

**Preh, Inc.**  
**General Terms and**  
**Conditions of Purchase**



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# 1. Scope and Acceptance

## (a) Scope

These General Terms and Conditions of Purchase (“Terms”) automatically apply to and are a part of all written and oral purchase orders and amendments thereto and any request for quotation, Releases (as defined below), purchase agreements, supply agreements or similar documents issued to Seller by Buyer (collectively referred to as an “Order”). All goods and services (whether or not ancillary to a sale of goods) such as production and service parts, raw materials, equipment, tooling, engineering and design only, components, intermediate assemblies, work in process, and end products to be provided under an Order are included in the term “Goods.” The Buyer named above may from time to time administer purchasing for its Affiliates and issue Orders containing its name or logo, but identifying a different Buyer. No such Order shall constitute or be interpreted to represent an Order of the Buyer named above it or a guaranty by the Buyer named above of any obligations or liabilities of the Affiliate as identified on an Order as the Buyer.

## (b) Offer and Seller’s Acceptance

Each purchase order, together with these Terms, is an offer by Preh, Inc. or its applicable Affiliate (each a “Buyer”) to the party to whom such Order is addressed and such party’s applicable Affiliates (“Seller”) to enter into the agreement it describes. It shall be the complete and exclusive statement of such offer and agreement and it is not an acceptance of Buyer’s quotation or other document. A purchase order is an offer by Buyer but not a firm offer and may be revoked prior to acceptance. Notwithstanding the foregoing, Buyer may elect at any time to consider Seller’s oral acceptance, Seller’s preparation to provide the Goods, or Seller’s delivery of the Goods, as an acceptance of a purchase order and its terms (and of no other terms) and to enforce an Order. An “Affiliate” is an entity directly or indirectly controlled by a party or an entity which is directly or indirectly under common control within a party. “Control” means at least a 25% voting or management interest.

## (c) Inconsistent or Additional Seller Terms

Buyer objects to any additional or inconsistent terms in an offer, acceptance, or other communication from Seller and only these Terms and any other terms set out in an Order shall be binding upon the parties. No objection to these Terms or reservation of rights by Seller shall be effective. If these Terms are inconsistent with the specific provisions of any Order, then the specific provisions of an Order will control. No course of performance or dealing by the parties shall be construed to waive, modify or otherwise adversely affect Buyer’s rights or Seller’s obligations.

## (d) Website Provisions

An Order also includes other provisions applicable to the Buyer’s purchase of Goods, which may be found on the Buyer’s general website or Buyer’s supplier website or portal at <http://www.preh.com> under Supplier Information (together, the “Buyer Guides”). In the event of a conflict between any Buyer Guides and these Terms, these Terms shall govern. Buyer may modify any Buyer Guides at any time by posting notice of such modified or new Buyer Guides through links provided on Buyer’s website. Seller shall review Buyer’s website and the Buyer Guides periodically. Seller’s continued performance under an Order without providing written

notice to Buyer in accordance with these Terms detailing Seller's objection to any modified or new Buyer Guide prior to the effective date of such modified or new Buyer Guide will be subject to and will constitute Seller's acceptance of such modified or new Buyer Guide as to all performance to be provided by Seller after their effective date.

## **2. Duration of Order**

### **(a) Initial Term**

If no "Initial Term" or other specific term is stated in an Order it shall continue until terminated by Buyer on 30 days' notice or otherwise terminated as provided by these Terms or a specific provision in a purchase order. Expiration or termination of an Order shall not affect warranty and other obligations which by their nature may continue beyond an initial obligation to provide the Goods. If a specific term is stated in an Order it shall continue for such period and then expire.

### **(b) Extended Term**

Buyer, at its option, may extend the term of an Order for up to six months beyond the scheduled expiration date of the Initial Term ("Extended Term"). If the Extended Term is elected, an Order will expire at the end of the Extended Term. Buyer will provide Seller with written notice of any Extended Term on or before the expiration date. The written notice will specify the Extended Term (up to six months) and include a non-binding volume projection of Buyer's needs. Prices in effect at the end of the Initial Term or Renewal Term and all other terms and conditions will remain in effect during the Extended Term. If a transition period longer than the Extended Term is required, Buyer and Seller will negotiate in good faith the terms and conditions of any further extension.

## **3. Prices, Payment, Audit, and Security Interest**

### **(a) Pricing and Invoices**

Seller shall furnish the Goods at the prices in an Order. All prices are firm. No price increases will be permitted, including but not limited to price increases to cover increases in the cost of raw materials, parts, components, fuel, energy, labor, supplies, overhead, or transportation. All prices are in U.S. dollars and DDP destination Incoterms 2010. Seller warrants that the price in an Order shall be complete, and no additional charges of any type, including but not limited to, current or increased costs of materials, labor, packaging, labeling, custom duties, taxes, storage, insurance, boxing and crating shall be added for any reason without Buyer's express written consent. Seller shall supply a reasonable number of Goods for testing without charge.

### **(b) Payment Date**

Unless otherwise stated on the face of an Order, payment terms are due net 60 days from the date Goods are delivered.

### **(c) Customs Invoice**

Buyer, at its option, may extend the term of an Order for up to six months beyond the scheduled expiration date of the Initial Term (“Extended Term”). If the Extended Term is elected, an Order will expire at the end of the Extended Term. Buyer will provide Seller with written notice of any Extended Term on or before the expiration date. The written notice will specify the Extended Term (up to six months) and include a non-binding volume projection of Buyer’s needs. Prices in effect at the end of the Initial Term or Renewal Term and all other terms and conditions will remain in effect during the Extended Term. If a transition period longer than the Extended Term is required, Buyer and Seller will negotiate in good faith the terms and conditions of any further extension.

### **(d) Taxes**

Seller’s price includes all payroll and occupational taxes, excise taxes, value-added taxes that are not recoverable by Buyer, and, except with the written consent of Buyer, all other taxes, fees, duties, tariffs or other charges applicable to the Goods under the applicable Incoterm or other delivery term; provided, however, that any national, state/provincial and local sales, use, excise, recoverable value added, and/or privilege taxes, if applicable, will be identified on Seller’s invoice separately from the price. If Seller is obligated by law to charge any excise, value-added and/or similar tax to Buyer, Seller shall ensure that it is invoiced to Buyer and once collected is promptly remitted by Seller to the appropriate government authority, all in accordance with applicable rules so as to allow Buyer to reclaim such excise, value-added and/or similar tax from the appropriate government authority. Seller transfers to Buyer all taxes, fees, and duties which are recoverable by Seller and shall cooperate with Buyer to enable Buyer to recover such sums. Neither party is responsible for taxes on the other party’s income or the income of the other party’s personnel or subcontractors. If Seller is exempt from withholding taxes on such income as a result of a tax treaty or other regime, Seller shall provide to Buyer a valid tax treaty residency certificate or other tax exemption certificate at least 30 days prior to payment being due. All Orders for Goods produced in Mexico and other countries with maquila or IMMEX programs shall be processed under such programs as may be requested by Buyer.

### **(e) Data**

The efficient use by Buyer of any Goods provided for under this Order may require that Data be delivered to Buyer. “Data” includes, without limitation, manuals, drawings, reproductions, specifications, software, photographs, reproducible copy, parts lists, plans, reports, computations and certifications. Seller shall deliver Data to Buyer no later than the specific time specified in an Order, and if none, then the beginning of delivery of the Goods. The term Goods includes Data.

## **4. Releases, Quantities and Blanket Order**

### **(a) Releases**

If an Order is described as a “Blanket Order” or in some other manner which indicates Buyer’s obligation to purchase is limited to those Goods and quantities in releases or other written delivery instructions from Buyer (“Blanket Order”), the quantities and delivery dates in an Order are not binding on Buyer, and Buyer’s obligation to purchase the Goods is expressly contingent upon the issuance of a release or other written delivery



instructions (“Releases”) by Buyer identifying the Goods and materials and quantities to be purchased and providing delivery schedules and directions. A Release shall be part of the applicable Order. All Orders for Goods used both in production by Buyer or its Customer, or in and for their corresponding service and replacement parts, are presumed to be Blanket Orders. As to a Blanket Order, Seller shall not provide any services, fabricate or assemble any Goods, procure required materials, nor ship any Goods, except to the extent specifically authorized by an Order or by written Releases. Seller shall maintain at its expense and risk components, materials and finished Goods necessary to assure a continued supply of Goods at the latest design level. Subject to change by Buyer’s Releases, Seller is authorized to fabricate and assemble up to four weeks of finished Goods inventory and acquire up to an additional eight weeks of component and materials inventory based on Buyer’s latest Releases. Releases may be modified by Buyer at any time to the extent not contrary to specific terms of an Order. Buyer shall be obligated only to purchase Goods and those components and materials fabricated or acquired by Seller in reliance on the firm periods provided above or otherwise in a Release that establishes a firm or fixed quantity. Notwithstanding anything to the contrary in an Order, Seller is obligated to provide quantities as required in Releases issued to Seller. A provision providing for Seller to provide a percentage or range of percentages of Buyer’s requirements is not a guarantee of any specific quantity of Goods that must be purchased by Buyer and the actual range of purchases pursuant to Releases can be substantially different from the percentages given without any change in the obligation of Seller. Notwithstanding anything to the contrary and if required by law for the enforcement of a Blanket Order, Buyer shall be obligated to purchase prototype Goods and Goods for manufacturing process testing and Goods indicated as firm in Releases at their cost of direct labor and materials. Buyer may temporarily suspend delivery or modify delivery dates for firm or fixed quantities. Buyer may return shipments in excess of quantities released or ordered to Seller at Seller’s expense for all packing, handling, sorting and transportation charges. Seller acknowledges and agrees to accept the risk associated with the lead times of the various components if they are beyond the firm Release quantities provided by Buyer. Releases are included in the term “Order.”

### **(b) Period**

If a Blanket Order has no specific period of validity, the obligation of Seller to sell under the prices and other terms of a Blanket Order continues during the periods in which Buyer issues Releases. Buyer has and/or will rely upon Seller’s obligations to sell under an Order. The inclusion in an Order of prices for periods beyond the term of any firm period of commitment in an Order obligates Seller to accept a new or renewed Order at such prices, but is not an implied extension of any commitment of Buyer to purchase. If an Order contains a specific period of validity, the obligation continues for the period covered by an Order and thereafter for a reasonable time at the prices in effect at the end of such period after written notice by Seller that it will no longer supply under such prices, so that Buyer may resource supply of the Goods.

### **(c) Seller’s Obligations**

A reference in a Blanket Order to a quantity is an estimate based upon information from Buyer’s Customer or other sources and is not a guarantee of the quantity to be purchased. A reference to production Goods included in an Order for tooling or other non-production Goods, is to obtain a warranty of performance of the Goods to be produced with the non-production Goods, and is not an obligation for the issuance of an Order for any production Goods or for a particular quantity of production Goods. A reference in an Order to a minimum or maximum quantity of production of Goods is a warranty by Seller of its commitment to maintain the indicated production levels, and is not a guarantee of a quantity of Goods to be ordered by Buyer.

#### **(d) Capacity**

Seller shall maintain a 100% on time delivery record and other Order requirements. Seller is responsible for any costs incurred to comply with Buyer's Releases. Seller shall maintain production and delivery capacity so that deliveries can be made in accordance with Buyer's Releases.

#### **(e) Requirements and Minimum Quantities**

If an Order is for Buyer's requirements or portion thereof without specifying a specific minimum and/or maximum quantity, Buyer is not obligated to purchase more than its requirements or stated portion thereof for the Goods during the term of the Order, as determined by Buyer in its discretion, for the Goods. As additional compensation to Seller for its supply obligations under the Order and any deemed option of Buyer to purchase or not purchase Goods, and as Seller's exclusive remedy, Buyer shall pay to Seller a fee of \$100.00 upon a demand from Seller made within 90 days after notice from Buyer that there will be no Releases or new additional Releases by Buyer, subject only to the purchase obligation in Subsection (a) above. This provision shall not affect Buyer's obligations to purchase under other provisions such as on termination for convenience.

#### **(f) Volume and Duration Projections**

From time to time and in connection with quotations, requisitions, Orders, and Releases, Buyer may provide Seller with estimates, forecasts or projections of its possible future volume or quantity requirements for the Goods and/or the term of a program ("Volume and Duration Projections"). Volume and Duration Projections, unlike a Release for a firm quantity, are not binding on Buyer. They are also not evidence of a requirements contract or Buyer's requirements as those terms are used in Subsection (a) above. Seller acknowledges that the Volume and Duration 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 Volume and Duration Projections or other estimate, forecast or projection provided to Seller, including as to its accuracy or completeness. Seller accepts that Volume and Duration Projections may not be accurate and that actual volume or duration could be substantially less than or greater than the projections. Seller acknowledges that this risk, and possible reward, is an aspect of the industry in which Seller and Buyer operate.

#### **(g) Claims**

All claims related to Buyer's alleged failure to comply with obligations to release and/or purchase firm or other quantities must be made in writing within 120 days of date such claim accrues or it is barred.

## **5. Delivery**

#### **(a) Delivery**

Delivery must be on the date indicated in an Order (including Releases), if any, unless otherwise directed by Buyer. If an Order is a Blanket Order or if no delivery schedule is provided, deliveries are to be made only in quantities and at times specified in Releases as they may be amended by Buyer. Buyer shall have no liability

for payment of Goods delivered to Buyer which are in excess of firm quantities specified in an Order (including Releases). Buyer may, from time to time, change delivery schedules or direct temporary suspension of scheduled shipments without additional charge. Time is of the essence as to delivery and other performance by Seller.

### **(b) Condition of Goods**

All Goods shall be delivered clean and ready for further processing. If any rust inhibitor or other chemical protection is required, it must be water soluble and approved by Buyer in writing prior to use.

### **(c) Shipping Charges**

All shipping, drayage, demurrage, storage, insurance, export and import duties and fees, tariffs and other charges, packing, and related charges shall be paid by Seller. If Buyer is specifically responsible for such charges according to the terms of an Order, they shall be prepaid by Seller, and then billed to Buyer. If Buyer is obligated to pay for shipping, Seller shall pay for all extra charges incurred because of Seller's failure to follow Buyer's shipping instructions, including those related to delivery schedules, whether or not Seller's liability for general damages is limited under other provisions of an Order.

### **(d) Packaging**

All Goods shall be suitably packed at Seller's cost to avoid damage, marked and shipped in accordance with the requirements of Buyer, if any, and of common carriers in a manner to secure the lowest transportation costs consistent with the required delivery schedules and to ensure the Goods arrive in good condition at the final destination. No additional charge shall be made to Buyer for packaging or shipping. All returnable dunnage and packaging shall be marked as such with the address to which it is to be returned.

### **(e) Documentation**

Packing slips identifying an Order number, release number and part number must accompany each shipment in an envelope marked "packing slip enclosed." Seller shall mark each package with an Order number, and where multiple packages comprise a single shipment, each package shall be shown on packing slips, bills of lading and invoices. Seller shall describe the Goods on the bill of lading or other shipping receipt and route shipments, in accordance with other instructions issued by Buyer, if any.

### **(f) Marking**

Seller shall mark Goods, packaging and packing as instructed by Buyer, including but not limited to, any parts branding requirements and the Automotive Industry Action Group ("AIAG"). Seller shall mark Goods in accordance with legal requirements (including, but not limited to, markings to discourage theft, to show compliance with country of origin and environmental law). Markings shall be in English (provided that if required by applicable law, Seller shall mark Goods, packaging and packing both in English and the language required by applicable law), AIAG format bar code, including completed fields for part number, container quantity, shipping date, and a unique serial number, and such other form as determined by Buyer.

### **(g) Expedited Delivery**

Seller shall pay all express and other charges necessary to speed delivery to enable Seller to meet the delivery

schedule. Seller shall ship all late shipments by express or other priority methods of delivery at its expense, as requested by Buyer.

### **(h) Delivery Materials**

Seller shall be responsible for the cleaning, replacement and repair costs of any reusable dunnage, delivery cartons or other materials delivered to Seller by Buyer or its Customer.

## **6. Risk of Loss and Title to Goods**

### **(a) Risk of Loss**

All shipments are at the risk of Seller until receipt at Buyer's location or other final destination designated in an Order or other writing by Buyer, regardless of the delivery point pursuant to the delivery terms unless risk is otherwise assumed by Buyer in writing. Seller shall insure the Goods at their replacement value for the benefit of Seller and Buyer as their interest may appear and provide to Buyer proof thereof. If risk of loss is assumed by Buyer, all risk casualty insurance for replacement value must be provided by Seller for the benefit of Buyer. The cost of any insurance shall be paid by Seller unless otherwise agreed in writing by Buyer. Under no condition will the risk of loss be that of Buyer, unless such insurance is provided. Risk of loss shall not be governed by transfer of title.

### **(b) Title to Goods**

Title to all Goods shall vest in Buyer the earlier of the date of an Order and their identification to an Order. Identification shall occur not later than the date Seller acquires or begins manufacture of the Goods. Buyer's obligation to pay for Goods is limited by terms of an Order. Seller shall pay all taxes related to ownership, possession or storage of the Goods until Buyer takes possession of the Goods whether or not title has transferred.

### **(c) Right to Possession**

Buyer has the right to possession of all Goods at all times from the time the Goods are identified to an Order whether or not Seller is in default subject to Buyer's obligation to pay for the Goods upon obtaining possession. This right is separate and apart from any security interest.

## **7. Changes**

### **(a) Required Changes and Requests for Adjustments**

Buyer reserves the right at any time to make changes in drawings, specifications, testing or quality control, packing, shipment, scope of work and other specific terms of an Order. The specifications shall include those in an Order and any statement of work or statement of requirements issued by Buyer or its Customer. Any purported change shall be binding on Buyer only if made in a written Order amendment from Buyer. Any diffe-

rence in price (higher or lower) or time for performance necessarily resulting from such changes shall be adjusted and an amendment to an Order shall be provided by Buyer in writing, if Seller makes demand for such adjustments and delivers all supporting documentation within ten days of receipt of Buyer's written notice of change or withdrawal of suspension. Time is of the essence for such demand. Notwithstanding anything to the contrary, the price shall be adjusted solely to compensate Seller for increased costs of materials and other direct production costs (excluding overhead and profit) necessarily incurred as a result of the changes, and the terms for performance shall be adjusted only for the period actually required to comply with the changes. Seller shall diligently perform all Orders and all changes while its claim is being evaluated and during any period of dispute regarding requested adjustments. Any such claim by Seller for adjustment to time for performance or cost under an Order must be solely and directly the result of the change directed by Buyer and any notice of such claim shall be effective only if accompanied by all relevant information sufficient for Buyer to verify such claim. Buyer shall have the right to audit all relevant records, facilities, work or materials of Seller to verify any claim. Seller shall consider and advise Buyer of the impact of a design change on the system or assembly in which the Goods covered by an Order are used. Nothing in this Section shall excuse Seller from proceeding promptly with an Order as changed.

### **(b) Limitation on Changes**

Without the prior approval of Buyer on the face of an Order amendment Seller shall not make any changes to any Order or the Goods covered by an Order, including, without limitation, changing: (i) any third party supplier to Seller of services, raw materials or goods used by Seller in connection with its performance under an Order, (ii) the facility from which Seller or such supplier operates, (iii) the price of any of the Goods covered by an Order, (iv) the nature, type or quality of any services, raw materials or goods used by Seller or its suppliers in connection with an Order; (v) the fit, form, function, appearance, performance of any Goods covered by an Order; or (vi) the production method, or any process or software used in the production or provision of any Goods under an Order. Any changes by Seller to any Order or the Goods covered by an Order without the prior approval by Buyer on the face of an Order amendment or in a signed writing by an officer of Buyer shall constitute a breach of an Order.

## **8. Quality and Inspection**

### **(a) Validation and PPAP**

Seller shall comply with all requirements necessary to complete timely Buyer's, Buyer's Customer's and the eventual original equipment manufacturer's validation of the Goods including but not limited to the production part approval process as adopted from time to time (collectively, "PPAP").

### **(b) Non-Conforming and Defective Goods**

Seller shall not ship non-conforming or defective production Goods to Buyer unless Buyer has delivered to Seller a written acceptance of permitted written deviation. Acceptance of a deviation by Buyer does not waive any warranty obligation of Seller. Defective Goods and Goods otherwise not in conformity with Buyer's specifications or an Order may be held by Buyer pending Seller's instructions at Seller's risk and expense and,



if Seller so directs, may be returned at Seller's expense; provided, if Seller fails to provide written instructions within seven days of notice, Buyer may return the Goods freight collect or otherwise dispose of them at Seller's expense and without liability to Seller. Goods returned as defective or non-conforming shall not be returned to Buyer and shall be replaced within 24 hours with new Goods unless instructed otherwise by Buyer. Buyer has the option to reduce the quantity of Goods that Buyer may be obligated to purchase by the quantity returned to Seller or otherwise disposed. Payment for the Goods prior to inspection shall not constitute an acceptance thereof or waive Buyer's right to revoke acceptance. Acceptance, whether or not it has been revoked, shall not release Seller's responsibility for defects, non-conformities, warranty or other claims. At Buyer's request, Seller shall provide a failure analysis report in the format requested by Buyer specifying the reason for failure of any rejected product. Seller shall in good faith work to resolve problems that impact the Goods, regardless of the actual or suspected root cause of the problems. If Buyer inspects Goods prior to use, Buyer may reject an entire shipment on the basis of sampling testing. Seller shall also provide Buyer with convincing evidence that any error or failure within Seller's control will not reoccur.

### **(c) Defects and Correction**

Seller shall provide Goods with zero percent defects. Seller shall maintain a capability process to meet this and other requirements of an Order and maintain control of those processes. Seller shall be responsible for all costs resulting from the receipt of the defective Goods, including but are not limited to, containment, sorting, rework, scrap, returns to Seller, returns and fines from Buyer's Customer, value-added to the parts by Buyer, down time and transportation.

### **(d) Certain Administrative Charges**

The efficient use by Buyer of any Goods provided for under this Order may require that Data be delivered to Buyer. "Data" includes, without limitation, manuals, drawings, reproductions, specifications, software, photographs, reproducible copy, parts lists, plans, reports, computations and certifications. Seller shall deliver Data to Buyer no later than the specific time specified in an Order, and if none, then the beginning of delivery of the Goods. The term Goods includes Data.

## **9. Maintenance and Safe Use**

Seller shall provide to Buyer with the Goods, in English (with any translation required by any applicable law) and in writing, all information necessary: (a) for the safe installation, use, maintenance and repair of the Goods; and (b) to maximize the efficient use and useful life of the Goods. Prior to and with the shipment of the Goods, Seller shall furnish to Buyer sufficient warning and notice in writing (including material safety data sheets and appropriate labels on the Goods, containers and packing) of any hazardous material that is an ingredient or a part of any of the Goods, together with such special handling instructions as may be necessary to advise carriers, Buyer, Customers if applicable, and their respective employees, how to exercise that measure of care and precaution that will best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the Goods, containers and packing shipped to Buyer. If requested by Buyer, Seller shall promptly furnish to Buyer in such form and detail as Buyer may direct, in addition to standard material safety data sheets: (i) a list of all ingredients in the Goods; (ii) the amount of all ingredients; (iii) information concerning any changes in or additions to such ingredients; and (iv) other information required by International Material Data Systems.

## 10. Confidentiality and Intellectual Property

### (a) Confidentiality

At all times prior to, during and after an Order, Seller shall: (i) maintain the confidentiality of any information disclosed by Buyer or any parent, Affiliate, Customer and contractor, including for example only, any technical, process or economic information derived from drawings, specifications, samples and other data furnished by Buyer in connection with an Order, whether or not identified as “confidential” upon disclosure (“Confidential Information”); (ii) not disclose or permit the disclosure of any Confidential Information to any person other than its employees or subcontractors for whom such knowledge is essential for performance of an Order; (iii) not use Confidential Information except for performance of an Order; and (iv) not disclose any of the terms of an Order or any details or characterization of Buyer’s performance of an Order. Seller shall immediately notify Buyer of any disclosure of any Confidential Information that is not permitted by these Terms or other misuse of any Confidential Information or breach of these Terms. Except as required for the efficient performance of an Order, Seller shall not: (x) use Confidential Information or make copies or permit copies to be made of Confidential Information without the prior written consent of Buyer; or (y) sell to any third party any products which are constructed with or incorporate Confidential Information obtained by Seller from reverse engineering of the Goods.

### (b) Seller’s Non-Confidential Information

Any knowledge or information disclosed by Seller or on its behalf to Buyer, its Affiliates or subcontractors, which in any way relates to an Order, shall not, unless otherwise specifically agreed to in writing by Buyer, be deemed confidential or proprietary information, and shall be acquired by Buyer, free from any restrictions (other than restrictions under valid patents), as part of the consideration for an Order, and Buyer may disclose such information.

### (b) Non-Conforming and Defective Goods

Seller shall not ship non-conforming or defective production Goods to Buyer unless Buyer has delivered to Seller a written acceptance.

### (c) Indemnification

Seller, at its expense, shall defend, indemnify and hold harmless Buyer and its successors, assigns, Customers and users with respect to every claim that may be brought against Buyer or others that use the Goods, for any actual or alleged infringement of any present or future patent, copyright, industrial design right or other proprietary right based on Seller’s activity under an Order, or the manufacture, sale or use of the Goods: (i) alone; (ii) in combination by reason of their content, design or structure; or (iii) in combination in accordance with Seller’s recommendations. Seller shall investigate and defend or otherwise handle every such claim, and at Buyer’s request, assist Buyer in Buyer’s investigation, defense or handling of any such claim. Seller shall pay all expenses and damages or settlement amounts that Buyer and others selling Buyer’s products or using the Goods of an Order may sustain by reason of each such indemnified claim. If the use or sale of the Goods is enjoined, Seller shall, at its own expense and at Buyer’s option, either: (x) procure the right to continue using the Goods; (y) replace the Goods with a non-infringing equivalent; or (z) remove the Goods

and refund the purchase price and the transportation and installation costs thereof. Seller's obligations shall apply even though Buyer furnishes all or any portion of the design and specifies all or any portion of the processing used by Seller and, unless Seller provides a non-infringing equivalent acceptable to Buyer and its Customer, even if Buyer has notice of a claim of infringement and continues to purchase, use, or resell Seller's Goods.

#### **(d) Ownership of Developments**

Any developments which are created by or on behalf of Seller in the performance of an Order, whether or not they may be protected by or subject to patent, trademark, industrial design, integrated circuit topography rights, copyright or other right ("Intellectual Property"), shall be the exclusive property of Buyer. All such developments shall be work for hire, Seller assigns all rights in and to such developments, including any Intellectual Property therein, to Buyer. Seller shall execute such further documents as may be necessary to transfer, record or otherwise enforce Buyer's rights therein including any Intellectual Property rights, and all related expenses shall be paid by Buyer. Seller shall ensure that any individual involved in the creation of any copyrighted works shall waive, on an irrevocable and worldwide basis, all author's and moral rights in and to such works.

#### **(e) Upgrades; Software Escrow**

Seller shall continue to provide support for any software or software programs incorporated into the Goods ("Software"). If any of the Software is migrated or otherwise modified, converted or rewritten for use with a new or different operating system or database environment, Seller shall immediately (upon general release to Seller's business customers) make the Software available to Buyer, at no additional license fees or other charges for the acquisition of a license by Buyer for use of the Software. Upon request by Buyer, Seller shall deposit and continue to deposit in an escrow account with a third party the most current release of the source code for any Software.

## **11. Service and Replacement Parts**

#### **(a) Supply**

Seller shall sell Goods to Buyer as ordered and released by Buyer for use as production and as service and aftermarket replacement parts, at the prices set forth in an Order, plus any actual costs for any unique packaging required for Goods intended for service and aftermarket. If the Goods are systems or modules, Seller shall sell to Buyer, as ordered by Buyer, the system or module or the components or parts that comprise the system or module. The prices for the components or parts shall not, in the aggregate, exceed the price of the system or module less assembly costs. During the 15 years after Buyer or its Customer completes production of its products incorporating any Goods, Seller shall sell Goods to Buyer as ordered to fulfill Buyer's service and replacement parts requirements. Unless otherwise agreed to by Buyer in writing, the price during the first five years of this period shall be those in effect at the conclusion of purchases for production for the Customer. For the remainder of this period, the price for Goods shall be as agreed to by the parties, not to exceed the lower of: (i) the cost of manufacture and, not to exceed the percentage on production Goods, a reasonable contribution to overhead and profit; or (ii) the price at which Buyer is obligated to sell to its Customer; or (iii)



the price at the conclusion of production for use by Customer's current models. When requested by Buyer, Seller shall make service literature and other materials available at no additional charge to support Buyer's service and replacement part sales activities.

## 12. Warranties

### (a) Express Warranties

Seller warrants and represents to Buyer that all Goods shall be: (i) merchantable; (ii) free from failure in the final product as sold to the end user; (iii) free from all defects, including for example, design, workmanship and materials; (iv) fit for the particular purposes for which they are purchased; including the specified form, fit, function and performance as a component and in the component system, as a part of the final product sub-system, in the location within the final products to be sold by Buyer and its Customer and in the environment in which the Goods are or reasonably may be expected to perform; (v) in strict compliance with the specifications, samples, drawings, designs, Seller's advertisements, statements on containers and labels, statements of work and requirements of Buyer and its Customers and other requirements (including performance specifications) approved or adopted by Buyer as of the date of delivery or such other date provided by Buyer in writing; (vi) in strict compliance with all government requirements; (vii) composed of all new materials and components; (viii) produced by experienced and well trained personnel in a professional and workmanlike manner and in accordance with industry best practices; (ix) in conformity with all sales and other information provided by Seller orally or in writing; and (x) free of liens. If there is any conflict or overlap of provisions regarding Seller's warranties, the more demanding provision shall apply. Any attempt by Seller to limit, disclaim, or restrict any such warranties or any remedies of Buyer, by acknowledgement or otherwise in accepting or performing an Order, shall be null, void, and ineffective without Buyer's prior written consent. Approvals by Buyer of Seller's design drawings, specifications, samples, designs and other data, are to assist Seller without charge to Seller, but they do not replace, modify or cause Seller to share, Buyer's responsibility and do not waive or limit any warranty of Seller.

### (b) Warranty Period

As to each of the Goods, each of Seller's warranties begins on the date of delivery to Buyer and continues until the last to occur of the following: (A) the expiration of all warranties made by Buyer to its Customer concerning Buyer's product incorporating the Goods not to exceed the earliest of 60 months or 60,000 miles; or (B) the expiration of the longest time period which Buyer or Buyer's Customer or the original equipment manufacturer may be required, by contract or law, to repair or replace the Goods or Buyer's product incorporating the Goods. The statute of limitations period applicable to any breach of warranty will be the longest statute of limitation period for breach of contract, products liability or indemnity claims in any applicable jurisdiction or, in the case of any recall campaign, the longest time period provided by the U.S. federal, state, or foreign government where the Goods are used. If Buyer or its Customer voluntarily or pursuant to a government mandate, makes an offer to owners of vehicles (or other finished products) on which the Goods, or any parts, components or systems incorporating the Goods, are installed to provide remedial action to address a defect or condition that relates to safety or the failure of the product to comply with any applicable law, safety standard or guideline, whether in connection with a recall campaign or other customer satisfaction or corrected service action (a "Remedial Action"), the warranty shall continue for such time period as may be dictated by

Buyer's Customer or the federal, state, local or foreign government where the Goods are used or provided. The warranty period for Goods other than those used as components in further production shall be the longer of two years or 4,000 hours of operation after final acceptance by Buyer or the period stated in Seller's sales materials.

### **(c) Work Environment**

Seller warrants that no child, prison, forced or involuntary labor shall be used by Seller or its subcontractors in the production of Goods. Seller and its subcontractors shall maintain a work place free from physical abuse and any practice in violation of local law. Seller and its subcontractors shall provide a healthy, safe work environment, wages and benefits as required by law, freedom of association and reasonable working conditions.

### **(d) Cumulation**

All warranties and remedies provided by these Terms are cumulative and in addition to those provided by law and shall survive testing and inspection of the Goods. Approval by Buyer of Seller's drawings, data, designs, engineering instructions, models, specifications or other technical information, written, oral or otherwise, does not waive or limit any warranty.

### **(e) Assignability**

All warranties under this Section are assignable by Buyer to its Customers, end users and other third parties without notice to or consent by Seller.

## **13. Indemnity Insurance and Performance on Buyer's Premises**

### **(a) Indemnity and Liability**

In addition to any rights to indemnification or remedy provided to Buyer by the applicable law, Seller, at its expense, shall defend, indemnify and hold harmless the indemnified parties from and against any claims and damages, including damages relating to the investigation, pursuit, defense and handling of any claims arising out of or relating to the condition, labeling, engineering, use, sale, storage, design, safety and other matters relating to the Goods whether or not incorporated in another product, as long as the damages were not caused solely by Buyer or other third party who is not a supplier of Seller. For clarity, Seller shall pay all damages that an indemnified party may sustain by reason of the foregoing. Seller waives the application of the doctrine of comparative negligence and other doctrines that may otherwise allocate the liability covered by Seller's indemnity. This Section shall not apply to any liability which the law does not permit Buyer from obtaining indemnity.

### **(b) Insurance**

Seller shall obtain and maintain insurance coverage in the following minimum amounts: workmen's compensation - statutory limits for jurisdictions in which work is to be performed; employer's liability-\$1,000,000; general liability-\$10,000,000 single limit; automobile liability/bodily injury-\$5,000,000 per person and \$10,000,000 per occurrence; and property damage-\$5,000,000. Seller waives subrogation against Buyer.

All policies shall be issued by an insurer licensed to do business in the national, state/provincial, and local jurisdiction where Buyer shall use and sell the Goods. Liability coverage shall include products and completed operations and (if available) recall, on an occurrence basis. Buyer shall be named as an additional insured under the policies. Seller shall furnish to Buyer a certificate of insurance completed by its insurance carrier(s) certifying that the required insurance coverages are in effect and will not be canceled or materially changed until 30 days after prior written notice has been delivered to Buyer.

## 14. Security

Seller grants to Buyer a security interest ("Security Interest") in the materials, components, contracts, Intellectual Property, and all other property and any proceeds thereof that may be acquired or allocated by Seller for use in the acquisition, assembly, and manufacture of the Goods, including Required Tooling and Furnished Property and in the completed Goods ("Secured Property") to secure Seller's return of any deposits and Seller's performance of other obligations under an Order. The Security Interest attaches at the time the Secured Property is identified to an Order. The Secured Property constitutes and will constitute continuing security for the performance of Seller's obligations under an Order including the obligation of Seller to repay to Buyer all monies paid on an Order if Seller defaults under an Order. Seller shall cooperate with Buyer and provide documents reasonably requested by Buyer, to enable Buyer to confirm, create and perfect the Security Interest. Seller grants Buyer an irrevocable power of attorney coupled with an interest to execute and file such documents. All Secured Property shall be marked, tagged, or otherwise identified by Seller as being subject to the Security Interest. Buyer may inspect the Secured Property during Seller's normal business hours. Seller shall insure and maintain the Secured Property for the benefit of Seller and Buyer.

## 15. Termination for Other than Default

In addition to any other rights of Buyer to cancel or terminate an Order or any Releases, Buyer may at its option immediately terminate all or any part of an Order or any Releases on 30 days notice, for (a) the termination or material reduction in Customer demands; (b) a change in Buyer's requirements; (c) Seller's failure to remain competitive in price, quality, delivery, and/or technology whether or not such failure would be a default or breach by Seller; or (d) Buyer's convenience by giving written notice to Seller. Seller shall cooperate with Buyer in any transfer of production or other performance to a new supplier. Upon a termination under this Section, Buyer shall pay to Seller the following amounts without duplication: (x) an Order price for all conforming Goods which have been completed in accordance with an Order not previously paid; (y) the actual direct cost of protecting Buyer's property; and (z) the actual direct costs of work in process and raw materials reasonably incurred by Seller in furnishing or preparing to furnish the Goods under an Order or any Releases to the extent such costs are reasonable in amount and are properly allowable or apportionable, under generally accepted accounting principles, to the terminated portion of an Order or any Releases issued pursuant to an Order; less, however, the reasonable value or cost (whichever is higher) of any Goods or materials subsequently used or sold by Seller with Buyer's written consent and of the cost of any damaged or destroyed Goods or materials. Notwithstanding the foregoing or any transfer to Buyer, Buyer shall not be liable to pay for finished Goods, work in process or raw materials obtained, fabricated or processed by Seller in amounts in excess of those authorized in Releases (if Releases are required or contemplated by an Order), for any undelivered Goods

which are Seller's standard stock or which are readily marketable, or for any finished Goods or materials which are not promptly delivered to Buyer after request by Buyer. Payments made under this Section shall not exceed the aggregate price payable by Buyer for finished Goods which would have been produced by Seller for firm quantities of finished Goods and materials under Releases outstanding at the date of termination for firm quantities of finished Goods and materials. Except as provided in this Section, Buyer shall not be liable for and shall not be required to make any other payments to Seller, directly or on account of claims by Seller or Seller's subcontractors, arising from termination of an Order, including for example only for loss of anticipated profit, revenue or opportunity, and for business interruption, unabsorbed overhead, product development and engineering costs, facilities and equipment, rearrangement cost or rental, unamortized depreciation costs, general and administrative burden charges, or interest on claims. Within 60 days from the effective date of termination, Seller shall submit a comprehensive termination claim to Buyer with sufficient supporting data to permit Buyer's audit and shall thereafter promptly furnish such supplemental and supporting information as Buyer shall request. Payment under this Section shall constitute the exclusive liability of Buyer if an Order is terminated by Buyer under this Section. Termination of an Order or any Release does not affect Seller's obligations under this Agreement as to Goods delivered or obligations not dependent upon the delivery of Goods. Seller has no right to terminate an Order for other than as provided by law.

## 16. Default and Remedies

### (a) General

Seller shall be in default: (i) if Seller fails to perform any obligation within the time specified in an Order or Release or any extension thereof granted by Buyer in writing, or upon Buyer's demand if no time has been specified; (ii) if Seller fails to make progress in the performance of any obligation so as to make Buyer reasonably apprehensive about Seller's ability or willingness to perform its obligations; (iii) if Seller repudiates or is in breach of any provisions of an Order, including Seller's warranties; or (iv) if Seller's performance of its obligations, or if any of the Goods, are found at any time to be defective in design, material or workmanship, or otherwise not in conformity with the requirements of an Order, and if in any of these circumstances Seller does not cure such failure within seven calendar days or such longer period as Buyer may authorize in writing.

### (b) General Remedies

Upon Seller's default, Buyer may by written notice of default to Seller, in addition to such other rights, remedies and choices as it may have under an Order or by law, at its option and sole discretion take one or more of the following actions: (i) rescind, cancel or terminate an Order; (ii) reject and return non-conforming or defective Goods at Seller's expense; (iii) require Seller to inspect the Goods and remove and replace non-conforming or defective Goods with Goods that conform to an Order; and/or (iv) take any other action at Seller's cost which Buyer determines in its reasonable judgment is necessary to cure Seller's default and/or mitigate the effect of Seller's default. If Buyer elects option (iii) and Seller fails to promptly make the necessary inspection, removal and replacement, Buyer may at its option and Seller's cost, inspect and repair or replace the Goods. Buyer may take remedial and other action based on one or more Sections of this Agreement as alternative and/or cumulative basis. Seller shall continue performance of an Order to the extent not terminated and shall be liable to Buyer for any excess costs for alternative products or services. Buyer, at its sole discretion, may also elect to extend the delivery schedule and/or to waive other deficiencies in Seller's performance; in



which case an equitable reduction in an Order price shall be established by Buyer to compensate Buyer for its damages. If Seller for any reason anticipates difficulty in complying with a required delivery or other date, or in meeting any of the other requirements of an Order, Seller shall promptly notify Buyer in writing of the potential default, the cause thereof, and the estimated length of the anticipated default. Buyer is under no obligation to waive any default.

### **(c) Damages and Specific Performance**

At Buyer's request, upon Seller's default, Seller shall reimburse Buyer for all direct, incidental, consequential and special damages, and damages for lost profits, revenue and opportunity and for business interruption related thereto, including but not limited to, costs, expenses and losses incurred directly or indirectly by Buyer or its Customers: (i) in inspecting, sorting, repairing or replacing non-conforming Goods; (ii) resulting from production interruptions; (iii) in conducting any recall or other corrective service actions; or (iv) resulting from personal injury (including death) or property damage. Consequential damages include reasonable actual legal and other professionals' fees incurred by Buyer. Buyer's indirect costs include but are not limited to such administrative changes as Buyer establishes from time to time to compensate Buyer for its time and effort in addressing issues related to Seller's default. Buyer may also at its option adjust the price of the non-conforming Goods which it elects to accept to reflect the reduced value of the Goods. Seller acknowledges and agrees that money damages would not be a sufficient remedy for any actual, anticipatory or threatened breach of any 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, Buyer shall be entitled to specific performance and interlocutory and permanent injunctive or other equitable relief as a remedy for any such breach, without proof of actual damages, without establishing a "balance of convenience", and without bond or other security being required.

### **(d) Set-Off**

Buyer shall have the right to reduce, set-off and recoup against amounts payable under an Order any indebtedness or other claim which Buyer, its parent, subsidiaries or affiliates, may have against Seller, its parent, subsidiaries and affiliates, under an Order or any other agreement between or among Seller, Buyer, and/or such third parties. If an obligation of Seller or any of its Affiliates to Buyer or any of its Affiliates is disputed, contingent or unliquidated, Buyer or any of its Affiliates may defer payment of all or any portion of the amount due until such obligation is resolved. Without limiting the generality of the foregoing, and by way of example, only, in the event of a bankruptcy proceeding of Seller, if all of the Orders between Buyer and Seller have not been assumed, then Buyer may defer payment to Seller, via an administrative hold or otherwise, for Goods against potential rejection and other damages.

### **(e) Cumulative and Additional Remedies**

Buyer's remedies under this Section and the applicable law shall be cumulative and additional to any other or further remedies provided under these Terms or by statute, law or equity, including, but not limited to, the recovery of direct, incidental, consequential and special damages, damages for lost profits, revenue and opportunity, and for business interruption, and consequential damages and the entry of injunctive relief, but Buyer shall be entitled to only one full recovery of all of its damages and enforcement of all its rights.

### **(f) Restrictions on Waiver**

A delay by Buyer in notification of a default or making a claim shall not constitute a waiver of a default or remedy. No waiver of a breach of any provision of an Order by Buyer shall constitute a waiver of any other breach, or

of the breached provision itself. No claim or right of Buyer arising under, or related to, an Order can be discharged in whole or in part by a waiver or renunciation unless supported by additional consideration and in writing signed by Buyer.

### **(g) Limitation on Seller's Remedies and Rights**

Money damages, as limited by these Terms and an Order, are Seller's exclusive remedy for breach of contract and all other claims or theories of recovery. Seller may not allege breach of contract or other theory of recovery for such money damages without providing a written notice of breach, documentation supporting the claim, and a reasonable time for Buyer to cure any breach and otherwise resolve the matter. Seller acknowledges that Buyer may supply to Customers the Goods in the form purchased from Seller or as a component of a system or other product sold to Customers. Seller's rights and remedies against Buyer shall be limited to the extent Buyer's rights against the Customers are limited.

### **(h) Continuation of Seller's Obligations**

Termination of an Order or any Release by Buyer for any reason permitted by an Order does not affect Seller's obligations under an Order: (i) as to Goods delivered; or (ii) not directly dependent upon the delivery of Goods.

### **(i) Disclaimer of Liability**

UNDER NO CIRCUMSTANCES SHALL BUYER BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES OR DAMAGES FOR LOST PROFIT, REVENUE, OPPORTUNITY, OR BUSINESS INTERRUPTION.

### **(j) Time, Quality and Quantity Requirements**

Without limitation, time, quality and quantity requirements for Seller's performance are of the essence of an Order.

### **(k) Transition of Supply**

In connection with Buyer's termination or non-renewal of this Order, or Buyer's other decision to source the Goods from any alternate supplier(s), Seller shall cooperate with Buyer in the transition of supply of the Goods, including the following: (a) Seller shall continue production and delivery of all Goods as ordered by Buyer, at the prices and other terms stated in an Order, without premium or other condition, during the entire period reasonably needed by Buyer to complete the transition to the alternate supplier(s), such that Seller's action or inaction causes no interruption in Buyer's ability to obtain the Goods as needed; (b) at no cost to Buyer, Seller shall promptly provide all requested information and documentation regarding and access to Seller's manufacturing process, including on-site inspections, bill-of-material, Data, tooling and process detail and samples of the Goods and components; and (c) subject to Seller's reasonable capacity constraints, Seller shall provide special overtime production, storage and/or management of extra inventory of the Goods, extraordinary packaging and transportation and other special services (collectively "Transition Support") as expressly requested by Buyer in writing. If the transition of supply occurs for reasons other than Buyer's default, Buyer shall, at the end of the transition period, pay the reasonable, actual cost of Transition Support as requested by Buyer and incurred by Seller, provided that Buyer has approved Seller's estimate of such costs prior to Seller incurring such costs.

## **(l) Reimbursement for Warranty Claims**

Seller shall reimburse Buyer for warranty claim costs determined by Buyer to be the result of a defect in the Goods as follows:

- (i) Material costs at Seller's selling price (Seller to Buyer or its service parts organization); plus
- (ii) Buyer's handling allowance for administration in effect at the time of failure (currently dealer net price times thirty-two percent (32%)); plus
- (iii) Dealer's approved labor rate at the time of failure times the appropriate standard repair time ("SRT") as published in original manufacturer's Warranty Time Schedule Manual or mutually agreed to time if no SRT is published; plus
- (iv) Freight charges associated within the delivery of replacement parts; plus
- (v) Freight and processing cost incurred by Buyer due to Seller's requirement to have failed material returned; plus
- (vi) Charges associated with the purchase of parts outside of Buyer's distribution system, and/or repairs made by subcontractors; plus
- (vii) Cost of repairs of any damage to other components caused by Seller's defective parts.

## **17. Force Majeure and Limitations of Seller's Liability**

Seller shall not be liable for incidental or consequential money damages because of delays or other defaults due to causes which are both beyond its control and without its fault or negligence. However, any such delay due to default or other failure of subcontractor, material supplier or carrier will be excused as to incidental and consequential damages only if beyond the control, and without the fault or negligence of, both Seller and its subcontractor, material supplier or carrier, and if Seller establishes that it could not obtain components, materials or services from any other source in time to meet the delivery schedule. Buyer, at its option, may acquire possession of all finished Goods, work in process and parts and materials produced or acquired for the performance of Seller's obligations, and Seller shall deliver such Goods to Buyer, at Buyer's option, Seller's facility or F.O.B. Buyer's facility, freight prepaid FOB. The relief provided to Seller by this Section shall apply only if: (i) Seller provides immediate written notice to Buyer of any delay which Seller does or could reasonably anticipate, of the length thereof, and of the reasons therefore; (ii) Seller provides 30 days' written notice to Buyer of the expiration date of its collective bargaining agreement and those of its subcontractors and suppliers which expire prior to anticipated delivery date of the Goods or other event which may cause a disruption in supply; (iii) Seller produces and maintains an inventory to an appropriate location to insure an adequate supply of Goods for at least 30 days if the event occurs; and (iv) Seller promptly complies with other instructions of Buyer. The limitations on incidental and consequential damages in this Section shall not affect Buyer's right to cancel, reduce quantities in existing or future delivery schedules or Releases, or enforce any other remedy for breach or exercise any other request unrelated to breach. Increases in the costs of materials, manufacture, transportation or other performance shall not excuse Seller's performance. This is a full and complete statement of Seller's rights to rely on the doctrines of force majeure, impracticability, impossibility and similar doctrines exercising performance.

## **18. Property Furnished or Purchased by Buyer or Its Customer for Seller's Use.**

### **(a) Ownership**

Unless otherwise agreed in a writing signed by Buyer, all tooling, equipment, material and other property of every description furnished to Seller by Buyer or its Customer, or acquired by Seller but paid for or to be paid for by Buyer or its Customer as a separate price or amortized in the price of the Goods, and any materials affixed or attached thereto and replacement thereof (all of which constitutes "Furnished Property"), shall be and remain exclusively the personal property of Buyer or its Customer and held as an at will bailment and in trust for the benefit of Buyer or its Customer as their interests may exist. All additions, attachments, accessories and repairs to the Furnished Property, and replacements thereof, shall be deemed Furnished Property and shall become the exclusive property of the owner of the affected Furnished Property without payment. Seller shall not substitute any of its own property for use in place of Furnished Property and to the extent it does so, such property shall become the Furnished Property of the owner of the property replaced. Title to the Furnished Property which is acquired by Seller and its contractors, and the components thereof, shall vest in Buyer upon their acquisition or production, even though the Furnished Property is not completed. Seller shall sign separate at-will bailment and other agreements confirming the status of Furnished Property under these Terms if requested by Buyer. Seller is also bound by any additional obligations relating to Furnished Property which are contained in Buyer's contract with its Customer and Seller agrees that Buyer, in its own name, may enforce such obligations on behalf of its Customer.

### **(b) Maintenance and Taxes**

Seller shall install, maintain, repair, replace and return Furnished Property in good condition and working order, reasonable wear and tear excepted, at Seller's cost. Seller shall pay all taxes assessed against the Furnished Property or for its use while in the possession or control of Seller, whether or not Buyer is required by law to pay such taxes. In addition, all Furnished Property must continue to be maintained or repaired by Seller in a condition that is adequate for at least one year of production of Goods based on Buyer's forecasts and historical purchase levels.

### **(c) Markings**

Each individual item of Furnished Property (and the container in which it may be stored) shall be plainly and permanently marked or otherwise adequately identified and permanently marked by Seller as the property of Buyer and with the project and part number on which it is used. Seller shall safely store the Furnished Property separate and apart from Seller's property. Seller shall maintain the character of Furnished Property as personal property and not as a real estate fixture.

### **(d) Use**

Seller shall not use or permit others to use Furnished Property except to fill Orders. Seller shall not, under any circumstance, sell or transfer any product or service produced with the Furnished Property except to Buyer and its designees. Seller shall use Furnished Property in a careful and safe manner. Seller, at its sole cost and expense, shall furnish appropriate safety systems for Furnished Property which are integrated into the production



process to meet federal and state OSHA and any other applicable safety rules and regulations, or, if delivered in Canada or other country, all requirements of similar legislation in the jurisdiction and its regulations.

### **(e) Location**

Seller shall arrange and pay for the packaging and transportation of the Furnished Property to and from the Buyer's or other location approved by Buyer or reimburse Buyer for such costs. Seller shall not move the Furnished Property from any location without the prior written consent of Buyer.

### **(f) Liens**

Seller shall provide Buyer with copies of any claims of liens and written waivers of liens from all suppliers of Seller that produced or provided Furnished Property prior to the earliest of the date payment is due to Seller or of start of production with the Tooling.

### **(g) Warranty Disclaimer**

Seller accepts the Furnished Property "AS IS" and without any representation, warranty or duty from Buyer except as may be specifically stated as such in an Order. It is Seller's obligation to determine if the Furnished Property is suitable for its intended purpose. ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF BUYER AND ITS CUSTOMER ARE DISCLAIMED.

### **(h) Risk of Loss and Insurance**

Furnished Property, while in Seller's custody or control, shall be held at Seller's risk and shall be kept insured by Seller at Seller's expense under a fire and extended all risk policy in an amount equal to the replacement cost with loss payable to Buyer or its Customer as their interests may appear. Seller shall maintain a liability insurance policy covering events related to the Furnished Property and have Buyer named as an additional insured. All such insurance shall be primary. Seller shall deliver to Buyer certificates of insurance evidencing such coverages and providing for a 30-day written notice to Buyer of any change, cancellation or lapse.

### **(i) Delivery to Buyer**

Furnished Property may be reclaimed and removed at any time by Buyer, at Buyer's written request (whether or not Buyer and Seller are engaged in litigation or other dispute), in which event Seller shall prepare Furnished Property for shipment and shall deliver it to Buyer or its Customer in the same or equal condition as originally received by Seller, and as required to be maintained by Seller, reasonable wear and tear excepted, all at Seller's expense. All consumable Furnished Property not used in the manufacture of the Goods shall, as directed by Buyer, be returned to Buyer at Buyer's expense and, if not accounted for or returned, shall be paid for by Seller to Buyer at Buyer's cost. Seller shall have no right to retain possession of Furnished Property to secure payment of amounts owed for Goods or for any other reason, as a claim for damages is an adequate remedy. Seller waives any statutory or other rights to claim a lien on Furnished Property.

**(i) Payment** Buyer shall not pay for any Furnished Property without: (x) the issuance by Buyer or its Customer of a written Part Submission Warrant ("PSW") approval without any temporary deviations or conditions for all Furnished Property under an Order; (y) receipt by Seller of a waiver of lien of the manufacturer and supplier of the Furnished Property; and (z) pictures showing required markings. Buyer may pay the manufacturer or supplier directly for any amount owed for Tooling and take such amount as a credit to set-off against amounts

owed to Seller or invoice Seller for such amount.

**(ii) Express Trust** Payments made by Buyer for Furnished Property are made by Buyer to Seller in express trust for the benefit of Buyer and of any third party toolmaker used by Seller or others to produce all or a portion of the Furnished Property who has a perfected toolmaker's lien or similar lien on the Furnished Property which is superior to Buyer's interest in the Furnished Property. Buyer shall pay in trust and Seller shall hold these payments as trustee in express trust for Buyer and the toolmaker to satisfy such lien. Seller acknowledges that such toolmaker is an intended third party beneficiary of this Section and that Buyer and the toolmaker each has the right to enforce the trust directly against Seller only. As a condition of the continuation of the trust, toolmaker shall not include or consent to include Buyer as a party to an action against Seller for payment or to obtain possession of all or a portion of the Furnished Property. Seller shall at Buyer's request defend and/or indemnify Buyer against any action and the costs thereof including reasonable attorney fees by the toolmaker against Buyer.

## 19. Required Tooling

Production of the Goods by Seller or its subcontractor may require production aids and equipment in addition to that to be provided as Furnished Property under an Order. Seller, at its own expense, shall furnish, keep in good condition, and replace when necessary all tooling, jigs, dies, gages, fixtures, molds, patterns and other personal property used in the production process, whether or not they are Furnished Property or they are owned or leased by Seller or its subcontractors, which are necessary for the production of Goods in accordance with an Order ("Required Tooling"). In addition, all Required Tooling must continue to be maintained or repaired by Seller in a condition that is adequate for at least one year of production based on Buyer's forecasts and historical purchase levels. The cost of changes to Required Tooling necessary to make design changes and specification changes to the Goods authorized by Buyer in writing shall be paid for by Seller by Buyer limited to the actual cost of materials, labor and unrelated third party costs without mark-up for overhead and profit unless otherwise provided in an Order. Buyer may inspect Required Tooling and Seller's facilities during normal working hours upon reasonable notice to Seller. Seller may not relocate the Required Tooling without the prior written consent of Buyer. Seller shall advise Buyer of any required repair or replacement of Required Tooling. Seller shall be responsible for obtaining any PPAP required because of movement, modifications, repair, replacement, or other events. Seller shall insure Required Tooling with fire and extended all risk coverage insurance for its replacement value and provide Buyer with certificates of insurance evidencing such coverage. Seller grants Buyer an irrevocable option to take possession of and good title to some or all of the Required Tooling (including leases thereof) as selected by Buyer, that is not Furnished Property and is specific for the production of Goods, upon tender to Seller a purchase price computed as the book value thereof, less any amounts Buyer has previously paid to Seller in any manner for the cost of Required Tooling (e.g., by separate payment or by an allocated portion of the price of the Goods as shown in an Order or documents provided by Seller such as, for example only, a bill of materials); provided, however, that this option to purchase shall not apply to any Required Tooling used primarily to produce products that are standard stock of Seller sold to purchasers other than Buyer or its designee. On Buyer's request, Seller shall deliver any purchased Required Tooling to Buyer at Seller's or its subcontractor's plant or other location specified by Buyer. Seller is responsible for labor and other costs of dismounting, dismantling, preparing for delivery and staging the Required Tooling for delivery. Seller shall cooperate with Buyer in removing the Required Tooling from the location of Seller or its subcon-

tractor Seller shall have no right, after tender of the purchase price, to retain possession of Required Tooling to secure payment of amounts owed or for any other reason and Seller waives any common law or statutory lien rights, as a claim for damages (with any bond in the amount of the purchase price of tooling to be purchased as may be required by a court) is an adequate remedy. If the Required Tooling is not utilized to produce any Goods for Buyer for a period of two years, Seller shall so notify Buyer in writing and request instructions as to the disposition of the Required Tooling.

## 20. Compliance with Laws

### (a) Labor Standards

Seller warrants that the Goods produced in the United States shall be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended, including Section 12(a) thereof and Seller shall insert a certificate to that effect on all invoices submitted in connection with an Order. Seller warrants that the Goods produced outside the United States shall be produced in facilities that comply with local law and any safety, labor or employment, and environmental standards adopted by Buyer. Seller and its subcontractors shall comply with all applicable laws relating to labor relations and human rights in the production of Goods and its work places.

### (b) Industry Standards and Law

Seller warrants that it shall comply with all applicable industry standards and national, state/provincial and/or local laws, rules, regulations and ordinances/bylaws applicable to the Goods and performance of an Order in the jurisdiction of production and destination of the Goods.

### (c) Anti-Dumping and Countervailing Duties

Seller warrants that all sales made under an Order shall be made in circumstances that will not give rise to the imposition of new anti-dumping or countervailing duties under United States law (19 U.S.C. Sec. 1671 et. seq.), European Union (Council Regulation (EC) No. 384/96 of December 22, 1995, Commission Decision No. 2277/96/ECSC of November 28, 1996), similar laws in such jurisdictions or the law of any other country to which the Goods may be exported. If countervailing or anti-dumping duties are imposed that cannot be readily recovered from Seller, Buyer may terminate an Order with no further liability of any nature whatsoever to Seller. If any jurisdiction imposes punitive or other additional tariffs on Goods subject to an Order in connection with a trade dispute or as a remedy in an “escape clause” action or for any other reason, Buyer may, among its options, treat such increase in duties as a condition of force majeure.

## 21. Assignment, Subcontracting and Replacement Orders

Assignment by Seller of an Order or any interest therein, or any payment due or to become due to Seller, without the prior written consent of Buyer, shall be void and not binding on Buyer. Subcontracting any part of an Order without the prior written consent of Buyer is prohibited. Buyer shall not be obligated to any subcontractor for the product or services of any subcontractor whether or not Buyer has consented to or designated a subcontractor. Approval of a subcontractor is not a release or waiver of any obligation of Seller or right of Buyer.

## 22. Audit Rights

Seller shall maintain general records relating to an Order for a period of not less than ten years after completion of final delivery of Goods pursuant to that Order. Records of all manufacture, testing and inspection by Seller of the Goods shall be kept complete, separate and available to Buyer and its Customer during the performance of an Order and for such longer periods as may be specified in an Order, but not less than ten years after the last delivery of the Goods to Buyer or as required by law.

## 23. Foreign Purchases

The price for Goods includes, and Buyer shall own, all related export and import customs duties and import drawback rights, if any, including rights developed by substitution and rights that may be acquired from Seller's supplier(s) that Seller can transfer to Buyer. Buyer shall include such provisions in all its subcontracts.

## 24. Applicable Law, Jurisdiction, Waiver of Liens and Sovereignty.

### (a) Applicable Law and Jurisdiction

If either an Order is issued, in whole or part, for goods to be shipped to a Buyer location within the United States of America or its commonwealths and territories (as shown by the ship to or receiving address of Buyer), or Seller's applicable shipping location is within the United States of America or its territories (as shown by the shipping address of Seller), then an Order is to be construed according to the laws of the United States of America and the State of Michigan, including the Uniform Commercial Code and excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any choice of law provisions that require application of any other law; and Buyer hereby agrees that the forum and venue for any legal or equitable action or proceeding arising out of, or in connection with, such an Order will lie on the appropriate federal or state courts in the State of Michigan and specifically waives any and all objections to such jurisdiction and venue. In all cases not covered by the preceding sentence: (x) an Order is to be construed according

to the laws of the country (and state or province, if applicable) where Buyer's receiving location is located (as shown by the ship to or receiving address of Buyer), excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any choice of law provisions that require application of any other law; (y) any legal or equitable action or proceedings by Buyer against Seller arising out of, or in connection with, an Order may be brought by Buyer in any court(s) having jurisdiction over Seller or, at Buyer's option, in any court(s) having jurisdiction over Buyer's receiving location as shown in the purchase order, in which event Seller consents to such jurisdiction and venue, including service of process in accordance with the applicable procedures of such jurisdiction; and (z) any legal or equitable actions or proceedings by Seller against Buyer arising out of, or in connection with, an Order may be brought by Seller only in the court(s) having jurisdiction over the Buyer's location at the address as shown on its purchase order.

### **(b) Liens**

Seller warrants that no lien shall be filed by Seller or anyone claiming under or through Seller against Buyer, the Goods, the Furnished Property, the site for delivery or installation of the Goods, or Buyer's Customer, for materials, labor, services, equipment or goods furnished as part of the Goods or Furnished Property. Seller waives any right it may have pertaining to, and agrees not to file or otherwise assert or prosecute or suffer or permit, any mechanic's, storage, materialman's, or other type of liens to be filed or continued against any property of Buyer. Seller shall insert the prior sentence in any lower tier subcontract or purchase order for labor, equipment or materials furnished. If any such lien shall be filed by Seller's direct subcontractor, or any of its lower tier subcontractors, Seller shall take any and all steps necessary for the immediate release and discharge of such lien, in the manner required by applicable law, upon demand by Buyer. Seller shall secure and furnish to Buyer and its Customer, upon request, a waiver of lien from each subcontractor under it.

### **(c) Commercial Activity; Absence of Immunity**

Seller represents it is subject to civil and commercial law with respect to its obligations under an Order to which it is a party, and the making and performance by it of an Order constitute private and commercial acts rather than public or governmental acts. Seller represents it and its respective properties are not entitled to immunity on the grounds of sovereignty or otherwise from the jurisdiction of any court or from any action, suit, set-off or proceeding, execution, or service of process in connection therewith, arising under an Order.

### **(d) Joinder**

If a Claim arises under or related to an Order or the furnishing of Goods by Seller to Buyer, by or against Seller, which is related to a similar claim by or against Seller in another jurisdiction or in an arbitration, Seller irrevocably consents on the request of Buyer to the resolution of such claims arising under or related to an Order by or against Seller in such jurisdiction or arbitration proceeding, which shall be binding on the parties and enforceable in a court of record.

### **(e) Service of Process**

If Seller does not maintain a registered agent or office in the United States, Buyer hereby irrevocably appoints the Secretary of State of the state whose law applies and/or CT Corporation as Seller's agent to receive process in any proceeding arising under or related to the agreement.



## **(f) Limitations of Actions**

No claims against Buyer can be brought as maintained unless filed in a court of competent jurisdiction as identified in an Order within one year of the date in which the claim accrued as determined under the UCC.

## **25. Publicity**

Without obtaining the prior written consent of Buyer, Seller shall not in any manner advertise or publish the fact that Seller has contracted to furnish Goods to Buyer (or Buyer's Customers), or use any trademark or tradename of Buyer (or Buyer's Customers) in Seller's advertising or promotional materials. Seller shall not disclose or imply in its marketing that any of Seller's other products are equivalent to the Goods purchased by Buyer. If Seller breaches this Section, Buyer shall have the right, among its other remedies, to cancel the undelivered portion of any Goods covered by an Order and shall not be required to make further payments except for conforming Goods delivered or services rendered prior to cancellation.

## **26. Ethical Standards**

Seller shall not: (i) give or offer to give any gift or benefit to Buyer's employees; (ii) solicit or accept any information, data, services, equipment or commitment from Buyer's employees unless it is (a) required under a contract between Buyer and Seller, (b) made pursuant to a written disclosure agreement between Buyer and Seller, or (c) specifically authorized in writing by Buyer's management; (iii) solicit or accept favoritism from Buyer's employees; (iv) enter into any outside business relationship with Buyer's employees or suppliers without full disclosure to and prior approval of Buyer's management; or (v) provide to or accept from suppliers any information regarding Buyer or its business. For the purposes of this Section: "employee" includes members of the employee's immediate family and household, plus any other person who is attempting to benefit from his or her relationship to the employee; "Seller" includes all employees and agents of Seller; "gift or benefit" includes money, goods, services, discounts, favors and the like in any form but excluding items with a value of \$25.00 or less; "supplier" includes prospective, current and past suppliers; and "favoritism" means partiality in promoting the interest of Seller over that of other suppliers. Any breach by Seller of its obligations under this Section shall constitute a material default by Seller of every contract and Order with Buyer and may further result in Seller's debarment from doing business with Buyer. Seller shall also comply with all ethics, fair business practices, non-discrimination and non-harassment policies of Buyer.

## **27. Third Party Representatives**

Seller represents and warrants that Seller has not and will not pay any third parties any commissions, fees, or other compensation for acquiring or attempting to acquire an Order without providing Buyer with written notice thereof at the time an Order is solicited and all such payments shall not violate the Federal Corrupt Practices Act and other similar applicable law.

## 28. Entire Agreement and Modifications

An Order (including these Terms) is intended by the parties as a complete and exclusive statement of the terms of their agreement. It supersedes all prior agreements, written or oral. There are no understandings, inducements, commitments, conditions, representations or warranties of any kind, whether direct, indirect, collateral, express or implied, oral or written, to Seller from or on behalf of Buyer other than as contained in these Terms or otherwise in an Order. No course of prior dealings between the parties and no usage of the trade may be used by Seller to supplement or explain any term used in an Order. All modifications must be in a writing signed by Seller and Buyer, except as otherwise provided in an Order.

## 29. Relationship of Parties

Seller and Buyer are independent contracting parties and nothing in an Order shall make either party the agent, joint venturer or legal representative of the other for any purpose whatsoever, or grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Although third parties may be referenced, there are no third party beneficiaries to an Order, except as specifically provided.

## 30. Severability

If any of these Terms or any Order is invalid or unenforceable under any statute, regulation, ordinance/by-law, or any other rule of law, such term shall be reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance/by-law, order or rule, and the remaining provisions of an Order shall remain in full force and effect. Any declaration of unenforceability of a provision hereof shall be as narrow as possible and shall not void an Order or any other provision.

## 31. Seller's Notice of Claims

COMMUNICATIONS FROM SELLER CONCERNING CLAIMS OF SELLER, INCLUDING AN INSTRUMENT TENDERED AS FULL SATISFACTION OF A DEBT OR CLAIMS, MUST BE SENT TO THE PRESIDENT OF BUYER.

[NOTE: THIS IS AN EXAMPLE OF SUPPLEMENTAL TERMS THAT CAN BE ADOPTED FOR SPECIFIC TYPES OF PURCHASES.]

Appendix A

Supplemental Provisions Applicable to Tooling

## 32. Supplemental Terms and Conditions Applicable to Tooling

### (a) Tooling Order

If an Order is for tools, dies, fixtures, gages, molds, or patterns, and similar production Goods (“Tooling”), Seller shall design, fabricate, revise, or acquire from sources approved by Buyer, and install the Tooling, subject to these additional Supplemental Provisions Applicable to Tooling (“Tooling Terms”). These Tooling Terms supplement and are cumulative with the General Terms and Conditions of Purchase and are included in “Terms” and control in the event of a conflict. The term “Tooling” also includes tangible and intangible related drawings, prints, designs, models, and test data of the Tooling. Seller is also bound by any additional obligations relating to Furnished Property which are contained in Buyer’s contract with its Customer and Seller agrees that Buyer, in its own name, may enforce such obligations on behalf of its Customer. Seller shall not subcontract all or any portion of the manufacture of the Tooling without Buyer’s prior written consent and Seller shall obtain for Buyer all of Buyer’s rights related to Tooling from each subcontractor used by Seller. Any consent, if given, shall not release Seller from its primary obligation to perform.

### (b) Samples, Quality and Durability

Seller shall, at its own expense, manufacture a reasonable number of sample parts on the Tooling for inspection or testing by Buyer to ensure the capability of the Tooling to produce the required parts, which meet Buyer’s and Customer’s applicable quality standards requirements, the applicable North American Standards for Tool Builders as selected by Buyer, TS 16949, AS9100, QS 9000 and all other applicable industry quality and process standards. In addition to Seller’s other obligations under the Terms, the Tooling shall be designed and fabricated to be sufficiently durable to permit and support the manufacture of all production and service part requirements through the estimated production and service lifetime of the part and permit the production of Buyer’s subsequent service and replacement requirements. Seller shall submit to Buyer a part submission package, sample products manufactured with Tooling, and any other tangibles and intangibles requested by Buyer. The Tooling will be deemed to be completed when the necessary samples have been submitted and approved by Buyer, the parts and Tooling have satisfied all PPAP requirements at production run rates, and accepted or approved by Buyer and Buyer’s Customer. Seller shall furnish to Buyer information of the subcontractor and scope of performance to be subcontracted. Any consent, if given, shall not release Seller from its primary obligation to perform.

### (c) Reports and Schedules

Buyer may request Seller to furnish semi-monthly (or more frequently at Buyer’s option) status reports on the construction or acquisition of the Tooling. Each status report must identify the Tooling, identify the subcontractors working on the Tooling, if any, and designate the percentage of completion and/or acquisition and the schedule for completion of each item of Tooling and other deliverables. Seller shall notify Buyer immediately upon becoming aware that the Tooling may not be completed by the completion date specified in an Order and Seller shall furnish to Buyer a schedule of the actions that Seller will take, at Seller’s expense, to achieve timely the specified interim and final milestones, deliverables and completion dates.



#### **(d) Title and Identification**

All right, title, and interest in and to any part of the Tooling passes to Buyer as soon as it is acquired or fabricated in accordance with an Order. All Tooling in the possession of Seller will be at will bailed property and Seller's right to temporary possession of such bailed property may be terminated by Buyer at any time. At Buyer's request, Seller shall sign a bailment agreement describing any additional bailment terms for specific Tooling. If the parties do not execute a bailment agreement, Buyer's records regarding the specific Tooling in Seller's possession may be used by Buyer as determinative of the existence, condition, ownership and other aspects of the bailed Tooling. Seller hereby grants Buyer a security interest in any Tooling in which Seller may have an interest and in any contract or right to purchase the Tooling from a third party and on Buyer's request shall obtain subordination agreements in favor of Buyer from any prior perfected secured parties and lien holders. Seller authorizes Buyer to file a financing statement pursuant to Article 9 of the Uniform Commercial Code, any Canadian personal property security legislation, and other law describing any or all of the bailed Tooling to perfect Buyer's interest in the Tooling. Seller shall: (i) properly store and maintain the bailed Tooling on Seller's premises listed on an Order; (ii) prominently and permanently mark it as the property of its owner, in accordance with Buyer's instructions; (iii) refrain from commingling it with the property of Seller or with that of a third party; and (iv) adequately insure it against loss or damage. Seller shall not grant or permit any lien or security interest to be asserted against Tooling. Seller shall not loan, sell or assign Tooling or permit it to be subject to any legal process without Buyer's prior written consent. Seller shall indemnify Buyer against any claim adverse or prior to Buyer's ownership or interest in the Tooling, except any claims resulting from any acts or omissions of Buyer. To the extent permitted by law, Seller waives its right to object to the repossession of the Tooling by Buyer in the event Seller is involved in bankruptcy proceedings.

#### **(e) Maintenance, Repair, Replacements and Taxes**

Seller, at Seller's expense, shall maintain the Tooling in first class condition and immediately replace any items which are lost or destroyed or become worn out. All repaired or replaced Tooling shall be the property of Buyer. Wear and repair of the Tooling is Seller's responsibility. None of the Tooling may be removed from Seller's premises without Buyer's written consent. Seller shall be responsible for property tax and any other taxes assessed upon Tooling while in Seller's custody or control.

#### **(f) Records**

Seller shall keep at the location of the Tooling all records related to the Tooling as Buyer may reasonably require. Buyer may inspect and copy such records with 24-hour notice.

#### **(g) Use of Tooling**

Seller shall not manufacture, sell, design, or convey any product or property produced, manufactured or assembled with use or assistance of the Tooling to or for any person other than Buyer, except as specifically directed by Buyer in writing for the benefit of Buyer. Seller, without additional charge to Buyer, shall furnish appropriate safety systems for Tooling to meet OSHA and any other applicable safety rules and regulations at Seller's responsibility and cost.

#### **(h) Risk of Loss and Insurance**

Seller shall be responsible for any and all loss or damage to Tooling, including loss or damage which occurs despite Seller's exercise of reasonable care, until Seller delivers Tooling to Buyer. Seller shall insure Tooling

with fire and extended coverage insurance for replacement value thereof for the entire time Tooling is in Seller's possession in accordance with an Order.

### **(i) Responsibility for Safe Use**

Seller shall use Tooling in a careful and safe manner and shall defend and indemnify Buyer from any claims, liabilities, expenses and damages arising from or related to the installation, use, possession, storage or repair of the Tooling. Seller shall maintain a liability insurance policy and name Buyer as an additional insured.

### **(j) Return**

Tooling shall be delivered by Seller to Buyer, at Buyer's written request which may be given at any time, whether or not Buyer and Seller are engaged in litigation or other dispute, in which event Seller shall prepare Tooling for shipment and shall redeliver it to Buyer or its Customer in the same or equal condition as originally received by Seller, reasonable wear and tear excepted, all at Seller's expense. Seller shall have no right to retain possession of Tooling to secure payment of amounts owed for Tooling or Goods or for any other reason, as a claim for damages is an adequate remedy. Seller waives any statutory, common law, equitable, or other rights to claim a lien on the Tooling provided Buyer tenders any unpaid portion of the purchase price.

### **(k) Disposition**

Seller's responsibility under the Tooling Terms continues beyond any expiration date of the related Order for production of Goods. If the Tooling is not used to produce any parts for Buyer for a period of two years, Seller shall notify Buyer and request instructions for the disposition or retention of the Tooling. Seller shall follow Buyer's instructions regarding the disposition or retention of the Tooling for the period of service parts supply.

### **(l) Tooling Invoices, Payment, and Prices**

Upon: (i) completion of Tooling; (ii) approval by Buyer of the initial samples manufactured by Seller; and (iii) satisfaction of any other conditions specified in an Order, Seller shall invoice Buyer at the billing address on the face of an Order. Payment for Tooling shall be made in accordance with Buyer's normal payment terms unless stated otherwise on the Tooling Purchase Order. Unless an Order provides for a "firm" price, Buyer's payment obligation shall be no more than the greater of: (a) Seller's actual costs for purchased materials and services (including Furnished Property and portions thereof); plus (b) Seller's actual cost for direct labor and overhead or any maximum or estimate included in the Order. Seller must establish a reasonable accounting system accessible to Buyer that enables ready identification of all Seller's costs.

### **(m) Injunctive Relief**

The Tooling is a unique product which is critical in the production of a unique part or assembly. Seller expressly acknowledges that Buyer is in an industry that has exacting standards for delivery, quality, and other performance including just-in-time delivery requirements. The failure to produce or deliver the Tooling in accordance with the requirements of an Order can expose Buyer to significant claims by third parties and a significant loss of business and reputation which will be very difficult or impossible to quantify and for which Seller may be fiscally unable to respond in monetary damages. Whether or not the parties are in a dispute, Seller shall be entitled to possession of the Tooling on demand and payment of any portion of the unpaid purchase price owed Seller under an Order for the Tooling which is not contested by Buyer, and Seller shall be entitled to orders for specific performance, preliminary and permanent injunctions and/or other extraordinary relief, which relief

shall be cumulative and in addition to any and all other remedies to which any party may be entitled under this Agreement or by law or equity, including but not limited to an ex parte order for possession of the Tooling provided Buyer shall only be entitled to a single full recovery for any breach Seller waives any requirement for posting of a bond provided that if a waiver is not permitted by law, the amount of the bond shall not exceed the unpaid purchase price.

#### **(n) Waiver of Jury Trial**

CERTAIN JURISDICTIONS PROVIDE THE RIGHT TO A TRIAL BY JURY, BUT THIS RIGHT MAY BE WAIVED SELLER HEREBY KNOWINGLY, VOLUNTARILY AND WITHOUT COERCION, WAIVES ALL RIGHTS TO A TRIAL BY JURY OF ALL DISPUTES ARISING OUT OF OR IN RELATION TO A PROCEEDING BY BUYER TO OBTAIN POSSESSION OF TOOLING.