prospective Customer of the Buyer.

Seller agrees not to disparage the Buyer or its past and present officers, directors, shareholders, employees, attorneys, consultants, representatives, or any of its or their respective affiliates or subsidiaries, including, without limitation, with or to any Customer, potential customer, governing body, trade organization, or other suppliers or potential suppliers to Buyer. The covenants set forth in this section will survive indefinitely.

### **38. Audit Rights, Financial Information, and Financial Health Assessments.**

If requested by Buyer, Seller will permit Buyer and/or its designees to: (A) examine all pertinent documents, data, and other information relating to the Goods, Buyer's Property, Tooling, Seller's obligations under the Order, any payment made to Seller, any claim made by Seller, and any quotes, invoices, or similar materials from Seller's own suppliers or subcontractors including with respect to Tooling; (B) view any facility or process relating to the Goods or the Order, including those relating to production quality; and (C) audit any facility or process to determine compliance with the requirements of the Order and these Terms and Conditions. If requested by Buyer, Seller will timely provide to Buyer, or its agents, its most current income statements, balance sheets, cash flow statements, and supporting data and schedules, including loan documents, and will timely complete and return to Buyer, or its agents, any financial

health assessments or similar type of forms when requested by Buyer. Seller will retain all information related to the Goods for the duration of the applicable warranty described in these Terms and Conditions, plus an additional year unless a different time is approved in writing by the Authorized Representative. Seller must prepare and submit to Buyer a contingency plan for continuity of supply of Goods in the event of a major disruption such as a force majeure, natural disaster, fire, utility interruption, labor shortage, or infrastructure disruption.

**39. Arbitration and Forum Selection.**

A. Notwithstanding Buyer's exclusive right to seek injunctive and/or equitable relief as described herein, any disputes arising from the Order or these Terms and Conditions, including any and all actions or suits by Seller in law or equity, will be finally settled by arbitration before the American Arbitration Association, Detroit, Michigan, pursuant to its commercial arbitration rules then in effect. The decision of the arbitrator will be final and binding upon Buyer and Seller. Any decision by the arbitrator will not be appealable, and judgment on the award rendered may be entered in any court of competent jurisdiction.

B. Buyer may, without waiving any remedy under the Order or these Terms and Conditions, seek from any court of competent jurisdiction (a) injunctive and/or equitable relief (including specific performance, preliminary injunctions, and/or temporary restraining orders), and (b) any other relief that is necessary to protect the rights or property of Buyer.

C. Any legal action for injunctive and/or equitable relief by Buyer for or related to the Order may be initiated and prosecuted, at Buyer's option, either in the Oakland County Circuit Court located in Pontiac, Michigan or in the United States District Court for the Eastern District of Michigan, Southern Division, or in any court having personal jurisdiction over Seller or any other defendant. Seller consents to jurisdiction and service of process in accordance with applicable procedures and agrees that a judgment or award against it resulting from any lawsuit or proceeding will be conclusive and binding upon it and may be enforced in any other domestic or foreign jurisdiction.

**40. Waiver of Jury Trial.**

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

Revision History Log

Date	Description of change	Reason for changes
06/28/2018	Paragraph 24 updated- added requirements for ISO 9001/TS16949/IATF 16949, ISO 14001 and other OEM requirements	To communicate end customer requirements to supplier
05/22/2023	Deleted TS16949 word as this is obsolete standard for automotive industry	TS16949 is Obsolete standard
08/05/23	Reviewed terms and conditions document, revised entire document and added Tooling validation requirements section 36G	Complete Review of terms and conditions document and tooling validation requirements was not part of the document