



# **STANDARD TERMS AND CONDITIONS OF PURCHASE**

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

**1 Supplies and Parties Covered by Agreement.** These Standard Terms and Conditions of Purchase (the “Terms”) apply to the agreement between Buyer and Seller regarding the purchase of the goods and/or services (in either such case, the “Supplies”) identified in a purchase order issued by Buyer to Seller referencing these Standard Terms and Conditions of Purchase (the “Order”). Buyer and Seller are the respective entities identified on the face of the Order, or, if Buyer and Seller are not so identified on the face of the Order, Buyer and Seller are the entities identified on the face of such other Agreement documents set forth in Section 2.1.1 below. If no such documents identify Buyer or Seller, the Buyer is GT Technologies, Inc., and Seller is the entity that performs the Agreement and/or is named in any invoices sent to Buyer. For purposes of these Terms, a “Related Entity” of any party or third party shall include such entity’s parent(s), subsidiaries, affiliates, and commonly owned and/or managed entities.

## **2 Content and Formation of Agreement.**

### **2.1 Terms and Incorporated Documents.**

**2.1.1** The “Agreement” consists of the following: (a) the Order; (b) specifications issued by or expressly agreed to by Buyer in a signed writing; (c) these Terms; (d) Material Releases (as defined in Section 3.1) issued by Buyer to Seller; (e) all non-disclosure, confidentiality and similar agreements between Buyer and Seller; (f) all long-term agreements, joint development agreements, or joint venture agreements between Buyer and Seller covering the Supplies; (g) all other documents specifically incorporated into any provision of the Agreement; and (h) Buyer’s then-current requirements and policies that are either transmitted by Buyer to Seller (whether in electronic or hardcopy form) or posted on Buyer’s supplier web portal (<http://www.gttechnologies.com/supplier.html>), including, without limitation, Buyer’s Supplier Requirements and Guidelines Manual, Product Containment System Guidelines, Prototype Inspection-Verification Requirements, and Contractor Environmental, Safety and Insurance Agreement. In addition to and without limiting any of Buyer’s other rights of modification under the Agreement, Buyer shall have the right to modify these Terms and any of the documents referenced in subpart (h) from time to time in Buyer’s sole discretion. The modified versions of any such documents shall be deemed incorporated into the Agreement and effective upon the sooner of Buyer’s transmittal of the same to Seller or upon Buyer’s posting the same on its website. Seller is responsible for keeping current regarding the terms of Buyer’s documents and/or any other Agreement documents.

**2.1.2** To the maximum extent possible, these Terms shall be interpreted consistently with the other elements of the Agreement, but in the event of conflict or inconsistency, the Order and other elements of the Agreement specific to the Supplies shall prevail over the Terms and other provisions of the Agreement. Further, unless otherwise expressly agreed by Buyer in writing, in the event of any conflict or inconsistency between any provisions of the Agreement, the provisions placing the greatest obligation on Seller and conferring greatest rights on Buyer shall prevail over any conflicting or inconsistent terms.

**2.1.3** The Agreement is the entire agreement between the parties respecting the Supplies and, when accepted, supersedes any prior agreements, negotiations or understandings of the parties respecting the Supplies, whether written or oral, express or implied. The Agreement may be

modified only (a) by Buyer through the process set forth in Section 2.1.1 above or elsewhere in the Agreement, or (b) by a writing signed by Buyer. The signature of an employee of Buyer on a document presented by Seller in connection with the delivery of any goods or services shall only constitute acknowledgement that such goods or services have been delivered and shall not constitute Buyer's assent to any terms and conditions different from or in addition to those in the Agreement, notwithstanding anything to the contrary in any document provided by the Seller.

**2.2 Contract Formation.** The Order is an offer by Buyer to purchase the Supplies from Seller in accordance with the terms of the Agreement. Seller acknowledges that neither a request for quotation or similar communication issued by Buyer nor a quotation or similar document issued by Seller is an offer. Seller accepts the Order upon the earlier of (i) its beginning work or performance; or (ii) its notification to Buyer of its acceptance of the offer; or (iii) its failure to reject the offer by written notice to Buyer within ten (10) days of receipt of the Order. **The Order is limited to and conditional upon Seller's acceptance of these terms exclusively. Any additional or different terms proposed by Seller, whether in Seller's quotation, proposal, acknowledgement, invoice or otherwise, are expressly rejected by Buyer, and reference in an Order or elsewhere in the Agreement to any such quotation, proposal, acknowledgment, invoice, or other document containing additional or different terms proposed by Seller shall in no way constitute an acceptance of such terms or a modification of these Terms or any other terms of the Agreement.** However, additional or different terms proposed by Seller shall not operate as a rejection of the Order if Seller commences work or performance or otherwise accepts Buyer's offer, in which case the Order shall be deemed accepted by Seller without any additional or different terms or variations whatsoever. If the Order is found to be an acceptance of any prior offer or proposal by Seller, such acceptance shall be limited to the terms of the Agreement. Buyer and Seller expressly reject any battle of the forms under UCC § 2-207 or its equivalent under applicable law, and any such analysis and/or question regarding the terms of the Agreement shall instead be governed by these Terms.

### **3 Delivery Requirements; Blanket Orders; Material Releases.**

**3.1 Delivery Requirements.** The times, quantities and locations for delivery of the Supplies ("Delivery Requirements") shall be specified in the Order or in "firm orders" included in material authorization releases, manifests, broadcasts or similar releases ("Material Releases"). The Delivery Requirements are of the essence under the Order, and Seller agrees to 100% on-time and conforming delivery. Unless otherwise agreed or stated in Buyer's Material Release, the firm order period in any Material Release is as set forth in Buyer's Supplier Requirements and Guidelines Manual. Buyer may require Seller to participate in an electronic data interchange or similar inventory management program, at Seller's expense, for notification of Material Releases, shipping confirmation and other information, and/or for such other purposes required by Buyer. Seller is responsible for obtaining and maintaining at its risk and expense all raw materials, inventories, other resources and manufacturing capacity necessary to meet Buyer's Delivery Requirements, and Seller shall bear the risk of loss for all Supplies until both the completion of delivery as required by the Agreement and acceptance by Buyer.

**3.2 Blanket Orders.** If the Order does not specify a quantity, states zero, "requirements," "blanket," "per release" or similar term, the Order is a Blanket Order. If the Order is a Blanket Order, then

Delivery Requirements shall be specified in Material Releases, and Buyer shall purchase from Seller 100% of Buyer's requirements for the Supplies or, if applicable, such other percentage or proportion of Buyer's requirements expressly specified by Buyer in the Order. Notwithstanding the foregoing, a Blanket Order does not prohibit Buyer from obtaining Supplies from other suppliers for purposes of: (i) trial production testing or similar purposes; and/or (ii) protecting against actual or potential shortages or disruptions in supply from Seller, as determined in Buyer's reasonable discretion.

**3.3 Forecasts.** Buyer or its Customer may provide Seller with forecasts or estimates of delivery times, quantities and locations, estimated program length or similar information for periods beyond the firm release period, whether in Material Releases or other documents. All such information is subject to change from time to time and shall not be binding upon Buyer. Seller bears all risks with respect to such changes, and Buyer shall have no liability for payment for any Supplies, materials and/or services provided by Seller in excess of firmly released or firmly authorized quantities specified in Buyer's Material Releases.

#### **4 Shipping and Delivery.**

**4.1 Packing and Shipping.** Seller shall be responsible for providing adequate packaging, packing, shipping and billing. Seller shall properly pack, mark, and ship Supplies (and provide related documentation) according to the requirements of Buyer, the involved carriers, the country of destination, and all other applicable Laws, rules, regulations, carrier tariffs and classifications. All goods shall be delivered to destination at Seller's expense, transportation charges prepaid, unless Buyer otherwise agrees in writing. Seller shall promptly provide Buyer with, in the form requested by Buyer, the identity and amount of all ingredients (and any changes in the ingredients) of the Supplies. Each shipment shall be accompanied by a packing slip, and an invoice for each shipment shall be mailed in duplicate with the bill of lading attached on the same day the shipment is made. Seller shall maintain and report any and all premium freight charges paid by Seller.

**4.2 Delay in Delivery.** If Seller for any reason does not comply with Buyer's Delivery Requirements or any other requirement of a Material Release, Buyer may, in its sole discretion and without prejudice to any and all other rights and remedies for Seller's non-compliance, (a) approve a revised delivery schedule, (b) require expedited or premium shipment of any of the Supplies at Seller's sole cost and expense; or (c) obtain cover Supplies, and adjust any quantity requirement under the Order accordingly, with Seller bearing the full cost and expense of such cover.

#### **4.3 Title and Risk of Loss.**

**4.3.1** Except for Tooling, Buyer shall take title to all Supplies upon the earlier of (i) delivery and acceptance of the Supplies at Buyer's plant or (ii) payment by Buyer of all or part of the purchase price of identified Supplies. Taking title will not relieve Buyer of any obligation to pay for the Supplies in accordance with the Agreement. Supplies shall be deemed identified upon fabrication, unless the Supplies are part of Seller's standard stock and sold to parties in addition to Buyer, in which case identification occurs when the Supplies are marked or otherwise designated by Seller as relating to the Agreement.

**4.3.2** For Tooling (as defined in Section 14.1.4) to which Buyer does not already have title, Buyer shall obtain title to Tooling constituting or relating to the Supplies upon fabrication or

acquisition by the Seller, regardless of payment. Taking title will not relieve Buyer of any obligation to pay for the Tooling in accordance with the Agreement. Supplies shall be deemed identified upon fabrication, unless the Supplies are part of Seller's standard stock and sold to parties in addition to Buyer, in which case identification occurs when the Supplies are marked or otherwise designated by Seller as relating to the Agreement.

## 5 **Price and Payment.**

- 5.1 Price.** Subject to and except to the extent that set forth in Sections 5.2, 8.1, 8.2, 8.3, 12.3, and 16.2 the purchase price is specified in the Order and is a firm fixed price for the duration of the Order and not subject to increase for any reason. The purchase price is inclusive of all applicable customs duties, tariffs, and other taxes and/or governmentally required payments, and of all storage, insurance, handling, packaging, transportation, delivery and other costs of Seller. All of the foregoing costs are the sole responsibility of Seller, irrespective of any increases to any of the same. Payment terms shall be specified in the Order or, if not specified in the Order or elsewhere in these Terms, Net 60 days from invoice date for all suppliers (both North-American-based and non-North-American-based).
- 5.2 Best Price.** Seller represents and warrants that the prices for the Supplies sold to Buyer are no less favorable than those that Seller currently extends to any third party for the same or similar Supplies in similar quantities. If Seller reduces its prices to third parties and/or offers to sell the same or similar Supplies in similar quantities to any other party during the term of the Agreement, Seller shall promptly notify Buyer of the same in writing and correspondingly reduce the prices charged to Seller. From time to time during the term of the Agreement, Buyer shall have the right to advise Seller of the terms of a bona fide offer from another seller offering to sell Buyer similar or substitute goods or services, as applicable, in like quantities, under similar conditions at a lower purchase price. If within fifteen (15) days of receipt by Seller or notice of said bona fide offer from Buyer, Seller does not agree to meet said lower purchase price, then Buyer shall have the right to terminate the Agreement as to some or all future purchases from Seller hereunder effective immediately upon written notice to Seller.
- 5.3 Invoices.** Seller shall issue invoices on or after delivery of the Supplies to Buyer and in conformance with Buyer's instructions as to form, content and method for submission. Payment shall be deemed to occur upon transmittal of payment by Buyer. All payment shall be made in U.S. dollars unless otherwise agreed in writing by Buyer.
- 5.4 Set Off.** In addition to any right of setoff or recoupment provided by law, Buyer shall be entitled at any time to set off or recoup against sums payable by Buyer or any of Buyer's Related Entities to Seller or any of Seller's Related Entities any amounts for which Buyer or Buyer's Related Entities claim in good faith Seller or any of Seller's Related Entities are liable to Buyer or Buyer's Related Entities under the Agreement or any other agreements between Buyer and Seller and/or any of their respective Related Entities. Buyer may do so without notice to Seller.
- 5.5 Payment Not Acceptance.** Payment for Supplies shall not constitute acceptance of non-conforming Supplies and will not limit or affect any rights or remedies of Buyer.

## 6 Non-Conforming Supplies.

- 6.1 **Right to Inspect.** Buyer shall have the right, but not the obligation, to inspect and test all Supplies, equipment, materials, processes, and workmanship at all times and places including during the period of manufacture, and in any event prior to acceptance. Notwithstanding Buyer's inspection and testing rights, however, Buyer's decisions as to whether, how and when to conduct inspections and/or tests shall not (a) relieve Seller from any responsibility for subsequently discovered defects, including latent defects, (b) relieve Seller from any of its obligations, representations, or warranties under the Agreement, (c) give rise to any liability of Buyer to Seller or to any legal defense of Seller as to Buyer, or (d) waive or prejudice any of Buyer's available rights or remedies, including, without limitation, with respect to the rejection, acceptance, or revocation of acceptance of any of the Supplies.
- 6.2 **Rejection/Revocation.** If Supplies are rejected by Buyer, or if acceptance is revoked, the quantities under the Order will be reduced unless Buyer otherwise notifies Seller. Following rejection or revocation and/or otherwise upon demand by Buyer, Seller shall, without prejudice to any and all other rights and remedies of Buyer, at Buyer's sole discretion and at Seller's sole risk, cost and expense, accept return of the Supplies to Seller, repair the Supplies, or replace the Supplies with conforming Supplies. Notwithstanding any term of the Agreement to the contrary, Seller shall have no right to payment for Supplies that are rejected, for which Buyer revokes acceptance, and/or that Buyer otherwise asserts are non-conforming and/or defective in any respect, and Seller shall promptly refund any payments Buyer has made with respect to such Supplies.
- 6.3 **Corrective Action.** Promptly upon learning of defective or non-conforming Supplies, Seller shall develop, document and implement corrective actions in accordance with all applicable quality control policies and standards of Buyer and any upper-tier and original equipment manufacturer customers to which Buyer supplies goods and/or services relating to the Order, the Agreement, and/or the Supplies, and/or relating to any goods or services into which the Supplies are incorporated (in any such case, a "Customer"). Seller shall immediately notify Buyer in writing when it becomes aware of any ingredient, component, design or defect in the Supplies that is or may be non-conforming and/or that may become harmful to persons or property, irrespective of whether such ingredient, component, design or defect was initially specified, selected, provided, and/or required by Buyer, its Customer(s), Seller, or any third party.
- 6.4 **Buyer Losses.** Seller is liable for all direct, incidental and consequential damages, losses, costs, and expenses incurred by Buyer resulting from Seller's actual or alleged failure to deliver conforming Supplies, even if the Seller has cured the failure. This includes but is not limited to compensating Buyer for any amounts charged by Customer(s) to Buyer; all costs of investigation, containment, sorting, repair, replacement, cure, and cover, each in such amount as reasonably determined by Buyer; and all costs of any recall campaign, corrective service action, or other voluntary or involuntary action in which Buyer or any Customer participates related to the non-conformity. As between Buyer and Seller, any determination by Buyer's Customer that Seller's Supplies are non-conforming or defective, are otherwise the cause of any damage, expense, or loss, or fail to comply with any warranty of Seller under the Agreement, shall be deemed conclusive, and Seller shall be deemed responsible for and shall indemnify and hold Buyer harmless against any and all corresponding costs and expenses incurred by or charged to Buyer as a result of Buyer's Customer's determination, including, without limitation, the types of costs set forth above. Buyer's rights and



remedies and Seller's obligations under this subsection are without limitation of, and are in addition to, Buyer's other rights and remedies under the Agreement.

**7 Buyer and Industry Standards and Policies.** Seller will conform to all quality control, validation, testing, information security, and other standards and inspection systems as established or required by Buyer, Buyer's Customer, and current industry standards, and Seller shall also participate in and at all times remain in compliance with all supplier quality and development programs as directed by Buyer, all at least to the extent set forth in, without limitation, Buyer's Supplier Requirements and Guidelines Manual, Product Containment System Guidelines, and Prototype Inspection-Verification Requirements. To the extent that any of the standards, policies or systems cited above are amended, supplemented or replaced, Seller's obligations under the Agreement shall automatically be deemed amended upon the earlier of Buyer's communication of the same to Seller, Buyer's or Buyer's Customer's posting of the same on its website, and/or, as applicable, the publication of any new, updated, and/or amended industry standards by the relevant industry group (*e.g.*, AIAG, etc.).

## **8 Changes.**

**8.1 Buyer Changes.** Buyer reserves the right to change the Supplies, including the design, specifications, engineering level, materials, packaging, testing requirements, shipping date, or time or place of delivery. Seller will promptly make any such change without regard to whether Buyer and Seller have reached agreement on an adjustment of the price or other terms.

**8.2 Seller Changes.** Seller shall not make any change to the Supplies, including, without limitation, to the manufacturing process, materials, raw materials, and proportions of raw materials for the Supplies, except at Buyer's written instruction or with Buyer's written approval. If Seller learns of a possible change to the Supplies that may reduce costs, improve quality, or otherwise be beneficial to Buyer and/or Buyer's Customer, Seller shall promptly inform Buyer of the possible change and then proceed as directed by Buyer.

**8.3 Impact on Cost.** Seller may request a price adjustment, limited to the actual and reasonable costs incurred or to be incurred as a result of any change described in this Section 8 and its various subsections. Seller's request and/or any right to payment under this Section shall be deemed waived and time-barred unless submitted within 30 days of Buyer's direction of a change and supported by necessary documentation and analyses, as reasonably determined by Buyer. Buyer and Seller shall negotiate in good faith on an equitable price adjustment (up or down), a change in shipping or delivery terms, or other appropriate adjustment, provided, however, that Buyer's ultimate decision regarding any requested price adjustment shall be deemed conclusive and binding, and, in cases where the subject change is required or requested by Buyer's Customer, in no event shall Seller receive any price adjustment in excess of any proportional price adjustment Buyer may receive from its Customer.

## **9 Warranties.**

**9.1** In addition to any other express and implied warranties provided by law or otherwise, Seller warrants to Buyer, Buyer's Customer(s) and their respective Related Entities, successors and assigns that the Supplies shall:

- 9.1.1** Conform to the Order and other aspects of the Agreement in all respects, including all specifications, drawings, samples and other descriptions furnished by Buyer or Buyer's Customer;
  - 9.1.2** Be merchantable, free from all defects in design (to the extent designed by Seller), workmanship, manufacture, and materials, and be of highest quality and workmanship;
  - 9.1.3** Be selected, designed (to the extent designed by Seller), manufactured and assembled by Seller based upon Buyer's intended use and be fit and sufficient for the purposes intended by Buyer;
  - 9.1.4** Be manufactured by the same process, and contain the same materials, raw materials and proportions of raw materials, required by the Order and other aspects of the Agreement and previously used by Seller in the manufacture of the Supplies, unless Seller obtains Buyer's written approval for a change pursuant to Section 8 above; and
  - 9.1.5** Conform to all applicable industry standards and all Laws (as defined in Section 25) in all jurisdictions within and outside the United States where the Supplies (or goods into which the Supplies are incorporated) are to be manufactured, delivered, transported, and/or sold.
- 9.2** For all services, Seller further warrants that its work will be performed in a professional and workmanlike manner, consistent with at least (a) all standards and specifications set forth in the Agreement, (b) all additional standards and specifications otherwise agreed on with Buyer, and (c) all standards and specifications otherwise consistent with industry standards.
- 9.3** Seller warrants that any representation made in any quote or otherwise regarding Seller's production capacity constitutes a warranty that Seller can manufacture or produce the stated quantity of the Supplies without the imposition of overtime charges or other surcharges.
- 9.4** Seller also warrants that title to all of the Supplies and Tooling shall be vested in Buyer free and clear of any and all liens and encumbrances of any nature, and Seller shall, at its sole cost and expense, (a) prohibit the assertion of any liens or encumbrances against any of the Supplies and/or Tooling before or after the passage of title to Buyer and (b) in the event of the assertion of any such liens or encumbrances against any such Supplies or Tooling, immediately cause such liens or encumbrances to be removed.
- 9.5** All warranties of Seller extend to future performance of the Supplies and are not modified, waived or discharged by delivery, inspection, tests, acceptance, payment, or the non-occurrence of any of the same. Buyer's approval of any design, drawing, material, process or specifications will not relieve Seller of any warranties under the Agreement. Seller waives any right to notice of breach.
- 9.6** Seller's warranty period is the longest of: (a) four years from the date Buyer accepts the Supplies, (b) the period of Buyer's warranty to its Customer, (c) the warranty period offered by Buyer or its Customer to end-users for the Supplies or products into which the Supplies are incorporated, or (d) the longest warranty period provided by applicable law.

## **10 Indemnification.**

- 10.1** Seller agrees to indemnify, defend and hold harmless Buyer, Buyer's Related Entities, Buyer's Customers, Buyer's Customers' Related Entities, and each of their dealers and users of the Supplies (or the products into which the Supplies are incorporated), and all of their respective agents, successors and assigns, and each of their owners, directors, officers, employers and agents (collectively "Indemnified Parties"), on demand, from and against any and all costs, fees, fines, penalties, damages (consequential and otherwise), attorneys' or other professional fees, investigation costs, and all other actual or potential liabilities and obligations whatsoever ("Losses"), arising out of any occurrence, allegation and/or actual or threatened third-party claims (whether in tort, negligence, contract, warranty, strict liability or otherwise), governmental claims, proceedings, or enforcement actions that, in whole or in part, arise from or relate to any actual or alleged:
- 10.1.1** Defect or non-conformity in the Supplies;
  - 10.1.2** Noncompliance by Seller with any of its representations, warranties and/or other obligations under the Agreement;
  - 10.1.3** Noncompliance by Seller, Seller's Related Entities, and/or any of their subcontractors or suppliers, or any of the foregoing entities' agents or representatives, with any applicable Laws;
  - 10.1.4** Failure to pay any customs duties, tariffs, or other taxes for which Seller is responsible under the Agreement or under any applicable Laws;
  - 10.1.5** Negligence or fault of Seller in connection with the design or manufacture of the Supplies;
  - 10.1.6** Recall campaign, corrective service action, or other voluntary or involuntary action in which any of the respective Indemnified Parties participates with respect to the Supplies or products into which the Supplies are incorporated;
  - 10.1.7** Spill, discharge or emission of hazardous wastes or substances in any way caused by or connected to, in whole or in part, the Supplies and/or Seller's activities undertaken in connection with the Agreement;
  - 10.1.8** Infringement (including claims of direct or contributory infringement or inducement to infringe) of any Intellectual Property Right relating to Supplies provided by Seller, even if such Supplies are made to Buyer's specifications;
  - 10.1.9** Any Cybersecurity Event (as defined in these Terms) and/or any unauthorized receipt, storage, dissemination or misappropriation of, or any unauthorized access to, any Intellectual Property Rights or confidential, proprietary, or personal information of any Indemnified Parties or any other entity that actually or allegedly is attributable, directly or indirectly, to Seller, Seller's Related Entities, or any of their subcontractors, suppliers, agents, employees, or representatives.

**10.1.10** Damages to the property of, or personal injuries to, any of the Indemnified Parties or any other person or entity to the extent arising from or in connection with Seller's or Seller's Related Entities' or any of their agents', contractors', employees', or representatives' (a) activities under the Agreement, (b) work on their own premises or the premises of Buyer, Buyer's Related Entities, Buyer's Customer, Buyer's Customer's Related Entities, or any other entity, or (c) use of their own property or the property of Buyer, Buyer's Related Entities, Buyer's Customers, Buyer's Customers' Related Entities, or any other entity.

**10.1.11** Challenge to Buyer's exclusive right, title and interest in, or right to possession of, the Tooling and/or any other Buyer's Property, brought by any third party, including but not limited to toolmakers, subcontractors, and lending institutions.

**10.2** If Seller is obligated to indemnify under this Section, then Buyer and/or Buyer's Related Entities may at their option participate in the defense of any claim with its own counsel, at Seller's expense.

**10.3** To the maximum extent permitted by applicable law, Seller's obligation under this Section will apply even as to Losses caused in whole or in part by an Indemnified Party's negligence, but Seller's indemnification shall not apply to the extent that Losses resulted solely and directly from the gross negligence or willful misconduct of such Indemnified Party.

**11 Inspection and Audit.** In addition to and without limiting any of Buyer's and/or Buyer's Customer's other rights and remedies under the Agreement, the following shall also apply:

**11.1 Inspection of Facility.** Buyer or its Customers (or any of their respective third-party designees) may enter Seller's facility at any time to inspect the facility, Supplies, materials, Tooling, and/or any of Buyer's or Buyer's Customer's Property related to the Agreement.

**11.2 Audit.** In addition to Buyer's other rights of inspection and/or audit under the Agreement, upon reasonable notice to Seller, Buyer and its Customers (or any of their respective third-party designees) may audit, at Seller's or, if applicable, Seller's Related Entities' facilities, Seller's or Seller's Related Entities' records, production facility, equipment, capabilities, the Supplies, any materials relating to the Supplies, any Tooling, and any of Buyer's or Buyer's Customer's Property (including all pertinent documents, data and other information) related to the Agreement for the purpose of verifying Seller's costs and its compliance with its obligations under the Agreement and under applicable Laws. Seller and/or Seller's Related Entities shall promptly provide, without additional charge, all reasonable facilities and assistance, as well as copies of or access to requested documents, and Seller and Seller's Related Entities will make their relevant personnel available for discussions during reasonable business hours.

**11.3 Financial Review.** Upon reasonable notice to Seller, Buyer or a third party designated by Buyer may review the financial condition of Seller and Seller's Related Entities. Seller and Seller's Related Entities will fully cooperate in such review and will promptly provide copies of or access to requested documents, including without limitation financial records and statements, forecasts, business plans, banking contacts and loan documents, and Seller and Seller's Related Entities will make their financial managers available for discussions during reasonable business hours. Buyer and any designated third party will keep confidential any nonpublic information about Seller and Seller's Related Entities obtained in a financial review and use such information only for purposes of

the review, except as needed to exercise and/or enforce Buyer's rights under the Agreement.

- 11.4 Buyer Discretion/No Buyer Liability, Waiver or Prejudice.** Buyer's right to conduct any inspection, audit or review under this Section 11 or otherwise is at its sole discretion. Buyer has no obligation to Seller to conduct any inspection, audit or review, and Buyer's decisions as to whether, how and when to conduct any inspection, audit or review shall not modify or relieve Seller of any obligations, representations, or warranties under the Agreement, shall not give rise to any liability of Buyer to Seller or to any legal defense of Seller as to Buyer, and shall be without waiver of or prejudice to any rights or remedies available to Buyer.

## **12 Customer Requirements.**

- 12.1** Seller shall comply at all times with the applicable terms of any agreements between Buyer and its Customer(s), as well as any renewals, extensions, amendments, and/or revisions to any such agreements, all of which together constitute the "Buyer/Customer Agreements." Buyer's "Customer" means any entity to which Buyer, directly or indirectly, sells the Supplies, or sells any goods or services into which the Supplies are incorporated, including a U.S. Government entity, any original equipment manufacturer, or any upper-tier supplier to an original equipment manufacturer. Seller shall comply at all times with all applicable Customer terms and requirements, including, without limitation, all terms and requirements regarding cyber-security or information protection, as well as all applicable Laws, including, without limitation, all Federal statutes, Executive Orders, and regulations that apply when the Customer is either a prime contractor or a higher-tier subcontractor under a U.S. Government contract, as any of the same may be amended from time to time. If Customer is not a prime contractor or higher-tier subcontractor under a U.S. Government contract, then, by written notice to Seller at any time, Buyer may elect to have the provisions of this Section prevail over any conflicting term of the Agreement. If, however, Customer is a prime contractor or higher-tier subcontractor under a U.S. Government contract, then the provisions of this Section shall prevail over any conflicting term of the Agreement. If Buyer is directed or required by its Customer, any court, or any governmental body at any level to provide information, adopt policies, certify compliance with standards or Laws, or perform similar actions, then Seller and, if applicable, Seller's Related Entities, shall, at their sole cost and expense, cooperate and comply with such requirements as reasonably directed by Buyer.
- 12.2** Seller shall incorporate the terms of Section 12.1 above into its contracts with its sub-suppliers and subcontractors and require that each sub-supplier and subcontractor comply with Buyer's and Buyer's Customer's requirements to the same extent as Seller is required to comply with such requirements. Seller's contracts with its sub-suppliers and subcontractors also shall require each sub-supplier and subcontractor to provide Buyer, Buyer's Related Entities, Buyer's Customer, Buyer's Customer's Related Entities, and all Indemnified Parties, with all rights and benefits specified in this Agreement, as well as any additional rights and benefits specified in any renewals, extensions, amendments, and/or revisions to this Agreement.
- 12.3** Notwithstanding any term of the Agreement to the contrary, if Buyer's Customer directed Seller as a source of the Supplies, (a) Buyer shall pay Seller for the Supplies only following and to the extent of Buyer's actual receipt of payment from that Customer for those goods in which the specific Supplies are incorporated; and (b) Seller shall notify Buyer in writing and immediately adjust its invoices to

reflect any price reduction agreed to between Seller and the Customer, provided that no change will be binding on Buyer without Buyer's specific written consent.

### **13 Duration and Termination.**

**13.1 Duration.** The Agreement shall be effective on the date specified in the Order, or if no date is specified, when the Order is issued to Seller. Unless canceled or terminated earlier in accordance with the Agreement, and subject to and with the exception of Section 32.4 (Survival) and the other provisions of these Terms, the Agreement shall terminate on the date specified in the Order; or, if no date is specified in the Order, the Agreement shall terminate upon the last to occur of (a) the end of production for the vehicle program of Buyer's Customer applicable to the Supplies and/or the goods into which the Supplies are incorporated, or (b) the expiration of termination of the last of Buyer's obligations under any agreement between Buyer and Buyer's Customer applicable to the Supplies and/or the goods into which the Supplies are incorporated.

**13.2 Termination by Buyer.** In addition to any other rights of Buyer to cancel or terminate the Order, Buyer may terminate the Order in whole or in part by written notice (a "Termination Notice") as follows:

**13.2.1** For convenience, effective three (3) days following delivery of the Termination Notice or upon such other date specified by the Buyer in writing; or

**13.2.2** For Default, effective upon delivery of the Termination Notice or upon such other date specified by Buyer in writing. Seller shall be in Default if (i) Seller breaches the Agreement; (ii) Seller repudiates or threatens to breach the Agreement; (iii) Seller fails to deliver, or threatens not to deliver, Supplies in connection with the Agreement; (iv) Seller fails to make progress or to meet reasonable quality requirements so as to endanger timely and proper performance of the Order and/or any other aspect of the Agreement; (v) Seller fails to meet the lower purchase price provided to it by Buyer under Section 5.2 of these Terms; (vi) Seller makes an assignment for the benefit of creditors, or proceedings in bankruptcy or insolvency are instituted by or against Seller; (vii) Seller needs accommodations from Buyer, financial or otherwise, in order to meet its obligations under the Agreement; (viii) without Buyer's advance written approval, Seller or Seller's Related Entities enter into or offer to enter into any transaction that includes a sale of a substantial portion of such entity's assets used for the production of the Supplies for Buyer, or any merger, sale, or exchange of stock or other equity interests that would result in a change of control of Seller (in any such case, a "Change of Control"); or (ix) at any time in Buyer's sole judgment, Seller's financial or other condition endangers Seller's ability to meet its obligations under the Agreement.

Termination by Buyer shall not relieve Seller of any liability under the Agreement.

**13.3 Termination by Seller.** Seller may terminate the Agreement only for Buyer's non-payment of the amounts required by the Agreement for Supplies, and only if such amounts are 30 or more days past due and material in amount, and then only if: (i) Seller first provides Buyer written notice specifying the amounts past due, the alleged due dates, and Seller's intent to terminate the Agreement if the past due amount is not paid; and (ii) within 60 days of such notice from Seller, Buyer does not either: (x) pay the past due amounts; or (y) notify Seller that it disputes Seller's entitlement to payment. Seller

shall terminate under this Section by delivering a Termination Notice to Buyer. Seller may not suspend performance of the Agreement for any reason, and any termination under this subsection shall be subject to and shall not relieve Seller of any of its obligations regarding Transition Support under Section 13.8, or of any other obligations that survive termination under Section 32.4 of these Terms.

**13.4 Seller's Obligations Following Termination.** Following delivery of a Termination Notice, Seller shall, unless otherwise directed by Buyer and subject to Seller's obligation to provide Transition Support as provided in Section 13.8:

**13.4.1** Terminate promptly all canceled and/or terminated work and/or activities with respect to the Supplies under the Order and transfer title and deliver to Buyer all finished work and Supplies completed prior to receipt of the Termination Notice and not yet transferred to Buyer;

**13.4.2** Transfer title to and deliver to Buyer all canceled and/or terminated work in process, and the parts and materials that Seller produced or acquired in accordance with the terminated portion of the Order and that Seller cannot use in producing goods for itself or for others; and

**13.4.3** Take actions reasonably necessary to protect property acquired prior to the Termination Notice that is in Seller's possession and in which Buyer has an interest until disposal instructions from Buyer have been received.

**13.5 Buyer's Obligations Following Termination.** Subject to and after adjustment for Seller's indemnification obligations and/or other obligations or liabilities under the Agreement, as well as Buyer's setoff rights and/or other rights and remedies under the Agreement, Buyer shall pay to Seller in connection with termination only the following amounts, without duplication, in complete and final satisfaction of any liabilities of Buyer to Seller relating to the Agreement:

**13.5.1** The purchase price for all conforming Supplies received by Buyer prior to the Termination Notice, or delivered following Termination Notice pursuant to Sections 13.4.1, 13.8, or delivered at the written direction of Buyer; provided, however, that in any such case, Buyer shall have no payment obligations for Supplies in excess of (a) the purchase price that would have been paid for the Supplies under the Agreement in the absence of termination, or (b) the amounts corresponding to the quantities in Buyer's firm Order(s) and/or firm Material Releases;

**13.5.2** Any amounts owed for Transition Support pursuant to Section 13.8; and

**13.5.3** If terminated for any reason other than Default by Seller, Seller's reasonable actual cost of merchantable and useable work-in-process and the parts and materials transferred to Buyer under Section 13.4.2 above; provided, however, that in any such case, Buyer shall have no payment obligations for such work-in-process, parts, and materials in excess of either (a) the purchase price of the Supplies under the Agreement had the work been completed, or (b) the quantity and value of work-in-process, parts, and/or materials corresponding to Buyer's firm authorizations under Buyer's firm Order(s) and/or firm Material Releases.

**13.6 Buyer's Obligations Following Expiration.** If the Order expires, Buyer shall pay to Seller, in complete and final satisfaction of any liabilities of Buyer to Seller relating to the Agreement, only (a) the purchase price for all conforming Supplies received by Buyer prior to expiration, but only to the extent such received Supplies were delivered in accordance with Buyer's firm Order(s) and/or Material Authorizations, and (b) if applicable, any amounts owed for Transition Support pursuant to Section 13.8.

**13.7 Recovery Limitations/Exclusions.** Notwithstanding any provision in this Section or elsewhere in the Agreement to the contrary, the following limitations and exclusions apply to Buyer's obligations and/or any payments to Seller under this Section:

**13.7.1** In no event shall Buyer's obligation to Seller upon termination exceed the amount Seller would have received in the absence of termination.

**13.7.2** Notwithstanding any provision of this Section 13 to the contrary, if Buyer's termination of the Agreement or any portion thereof is a result of Buyer no longer being a supplier to Customer for the vehicle program for which the Supplies are used and/or for which Buyer issued the Order, Buyer shall only be obligated to compensate Seller under this Section if, when, and to the extent that the Customer reimburses Buyer for such costs.

**13.7.3** In no event shall Buyer be required to pay Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, failure to realize anticipated production volumes, revenues or savings, unabsorbed overhead, interest on claims, product development and engineering costs, tooling, facilities and equipment rearrangement costs or rental, unamortized capital or depreciation costs, or general administrative burden charges from termination or expiration of the Agreement, except as otherwise expressly agreed in a separate Order issued by Buyer.

**13.8 Transition of Supplies.** Following expiration, cancellation, or termination of the Agreement (including termination by Seller), and/or following Buyer's decision to source the Supplies from any alternate supplier(s) for any other reason, notwithstanding any claimed or actual breach of any obligation by Buyer, Seller shall cooperate in the transition of supply to the successor supplier(s) ("Transition Support"). Without limitation, Seller's Transition Support obligations include the following:

**13.8.1** Seller will continue production and delivery of all Supplies as ordered by Buyer, at the prices stated in the Order and on all other terms stated in the Agreement, without premium or other condition, during the entire period reasonably needed by Buyer to complete an orderly transition to the alternate supplier(s);

**13.8.2** At no cost to Buyer, Seller shall promptly provide all requested information and documentation regarding, and Seller shall promptly provide access to, Seller's manufacturing process, including on-site inspections, bill-of-material data, tooling and process detail and samples of Supplies and components; and

**13.8.3** Subject to Seller's actual capacity constraints, Seller shall provide special overtime production, storage and/or management of extra inventory of Supplies, extraordinary



packaging and transportation and other special services as expressly requested by Buyer in writing. If the transition occurs for reasons other than Buyer's termination of Seller for Default, Buyer shall, after the end of the transition period, pay the reasonable, actual cost of the assistance under this Section 13.8, if (a) Seller has advised Buyer in writing prior to incurring such amounts of its estimate of such costs, and (b) Seller has provided Buyer with a timely written request for payment. Notwithstanding the foregoing, Seller's request and any right to payment under this Section shall be deemed waived and time-barred unless submitted within 30 days after the end of the transition period, together with necessary supporting documentation, as reasonably determined by Buyer, evidencing Seller's actual costs. If the parties disagree on the cost of Transition Support, Buyer will pay the agreed portion to Seller without prejudice to Seller's right to seek to recover any disputed amounts.

#### **14 Buyer's Property and Buyer's Customer's Property.**

- 14.1** Buyer's Property and Buyer's Customer's Property means any tangible or intangible property to which Buyer or Buyer's Customer, as applicable, has title. Without limitation, Buyer's Property and Buyer's Customer's Property includes the following:
- 14.1.1** All Supplies, together with materials and components incorporated or to be incorporated into the Supplies;
  - 14.1.2** All property furnished directly or indirectly by Buyer or Buyer's Customer to Seller to perform the Agreement;
  - 14.1.3** Inventions, Intellectual Property and Proprietary Information of Buyer or Buyer's Customer, or provided by Buyer or Buyer's Customer to Seller, as specified in Sections 17 and 18;
  - 14.1.4** All materials, parts, components, assemblies, equipment, tools, jigs, dies, fixtures, patterns, drawings, specifications, samples, hardware, software and facilities, including any replacements thereof, any materials affixed or attached thereto, and any special tooling produced by or furnished to Seller for the performance of its obligations under the Agreement ("Tooling"), if furnished to Seller or specifically paid for, in whole or in part, by Buyer or Buyer's Customer, or for which Buyer or Buyer's Customer has agreed in an order to compensate Seller;
  - 14.1.5** All other property (including, by way of example, returnable packaging) for which Buyer or Buyer's Customer has agreed in an order to compensate Seller; and
  - 14.1.6** Any modifications, repairs, refurbishments, and replacements of Buyer's Property or Buyer's Customer's Property.
- 14.2** With respect to Buyer's Property or Buyer's Customer's Property in the custody or control of Seller, Seller's Related Entities, or any of their respective suppliers, contractors or agents:
- 14.2.1** Buyer does not guarantee the accuracy of, or the availability or suitability of, Buyer's Property or Buyer's Customer's Property supplied by Buyer or Buyer's Customer. Seller agrees carefully to check and approve, for example, and without limitation, all tooling, dies

- or materials supplied by Buyer and/or Buyer's Customer prior to using it. Seller shall assume all risk of death or injury to person or damage to property arising from the use of Buyer's and Buyer's Customer's Property. TO THE EXTENT PERMITTED BY LAW, BUYER SHALL HAVE NO LIABILITY TO SELLER OR ANYONE CLAIMING BY OR THROUGH SELLER FOR ANY INCIDENTAL OR CONSEQUENTIAL OR OTHER DAMAGES OF ANY KIND WHATSOEVER RELATING TO BUYER'S PROPERTY AND/OR BUYER'S CUSTOMER'S PROPERTY. BUYER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO SUCH BUYER'S PROPERTY AND BUYER'S CUSTOMER'S PROPERTY, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND SELLER WAIVES, FOR ITSELF AND ITS RELATED ENTITIES AND ALL OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, ALL CLAIMS OF NEGLIGENCE AND STRICT LIABILITY.
- 14.2.2** Seller shall use Buyer's Property and Buyer's Customer's Property only for the production of Supplies for Buyer.
- 14.2.3** Seller at its own expense shall: (i) keep all of Buyer's Property and Buyer's Customer's Property in good working condition, house, maintain, repair and replace it, except for normal wear and tear; (ii) keep Buyer's Property and Buyer's Customer's Property fully insured at full replacement cost for the benefit of Buyer (or, at Buyer's direction, Buyer's Customer) at all times while in Seller's possession, with the insurer and other terms of such insurance at all times meeting the requirements of Section 20 of these Terms; and (iii) keep Buyer's Property and Buyer's Customer's Property segregated from all other assets and labeled as being the property of Buyer or Buyer's Customer, as applicable.
- 14.2.4** Seller shall have only temporary possession as a bailee at will. Seller may not release, relocate or dispose of Buyer's Property or Customer's Property to any third party without the express written permission of Buyer. Seller shall promptly notify Buyer of the location of Buyer's Property and Buyer's Customer's Property if located at any place other than Seller's facility.
- 14.2.5** Buyer shall have the right to enter Seller's premises, or the premises of Seller's Related Entities, suppliers, contractors or agents, to inspect Buyer's Property and Buyer's Customer's Property and Seller's and Seller's Related Entities' records regarding Buyer's Property and Buyer's Customer's Property. Only Buyer, Buyer's Customer, or their respective Related Entities, as applicable, have any right, title or interest in Buyer's Property or Buyer's Customer's Property, except for Seller's limited right, subject to Buyer's and/or Buyer's Customer's sole discretion, as applicable, to use Buyer's Property and Buyer's Customer's Property in the manufacture of Supplies. Seller shall not create or allow to exist any liens or encumbrances on Buyer's Property or Buyer's Customer's Property, and Seller shall immediately sign any UCC-1 forms or other documents reasonably required by Buyer or Buyer's Customer to perfect all rights granted herein. Seller grants to Buyer (or, upon Buyer's request, Buyer's Customer) a limited and irrevocable power of attorney, coupled with an interest, to execute and record on Seller's behalf any notice or financing statements with respect to Buyer's Property and Buyer's Customer's Property that Buyer or Buyer's Customer determine are reasonably necessary to reflect Buyer's and/or Buyer's Customer's respective interests in Buyer's Property and/or Buyer's Customer's Property.

**14.2.6** Immediately upon Buyer's request or upon any bankruptcy or insolvency filing, and without payment of any kind, Seller shall return Buyer's Property and Buyer's Customer's Property and comply with Buyer's and/or Buyer's Customer's instructions relating to its return, including but not limited to the method and location for its return. Seller is responsible for labor and other costs incidental to its return. Seller shall cooperate with Buyer and will provide it (and its third-party designees) with access to all facilities at which Buyer's Property and/or Buyer's Customer's Property is located. Seller expressly waives any right to additional notice or process relating to Buyer's exercise of its rights under this Section. Seller waives, to the extent permitted by law (i) any lien or other rights that Seller might otherwise have on any of Buyer's Property and/or Buyer's Customer's Property, including but not limited to molder's and builder's liens; and (ii) any objection to Buyer's repossession and removal of Buyer's Property and/or Buyer's Customer's Property for any or no reason, including bankruptcy or insolvency proceedings.

**14.2.7** Seller shall ensure that its suppliers, contractors or agents are contractually obligated to comply with all of Seller's obligations with respect to Buyer's Property and Buyer's Customer's Property.

**15 Seller's Property.** All items that are not Buyer's Property or Buyer's Customer's Property and that are necessary for the production of Supplies are Seller's Property. If Seller uses Seller's Property to produce goods or services similar to Supplies for other customers, including aftermarket customers, such goods or services shall not incorporate any of Buyer's or Buyer's Customer's logos, trademarks, tradenames or part numbers. Seller shall not disclose or imply in its marketing efforts that such goods or services are equivalent to those purchased by Buyer.

## **16 Tooling.**

**16.1** Seller shall not purchase any Tooling for the account of Buyer or charge Buyer for any Tooling except as authorized in the Agreement.

**16.2** If Buyer has agreed to compensate Seller for Tooling:

**16.2.1** The price for Tooling set forth in the Order shall be adjusted to credit Buyer in the amount, if any, by which the price exceeds Seller's actual cost as verified. Seller shall retain all cost records for a period of two years after receiving final payment of the charges. Seller shall provide to Buyer (and its third-party designees), as requested, access to Seller's premises and all documentation relating to the Tooling prior and subsequent to payment, to inspect work performed and to verify charges submitted by Seller against the Order.

**16.2.2** Seller shall be entitled to receive payment only after Tooling is completed, including completion of all required testing and submission of all necessary documentation. Seller shall be entitled to receive payment only after and to the extent of, and in proportion to, Buyer's actual receipt of such reimbursement or other payment from the Customer.

**16.3** If Seller is responsible for fabricating or acquiring Tooling, such Tooling shall (i) comply with any specifications provided by Buyer (or, where directed by Buyer, those of its Customer); (ii) be

capable of producing Supplies that satisfy the Agreement and of meeting any volume requirements or estimates provided to Seller during the life of the product as well as satisfying the requirements for Service Parts. Time is of the essence for Seller's acquisition or fabrication of Tooling. Seller shall provide Tooling progress reports on Buyer's request and shall promptly notify Buyer in writing if it believes that the Tooling might not be completed by the completion date specified on the Order and/or elsewhere in the Agreement.

- 16.4** If all or part of the fabrication, modification, repair or refurbishment of Tooling will be subcontracted to a third-party toolmaker, Seller shall (a) give Buyer advance written notice of the identity of the toolmaker and the location of the Tooling; (b) inform the toolmaker in writing that it is a bailee-at-will, through the Seller, of Tooling owned by Buyer and/or the Customer; and (c) be solely responsible for payments to the toolmaker. Buyer has no obligation to Seller or any of Seller's subcontractors other than payment to Seller of the Order price to the extent required by the Agreement. If a subcontractor brings an action against Seller for payment of the Tooling, Seller shall not join the Buyer in the action or any other action.
- 16.5** If Seller intends to subcontract all or part of the manufacture of the Supplies to a third-party subcontractor and to locate Tooling on the subcontractor's premises, Seller shall (a) provide Buyer with written notice of the identity of the subcontractor and the location of the Tooling; (b) obtain Buyer's advance written permission; (c) inform the subcontractor in writing that it is a bailee-at-will, through Seller, of Tooling owned by Buyer and/or Buyer's Customer, as applicable; and (d) be solely responsible for payments to the subcontractor. If a subcontractor brings an action against Seller for payment of the Tooling, Seller shall not join the Buyer in the action or any other action.

## **17 Intellectual Property.**

- 17.1** Seller warrants that the Supplies and the sale and/or use thereof (before or after incorporation into products during manufacture) do not and will not infringe any Intellectual Property Rights. "Intellectual Property Right" means any right arising under U.S., state, or foreign law relating to patent, trademark, copyright, industrial design, trade secrets, or similar rights or protections.
- 17.2** If Seller, or any person employed by or working under the direction of Seller, in anticipation of or in the performance of the Agreement conceives or first reduces to practice: (i) any invention or any experimental, development or research activities, including engineering related thereto, whether or not patentable, (ii) any subject matter, application or discovery that is or could be patented or copyrighted, or that is or could be the subject of any trade secret protections, (iii) any improvement in the design of the Supplies or any alternative or improved method of accomplishing the objectives of the Agreement (collectively, "Inventions"), such Inventions shall be owned by Buyer and be deemed confidential and proprietary property of Buyer, regardless of whether such Inventions or any portions thereof can be copyrighted or patented or are or may be entitled to trade secret protections. Seller shall immediately disclose all Inventions to Buyer and shall cooperate (and cause its employees to cooperate) in executing any documents and taking all actions necessary or convenient to patent, copyright, assign to the Buyer or otherwise perfect or protect such Inventions for the benefit of Buyer.
- 17.3** Seller shall not manufacture or provide, or offer to manufacture or provide, any goods or services that are based in whole or in part upon Inventions, confidential or proprietary information of Buyer

or intellectual property of Buyer, whether for its own purposes (other than to satisfy its obligations under the Agreement), for Buyer's Customer or any other third parties, without Buyer's prior written consent.

**17.4** Seller hereby grants to Buyer, Buyer's Related Entities, and each of their respective successors and assigns, and Buyer and its applicable Related Entities hereby accepts, a non-exclusive, irrevocable, royalty-free, fully paid up worldwide license, including the right to sublicense to others in connection with providing the Supplies to Buyer or the Customer, under: (i) any Intellectual Property Rights owned or controlled by Seller or Seller's Related Entities, and relating to the Supplies, to make, have made, repair, reconstruct, rebuild, relocate, use, sell and import the Supplies, and (ii) any works of authorship fixed in any tangible medium of expression (including drawings, prints, manuals and specifications) furnished by Seller or Seller's Related Entities in the course of Seller's activity in anticipation of or in connection with the Agreement, to reproduce, distribute and display such works and to prepare derivative works based thereon, subject to the other provisions of the Agreement (all items in clauses (i) and (ii) above collectively constitute "Seller's Intellectual Property," and such license in respect thereof constitutes the "License"). Seller acknowledges and understands that the License shall be effective from the earlier of (a) the date of the first Order under the Agreement, (b) the date of any other agreement incorporated into the Agreement, or (c) the date of Seller's first delivery of Supplies to Buyer, and extend for the longer of (x) the date on which the last obligations of Seller under the Agreement (including surviving obligations under Section 32.4) expire or terminate, or (y) the date on which the last of Buyer's contractual obligations to its Customer expire or terminate. The License is intended to be subject to 11 U.S.C. § 365(n), as an executory agreement under which Buyer has license rights to Seller's Intellectual Property, and is supplementary to any other rights of Buyer under the Agreement and any other agreement with Seller.

**17.5** Seller will ensure that the terms of its contracts with its subcontractors and employees are consistent with the terms of this Section.

## **18 Proprietary Information.**

**18.1** Any information or knowledge that Buyer may have disclosed or may hereafter disclose to Seller in anticipation of or in connection with the Agreement and/or the Supplies (including but not limited to the provisions of the Agreement), any information or knowledge relating to the Inventions or that relate to or are the subject of any of Buyer's, Buyer's Related Entities', Buyer's Customer's, or Buyer's Customer's Related Entities' Intellectual Property Rights, any information and knowledge that is the subject of any non-disclosure and/or confidentiality agreements between Buyer and Seller and/or their respective Related Entities, and any and all services to be rendered and/or work to be performed pursuant to the Agreement are and shall be deemed confidential and, as between Buyer and Seller, proprietary information of Buyer, irrespective of whether the corresponding documents, files, drawings, and/or other media reflecting such information or knowledge are expressly marked or identified as confidential.

**18.2** Seller shall not, without authorization in writing from Buyer, use, communicate or disclose the confidential and proprietary information of Buyer or use such information for any purpose other than to perform its obligations under the Agreement. Seller agrees to safeguard the confidential and proprietary information of Buyer by using reasonable efforts, including at least those efforts used in

the protection of its own proprietary information of a similar nature, and in any event as required by industry standards and applicable Laws for the protection of trade secrets and other confidential and/or proprietary intellectual property rights and/or information, to prevent the disclosure to third parties of the same. Seller shall cause its employees, contractors, officers, directors, agents and representatives to be bound by and comply with the foregoing restrictions. Seller shall also (a) restrict access to and/or disclosure of Buyer's confidential and proprietary information within Seller's organization only to those employees who have a need to know in order to fulfill Seller's obligations under the Agreement, and who have agreed to keep all such information confidential, and (b) prevent the disclosure of any such confidential and proprietary information to third persons not employed by Seller without both Buyer's prior written consent and a signed acknowledgment from such persons confirming the confidential status of such information and the need to comply with the same confidentiality, access, and non-disclosure restrictions to which Seller is subject. Seller further agrees not to assert any claims with respect to any technical information that Seller shall have disclosed or may hereafter disclose to Buyer in anticipation of and/or in connection with the Supplies and/or the Agreement.

- 18.3** The restrictions and obligations of Sections 18.1 and 18.2 will not apply to information that (a) is already publicly known at the time of its disclosure by Buyer; (b) after disclosure by Buyer becomes publicly known through no fault of Seller; or (c) Seller can establish by written documentation was properly in its possession prior to disclosure by Buyer or was independently developed by Seller without use of or reference to Buyer's, Buyer's Related Entities', Buyer's Customer's, or Buyer's Customer's Related Entities' information and does not constitute an Invention owned by Buyer, Buyer's Related Entities, Buyer's Customer, or Buyer's Customer's Related Entities.
- 18.4** Seller shall only use, share or transfer data provided by Buyer for the purpose of fulfilling the terms of this Agreement, and, in so doing, Seller shall comply with all restrictions, limitations and obligations under the Agreement regarding such data. Seller shall not obtain ownership in Buyer's data.
- 18.5** The restrictions and obligations of this Section 18 and its respective subsections, as well as the restrictions and obligations of Seller and any of Seller's Related Entities under any and all confidentiality or non-disclosure agreements between Buyer and Seller and any of their respective Related Entities relating to the confidential and proprietary information covered by this Section 18, shall survive the termination of this Agreement and, unless a longer period is specified in writing by Buyer, will continue for the longest of (a) five years from the date of disclosure of information covered by this Section, (b) three years after the termination or expiration of the last effective obligation (including surviving obligations under Section 32.4) under any document that is a part of the Agreement, (c) the term of any confidentiality or non-disclosure agreement(s) between Buyer and Seller covering any or all of the subject information, or (d) as long as Buyer's Property, Buyer's Related Entities' Property, Buyer's Customer's Property, or Buyer's Customer's Related Entities' Property, or any other information of Buyer, Buyer's Related Entities, Buyer's Customer, or Buyer's Customer's Related Entities remains a trade secret (in any such case, the "Confidentiality Period"). Notwithstanding anything to the contrary in the Agreement, to the extent that any confidentiality or non-disclosure agreement(s) between the parties that predate(s) the Order would otherwise expire and/or terminate before the end of the Confidentiality Period, upon and by virtue of Seller's acceptance of the Order, Buyer's rights and Seller's obligations under such agreements shall be deemed modified and extended until the expiration of the Confidentiality Period unless otherwise

expressly modified in a writing signed by Buyer. To the extent of any conflict between the express terms of such an agreement and any other provisions of the Agreement, the terms imposing the greatest confidentiality and non-disclosure obligations on Seller, and the terms conferring the greatest protections and rights, including Intellectual Property Rights, on Buyer, will control.

- 18.6** All documents containing confidential or proprietary information or relating to any Intellectual Property Rights of any party other than Seller under the Agreement shall, as between Buyer and Seller, belong exclusively to Buyer and shall be subject to the confidentiality and non-disclosure obligations set forth in this Section 18 and its accompanying subsections. All drawings, know-how, and confidential or proprietary information supplied to Seller by or at the request of Buyer and all rights therein will, as between Buyer and Seller, remain the property of Buyer and Seller shall cause all of the same to be kept confidential in accordance with this Section 18 and its accompanying subsections.
- 18.7** Unless Buyer requests otherwise or specifies a different period in writing, Seller shall, within five (5) business days of Buyer's request or the expiration or termination of this Agreement, return all confidential and proprietary information (including all copies, notes and/or extracts thereof).

## **19 Cyber-Security, Information Protection, and Data Privacy**

- 19.1** Seller shall comply with all applicable Data Privacy Laws and shall store Buyer's data and information securely on servers with appropriate and reasonable cybersecurity protections in place. "Data Privacy Laws" shall mean applicable Laws relating to data protection, including, without limitation, the laws and regulations of the European Union member states under the General Data Protection Regulation ("GDPR") (the European Union Regulation 2016/679), the laws of the United Kingdom under the Data Protection Act 2018 ("DPA"), the laws of Germany under the German Privacy Act effective May 25, 2018 ("GPA-new"), the laws of Canada, the United States, and the individual provinces and states of Canada and the United States addressing privacy policies and/or data breach, and the laws of any country dealing with Personal Information. In addition, and without limitation, to the extent that "personal data" about one or more "data subjects" (*e.g.*, Seller and/or Seller's, employees, agents, affiliates, vendors, suppliers, clients, and/or customers), as those terms are defined under the GDPR, DPA, and other similar Data Privacy Laws that may be effective and applicable, are collected and/or transmitted by or on behalf of Seller to Buyer, Buyer's customer(s), and/or any other individuals or entities affiliated with or requested by Buyer, Seller represents and warrants that all such personal data has been collected in compliance with applicable Data Privacy Laws, and also that Seller has informed all corresponding data subjects of the purpose of such collection and transmittal of their personal data to the full extent required under applicable Data Privacy Laws. Further, to the extent not otherwise specified in the Agreement, with respect to all of Seller's and Seller's Related Entities' cybersecurity and information technology systems, Seller and Seller's Related Entities shall ensure that they at all times are and remain in compliance at least with CS-1 Cyber Security/3<sup>rd</sup> Party Information Security standards and requirements, as well as all amended and superseding versions of the same.
- 19.2** The restrictions and obligations set forth in Sections 17 and 18 and their corresponding subsections, as well as any and all other restrictions and obligations of Seller under any Data Privacy Laws, shall survive the termination of this Agreement and, unless a longer period is specified in writing by

Buyer, will continue for the longest of (a) the Confidentiality Period (as defined in Section 18.5) or (b) such other period required under any Data Privacy Laws or other applicable Laws (in either such case, the “Data Privacy Period”). To the extent of any conflict between any provisions of the Agreement with respect to Seller’s obligations under this Section, the terms imposing the greatest obligations on Seller will control.

- 19.3** In the event of any Cybersecurity Event (as defined in Section 18.1) that causes any actual or potential breach by Seller of the Agreement, including, without limitation, any delay in delivering the Supplies on the delivery dates and times and in the quantities specified by Buyer, or any interrupted or unauthorized access to confidential and/or proprietary information or other information relating to Seller’s or Buyer’s performance under the Agreement, Seller shall inform Buyer by telephone call of such Cybersecurity Event as soon as possible, and in any case within 24 hours, after Seller discovers such Cybersecurity Event. Seller shall (a) provide Buyer with a summary of known information about such Cybersecurity Event, (b) implement required measures to remedy the effects of such Cybersecurity Event, (c) provide all additional information requested by Buyer about the Cybersecurity Event and corresponding response, and (d) within two weeks after Seller completes its investigation of the Cybersecurity Event, provide a report to Buyer, containing, without limitation, a description and timeline of the Cybersecurity Event, the cause(s) and suspected perpetrators of the Cybersecurity Event, the measures Seller has implemented to avoid similar future Cybersecurity Events, the nature and extent of information that may have been misappropriated, compromised, destroyed, or otherwise affected by or accessed as a result of the Cybersecurity Event, and any actual or potential financial impacts to each of Buyer and Seller as a result of the Cybersecurity Event.
- 19.4** In connection with the requirements of Section 19.3 above, Seller shall, at its sole expense, promptly investigate the Cybersecurity Event and fully cooperate with Buyer’s investigation, including by promptly providing Buyer with requested information and/or access to Seller’s network, databases, computer systems, electronic records, or other data, files or equipment. No later than two months after Seller completes its investigation, Seller shall fully implement all required remedial actions to prevent the Cybersecurity Event from continuing and to prevent similar future events. Seller shall provide Buyer with the name and contact information of Seller’s primary cyber-security representative, which representative shall remain immediately reachable by Buyer at any times on any day.
- 19.5** In the event that any Cybersecurity Event results in the loss of any payments made by Buyer to Seller under the Agreement, Buyer shall have no obligation to make further payments to Seller until Buyer completes its investigation. Thereafter, any payments from Buyer to Seller shall be in proportion to Buyer’s findings with respect to the cause(s) and extent of the Cybersecurity Event and any lost payments, and subject to Seller’s indemnification obligations and Buyer’s set-off rights under the Agreement.
- 19.6** Seller shall, at its expense, implement, maintain and enforce appropriate technical and organizational measures and other protections for the proper security of all electronically available information. In particular, but without limitation, Seller shall (a) not load any confidential, proprietary, private, or otherwise sensitive information onto any cloud-based or remotely accessible servers, laptop computers, portable electronic devices, or portable storage media that can be removed from or accessed outside Seller’s premises, unless in each case such



information is encrypted, (b) implement, maintain and enforce appropriate measures and protections to prevent password theft or loss or unauthorized access to or use of any electronically stored information, (c) notify Buyer promptly of any password theft or loss or unauthorized access or use of any electronically stored information, (d) implement, maintain and enforce at Seller's premises physical security measures that meet or exceed industry standards for such types of premises with respect to the accessibility and maintenance of electronically stored information, and such measures shall (i) meet or exceed industry standards for such types of premises, and (d) implement, maintain and enforce appropriate measures and protections that meet or exceed industry standards for preventing unauthorized access to, or unauthorized disclosure, alteration or loss of, electronically stored information, whether due to accident, theft, other unlawful conduct, or otherwise.

- 19.7** Seller's information systems shall not contain any virus, malware, Trojan horse, worm, time bomb or other computer programming routine, device or code that could damage, delete, destroy, replicate, lock, disable, detrimentally interfere with, surreptitiously intercept, or expropriate any data or system. Seller shall implement, maintain and enforce all required measures and other protections to ensure that its information systems do not contain any of the foregoing, including any backdoor or other computer programming routine, device or code that could adversely affect the security, confidentiality, accessibility, or integrity of any systems or electronically stored information of Buyer, any of Buyer's Customers or other suppliers or sub-suppliers, or any other third party having any relation to the Supplies or the Agreement.
- 19.8** Seller shall take all reasonable measures to secure and defend its physical premises, information systems and equipment against "hackers" and others who may seek, without authorization, to modify or access Seller's or Buyer's systems or the information found therein, and Seller shall periodically test its information systems for potential security vulnerabilities.
- 19.9** Seller shall indemnify and hold Buyer and the Customer, and their respective representatives, employees, agents, customers, invitees, subsidiaries, affiliates, successors and assigns, harmless from and against all liabilities, claims, demands, losses, costs, damages and expenses of any nature or kind (including consequential and special damages, personal injury and property damages, lost profits, production interruption costs, inspection, handling and reworking charges, professional and other legal fees, and other costs associated with Buyer's administrative time, labor and materials) arising or resulting from any Cybersecurity Event involving Seller's or its subcontractors' or suppliers' business or information systems.
- 19.10** In addition to Buyer's and Buyer's Customer's audit and inspection rights set forth elsewhere in the Agreement, Buyer shall have the right, either directly or through a reputable third party, to visit Seller's and Seller's Related Entities' premises and each other premises where Seller causes electronically stored information to be maintained with respect to Buyer, Buyer's Related Entities, Buyer's Customer, Buyer's Customer's Related Entities, any other suppliers, the Supplies, and/or the Agreement, for the purpose of reviewing, auditing and conducting a risk assessment of Seller's business operations. The subjects of Buyer's review, audit, and risk assessment shall be determined by Buyer and/or Buyer's third-party agent and may include, without limitation, Seller's technical infrastructure, information or data systems interaction, organization, quality, quality control, personnel involved with the production and delivery of the Supplies, and/or Seller's internal controls with respect to the implementation, maintenance, and

enforcement of technical and organizational measures and other protections necessary to maintain the security of all electronically stored information. Buyer and/or Buyer's third-party agent may also conduct a walk-through of the subject premises and perform such other checks that are reasonably required to confirm compliance with the terms of this Section 19.10, subject to Buyer's additional written requirements to Seller regarding the scope of Buyer's access to Seller's premises and information. The audits, reviews or risk assessments described in this Section 19.10 shall (a) occur at a reasonable time during normal business hours, (b) not occur more than once each calendar year at each relevant location, and (c) not unreasonably interfere with Seller's business or operations; provided, however, that the limitations in the foregoing sentence shall not apply, and all of the costs associated with the foregoing shall be borne solely by Seller, if Seller, Seller's Related Entities, or any of the other premises where Seller causes the electronically stored information described in this Section or constituting or relating to the information in Sections 17 or 18 above to be maintained have experienced a Cybersecurity Event that is still continuing and/or has not yet been fully remedied, or, in Buyer's reasonable discretion, Seller, Seller's Related Entities or any of the foregoing premises are at an elevated and imminent risk of experiencing a Cybersecurity Event (including, without limitation, where any such premises have experienced Cybersecurity Event in the preceding 3 years).

## **20 Insurance.**

Seller and its subcontractors shall maintain in full force and effect at their expense the following minimum insurance coverage's utilizing such insurance companies who have at least an A.M. Best Company Rating of A- or greater:

- 20.1** Workers' Compensation and Occupational Disease Coverage in accordance with the laws of the State(s) within whose jurisdiction the work is performed.
- 20.2** Employers Liability Coverage with minimum limits of \$500,000 Bodily Injury by Accident, \$500,000 Bodily Injury by Disease, and \$500,000 Bodily Injury by Disease Each Employee.
- 20.3** Commercial General Liability Insurance including but not limited to the following coverages:
  - (i)** Premises / Operations Liability;
  - (ii)** Explosion, Collapse and Underground Hazards Included;
  - (iii)** Products / Completed Operations Hazards Included;
  - (iv)** Contractual Liability Coverage Included;
  - (v)** Broad Form Property Damage Liability Included;
  - (vi)** Independent Contractors (Contractors' Protective) Liability;
  - (vii)** Personal Injury Liability; and
  - (viii)** The Limits of Insurance shall be as follows: \$2,000,000 General Aggregate Limit (Other than Products / Completed Operations), \$1,000,000 Products / Completed Operations Aggregate Limit \$1,000,000, and Personal and Advertising Injury Limit \$1,000,000 Each Occurrence Limit.
- 20.4** Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired vehicles with a minimum limit of \$1,000,000 Combined Single Limit.

- 20.5** Cyber Risk/Network Security/Privacy Insurance, with a limit of at least \$5,000,000 for each claim. Such insurance shall provide coverage, at a minimum, for costs, damages, and liability arising from any (a) alleged or actual theft, loss, and/or improper dissemination and/or use of personal, proprietary, or confidential information, (b) network security breaches arising from the unauthorized access to, use of, or tampering with computer systems, including hacker attacks or inability of an authorized party or third party to gain access to services, including denial of service, unless caused by a mechanical or electrical failure, (c) introduction of a computer virus or other malicious software into, or otherwise causing damage to, any customer's or third person's computer, computer system, network, or similar computer-related property and the data, software, and programs thereon, (d) government investigations, regulatory penalties and/or fines resulting from the alleged or actual disclosure of personal or confidential information or network security liability event, (e) cyber extortion, (f) related forensic costs, crisis management costs, investigation costs, and attorneys' fees and (g) non-physical business interruption.
- 20.6** Insurance of the type and amount necessary to satisfy Seller's obligations under Sections 14.2.3 and 30.2.2 of these Terms.
- 20.7** If Seller is performing services at Buyer's premises, Seller shall maintain Installation Floater / Builders Risk Coverage that provides All Risk Physical Damage Insurance on all of Seller's and Seller's Related Entities' and their respective subcontractors' equipment, tools, equipment, material and machinery, including property of employees, in an amount equal to 100% of the full replacement costs.
- 20.8** In addition to the coverages outlined above, Seller shall maintain Excess Umbrella Liability with a minimum limit of \$2,000,000. Such coverage is to be excess over all other coverages required under the Agreement, except that such coverage need not be excess over the respective coverages described in Sections 20.2, 20.3, and 20.4 above to the extent that those underlying coverages are respectively written in the amount of \$3,000,000 or more.

"GT Technologies, Inc. and its affiliates and subsidiaries" shall be named as an additional insured under all such insurance policies other than Workers compensation prior to the start of work. Seller must furnish Buyer with a Certificate of Insurance evidencing same. All policies shall be endorsed to provide Buyer with 30 days advance written notice of material change, cancellation or non-renewal of coverage. Such insurance as is afforded by all liability policies maintained by Seller shall be primary to and non-contributory with any other insurance or any self-insurance or deductibles available to Buyer and shall include a cross-liability and severability of interest clause. Each policy shall be endorsed to include a waiver of Seller's, Seller's Related Entities', and their respective subcontractors' rights of recovery and their insurance carriers' rights of subrogation against Buyer, Buyer's Related Entities, and Buyer's Customer(s) and Buyer's Customers' Related Entities. Failure of Seller to keep the required insurance policies in full force and effect during the Agreement shall constitute a material breach of this Agreement. The obligation of Seller to carry insurance shall not limit in any way the obligations undertaken by Seller elsewhere under the Agreement.

- 21 Waiver of Liens.** Seller hereby waives all mechanics' liens and claims and agrees that none shall be filed or maintained against Buyer's, Buyer's Related Entities', Buyer's Customer's, and Buyer's Customer's Related Entities' premises, Tooling, and/or any of such entities' other property, on account of any Supplies and/or other aspect of the Agreement, and Seller shall, at its sole cost and expense, cause all its Related

Entities and each of their respective subcontractors, materialmen and suppliers (and subcontractors of such parties) to provide similar waivers and agreements in form satisfactory to Buyer.

## **22 Excusable Delay.**

**22.1** Except as otherwise provided in this Subsection, any delay or failure of either party to perform its obligations will be excused if and to the extent that the party is unable to perform due to an event or occurrence beyond its reasonable control and without its fault or negligence, such as acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority; embargoes; fires; explosions; natural disasters; riots; wars; sabotage; or court injunction or order (collectively “Excusable Delay”), provided that the party unable to perform gives notice of the non-performance (including its anticipated duration) to the other party promptly after becoming aware that it has occurred or is reasonably likely to occur, followed by prompt notices of any material changes in the facts relative to its ability to perform and/or the anticipated duration of the non-performance. Seller and Buyer shall share information, confer, seek agreement and otherwise act cooperatively to avoid or mitigate the effects of the potential or actual excused non-performance. Within 3 business days after written request by the other party, the non-performing party will provide adequate assurances that the non-performance will not exceed 15 days. If the non-performing party does not provide those assurances, or if the non-performance exceeds 15 days, the other party may terminate the Agreement by notice given to the non-performing party before performance resumes. The following are not Excusable Delays: (i) the increase in cost or decrease in availability of materials, components or services procured or provided by Seller, or any other increase in Seller’s cost or time of performance, due to market conditions, supplier actions, labor disruptions, or contract disputes; (ii) the increase in cost or decrease in availability of materials, components or services procured or provided by Seller, or any other change in Seller’s cost or time of performance, due to any Law, governmental action, or industry standard or requirement that is or becomes applicable to any aspect of the Agreement, including, without limitation, any of the foregoing that (A) require the payment of any new, additional, or increased customs duties, tariffs, taxes, and/or other governmentally required payments, (B) reduce or eliminate any previously available exclusions, exceptions, drawbacks, credits, refunds, or similar benefits with respect to any custom duties, tariffs, taxes, and/or other governmentally required payments, and/or (C) require new and/or increased expenditures and/or commitments of resources to achieve compliance; (iii) Seller’s financial distress; (iv) any labor strike or other labor disruption applicable to Seller or to any of its subcontractors or suppliers; or (v) any cybersecurity breach or attack or similar event, or any malfunction, disruption or failure of, or unauthorized access to or transmittal of, any information or data repository, electronic communication system, or computer software or hardware, or any of the occurrences otherwise described in Section 19.3 above that are the subject of Seller’s notice obligations to Buyer, or any other occurrence for which Seller is required to maintain insurance coverage under Section 20.5 above (in any case, a “Cybersecurity Event”).

**22.2** During any delay or failure to perform by Seller, Buyer may, at its sole option and at Seller’s sole cost and expense, (a) purchase Supplies or related goods or services from other sources and reduce its schedules to Seller by such quantities, without liability to Seller; (b) require Seller to deliver to Buyer at Buyer’s expense all finished goods, work in process and parts and materials produced or acquired for work under the Agreement; (c) have Seller provide Supplies from other sources in quantities and at times requested by Buyer and at the price set forth under the Agreement; and (d) exercise any and all of Buyer’s Transition Support rights under Section 13.8 above. In addition,

Seller, at its sole cost and expense, shall take any and all necessary actions to ensure the supply of Supplies to Buyer for a period of at least 60 days during any anticipated labor disruption or resulting from the expiration of Seller's labor contracts.

**22.3** In the event of any allocation of goods or services by Seller during any period of actual or anticipated delay, failure to perform, or reduced capacity, whether due to an Excusable Delay or otherwise, if Buyer demands continued deliveries from Seller, Seller shall give preference to Buyer for all of the Supplies ordered under Order. Seller's obligations under this Subsection are in addition to and shall not limit any of Seller's other obligations under the Agreement.

**23 Limitation on Assignment and Subcontracting.** The Agreement is entered into with Seller, in reliance upon its personal performance of the duties imposed. Without Buyer's prior written consent, Seller may not (i) assign this Agreement or any part thereof or delegate the performance of any of its duties hereunder; (ii) enter into any transaction resulting in a Change of Control; or (iii) assign any accounts receivable from Buyer to third parties. Any subcontracting, assignment or delegation, or Change of Control shall not relieve Seller of any responsibility under the Agreement. In addition, any subcontractors and material suppliers shall be subject to Buyer's written approval, which approval shall not be unreasonably withheld. Seller shall be fully responsible for the acts and omissions of its subcontractors and suppliers, and of persons directly or indirectly employed by them.

**24 Service Parts.** Seller shall sell Buyer such Supplies in such quantities as are necessary to fulfill current model service and replacement parts and components requirements ("Service Parts") for the longer of (a) at least as long as Buyer is required to provide current model and replacement parts to Buyer's Customer, or (b) at least 15 years following the conclusion of Customer production for consumer vehicles, or (c) such other period stated in writing by Buyer. Prices during the first five years of the service period will be the same as the prices that were in effect at the conclusion of current model purchases, unless otherwise agreed in writing by Buyer in Buyer's sole discretion. For the remainder of the service period, prices shall be the same as the prices that were in effect at the conclusion of production plus any agreed upon adjustments to compensate for reduced volumes, all in Buyer's sole discretion. In no event shall service and replacement parts be supplied to Buyer at prices that are not competitive or that exceed those charged to other comparable customers of Seller. Supplies provided for service must be produced from original Tooling unless otherwise approved by Buyer in writing. Seller shall maintain preventative and predictive maintenance processes on all Tooling and must immediately report any concerns with tools, fixtures or other equipment that could cause delay of shipment or quality concerns, both during the production and service part periods.

**25 Compliance with Laws.**

**25.1** Seller shall at all times comply with all applicable laws, treaties, rules, regulations, ordinances, policies, directives, by-laws, orders, building codes, fire codes, permits, approvals, or other requirements of any national, state, provincial, local, multi-national or international body (collectively "Laws") relating to the manufacture, sale, delivery and use of the Supplies or any other aspect of performance under the Agreement, all as updated and amended from time to time. In particular, but without limitation, Seller's obligations under this Section 25.1 include the following:

**25.1.1** Seller shall comply with the sanctions programs identified in 31 C.F.R. chapter V and administered by the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury, as well as with Section 1502 of the Dodd-Frank Act concerning Conflict

Minerals, including all restrictions on the mining source of Gold, Tin, Tantalum and Tungsten (3Ts&G), irrespective of whether Seller is among the entities to which Section 1502 of the Dodd-Frank Act expressly applies. Upon request, Seller shall submit to Buyer evidence of such compliance.

- 25.1.2** Seller represents and warrants that all Supplies, all packaging, labeling and transportation of the Supplies, all promotional and advertising materials supplied with the Supplies, and all consumer representations and advertising by Seller in relation to the Supplies shall comply with all applicable Laws in connection with the performance of services and sale and transportation of goods to Buyer (including, without limitation, those relating to the environment, health and safety), and Seller shall secure and pay for all consents, approvals, inspections, licenses and permits, from all government and regulatory authorities, which may be required in connection therewith.
- 25.1.3** Without limiting the foregoing, with respect to goods or services to be delivered in the United States, Seller shall comply with all Executive Orders and applicable Federal Acquisition Regulations (FAR) and/or all provisions of the Defense FAR Supplement (DFARS), including those relating to Equal Employment and Affirmative Action, Veterans, Disadvantaged Business, Enterprise and Employment of the Handicapped, as well as all rules and regulations being incorporated herein by reference. Seller further represents, and warrants that the goods to be furnished thereunder were or will be produced in compliance with the requirements of the Fair Labor Standards Act of 193, as amended, including Section 12(a).
- 25.1.4** Seller shall comply with all Laws relating to any hazardous or restricted material applicable to the Supplies, inform Buyer of its use of such materials and provide sufficient documents and information (including appropriate labels, containers, and packing, and handling, disposal and recycling instructions, material safety data sheets and certificates of analysis) for any such materials. Further, for Supplies to be delivered into the United States, Seller certifies and guarantees that the goods supplied hereunder are in compliance with applicable sections of the Federal Hazardous Substances Act (15 U.S.C. § 2051, *et seq.*) as amended, and the Consumer Product Safety act (15 U.S.C. § 1261, *et seq.*) as amended, and lawful standards and regulations hereunder. Further, Seller represents and warrants that each chemical substance constituting or contained in the Supplies or otherwise transferred to Buyer hereunder is on the list of chemical substance, compiled and published by the Administrator of the Environmental Protection Agency pursuant to the Toxic Substance Control Act (15 U.S.C. § 2601, *et seq.*) as amended. If the Supplies are shipped by Seller to or within, or used or sold in European destinations, before shipments are made, Seller shall notify Buyer of the “Classification of Dangerous Goods” to the extent required by the European Agreement concerning “International Carriage of Dangerous Goods,” and Seller shall also ensure its continued compliance with all provisions of REACH (EC 1907/2006), all as amended from time to time.

## **26 Import-Export/Taxes/Additional Costs**

- 26.1** Seller shall pay all sales, use, excise, transportation, customs duties, tariffs, employment insurance, pension plan, payroll, employer health, withholding transfer and other similar taxes in connection

with the manufacture, sale, delivery and use of the Supplies and any and all other activities relating to the Agreement.

- 26.2** Unless otherwise stated by Buyer in a signed writing, Seller shall act as importer of record for the Supplies and any materials, components and/or other goods procured or provided by Seller in connection with the Agreement. Seller shall be responsible for (i) ensuring that the import and export of all such Supplies, materials, components and/or goods complies fully with all applicable import and export Laws, (ii) obtaining all required import and export permits, certificates and release documents, and (iii) paying any customs duties, tariffs, and any other taxes and/or governmentally required amounts payable upon or as a result of the import or export of such Supplies, and/or any materials, components and/or goods with respect to the Supplies.
- 26.3** Seller shall provide certificates of origin and domestic value added relating to the goods purchased hereunder within the meaning of the rules of origin of NAFTA preferential duty provision and of any applicable Free Trade Zones, which shall include, without limitation, a statement as to whether the goods in question were produced in the United States, Mexico, or Canada, or if the country of origin or manufacture is not NAFTA eligible, then a statement as to the country of origin or manufacture. Upon request, Seller shall promptly furnish all other information relating to the costs and places of origin of the Supplies as may be required by Buyer to comply with all customs, tariffs and other applicable Laws. Seller shall comply with all such Laws and obligations, and Seller represents and warrants that any such information that is supplied to Buyer is true and that all sales covered by the Agreement shall be made at not less than fair value under the anti-dumping laws of the countries to which the Supplies are exported.
- 26.4** All other credits or benefits resulting from the Agreement, including trade credits, export credits or the refund of customs duties, tariffs, taxes, or fees, belong to Buyer. Seller shall, at its sole cost and expense, provide all information and certificates (including, without limitation, NAFTA and other Free Trade Zone Certificates of Origin) necessary to permit Buyer (or its Customers) to receive these benefits or credits.
- 26.5** If any Supplies or any materials, components, or other goods procured or provided by Seller in connection with the Supplies, are or become subject to any customs duties, tariffs, or similar taxes or other governmentally required payments in any applicable jurisdiction (collectively, “Tariffs”), including, without limitation, in the United States under Section 232 of Trade Expansion Act of 1962 or Section 301 of the Trade Act of 1974, Seller shall promptly identify and inform Buyer of all potentially available exemptions, exclusions, exceptions, credits, refunds, rebates or similar benefits (collectively, “Exclusions”).
- 26.6** Upon Buyer’s request, Seller shall, either directly, or indirectly in cooperation with Buyer or any third-party importer of record, cause to be prepared, filed, tracked and pursued (a) all necessary applications, petitions, requests, rebuttals, sur-rebuttals, and similar documents (collectively, “Applications”) for any Exclusions, as well as (b) all available appeals, challenges, revisions, and other activities required to succeed on any Application. Before transmitting any Applications or related information to any governmental body or third party, Seller shall (x) provide the documents to Buyer for review, (y) incorporate all of Buyer’s requested revisions, including, without limitation, revisions to remove information deemed by Buyer to be confidential or proprietary, and (z) obtain Buyer’s written approval to transmit the final documents. Unless

Buyer expressly agrees otherwise in a signed writing, upon the approval of any Application or granting of any Exclusion, in either case whether in whole or in part, Buyer shall immediately receive all corresponding financial benefits, either through corresponding price reductions for the Supplies or through such other means as Buyer may elect. Nothing in this Section 26.6 shall affect, modify, limit, or negate any of Seller's other obligations under the Agreement, including, for example and without limitation, the obligation to pay any and all Tariffs under Section 26.3. Further, Seller shall ensure and warrant that any and all information contained in and/or disclosed in connection with any Application under this subsection is not the subject of any confidentiality or non-disclosure obligations to any party, whether such obligations are contractual or otherwise exist under applicable Laws.

**26.7** To the extent that, at any time, whether before or after the inception of the Agreement or the date of any Order, any new or amended Law or governmental action causes the cost of performance under any aspect of the Agreement to increase in any respect, Seller, at its sole cost and expense, shall bear the full financial impact of such increase, and in no event shall such increase constitute an Excusable Delay as to Seller. In particular, but without limitation, (A) Seller shall be wholly responsible for, and shall timely pay, any and all new, additional, or increased customs duties, tariffs, and/or other taxes relating in any way to the Supplies, any portions thereof, and/or any other aspect of either party's performance under the Agreement; and/or correspondingly, (B) in the event of any reduction or elimination of any exclusions, exceptions, drawbacks, credits, refunds, or similar benefits with respect to any customs duties, tariffs, and/or taxes, Seller alone shall be obligated to pay all resulting new and increased amounts, with no resulting right of reimbursement.

**27 Non-Collusion.** Seller represents and warrants that Seller has not and will not directly or indirectly, enter into any agreement, participate in any collusion or otherwise take any action in restraint of free or competitive bidding, including, but not limited to, any offer or promise of future employment or business opportunity by or for any contractor or subcontractor, or any personnel of Buyer or its contracts or subcontractors associated in any way with this Agreement and/or the Supplies.

**28 Anti-Kickback.** If at any time Seller has reasonable grounds to believe that any employee, agent, officer, director, manager, or owner of Buyer, Buyer's Customer, Seller, any subcontractor or supplier, or any parent, subsidiary, or affiliate of any such entities, directly or indirectly solicited, accepted or attempted to accept any money, fee, gratuity, offer or promise of future employment or business opportunity, or thing of value of any kind for the purpose of improperly obtaining or rewarding favorable treatment in connection with a contract or subcontract associated with Buyer, Seller shall promptly report in detail the possible misconduct to Buyer.

## **29 Safety**

**29.1** Seller shall, at its expense, obtain from all subcontractors and material suppliers retained by Seller waivers and releases of all liens which may be imposed by them against the items sold hereunder, premises of Buyer or the improvements thereon in connection with the performance of the Agreement and Seller shall defend, indemnify, and hold harmless Buyer with respect thereto.

**29.2** Flammable or toxic liquids, gases, other hazardous material, or dangerous conditions may be present in equipment or work areas involved in the performance of the Agreement on Buyer's or Buyer's Related Entities' premises. Seller is aware of and has investigated such equipment and work areas



and shall take extreme care in the performance of work on Buyer's premises and assumes all risk of personal injury and property damage incurred or suffered by Seller and/or Seller's Related Entities or any of their employees, agents and subcontractors in connection therewith for work to be performed on Buyer's or Buyer's Related Entities' premises. Seller agrees to comply at all times with Buyer's and Buyer's Related Entities' safety rules and requirements and shall take such safety protection measures and precautions as are required by applicable Laws.

- 29.3** To the fullest extent permitted by applicable law, Seller shall defend, indemnify, and hold harmless Buyer, Buyer's Related Entities, Buyer's Customer, Buyer's Customer's Related Entities, and any and all other Indemnified Parties, and each of their respective officers, directors, employees and agents from and against all claims, damages, losses and expenses, including, without limitation, attorneys' fees, made or incurred by a third party and arising out of, related to, or resulting from the work by Seller, Seller's Related Entities, or any of their subcontractors, agents, servants and/or employees performed on Buyer's, Buyer's Related Entities', Buyer's Customer's, Buyer's Customer's Related Entities', or any other entity's premises, whether such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, including loss of use thereof (except to the extent caused by the gross negligence or willful misconduct of Buyer or Buyer's Related Entities as finally determined by a court of competent jurisdiction).

### **30 Relocation/Installation of Production Equipment.**

- 30.1** In addition to its other indemnity obligations under the Agreement, if Seller causes to be performed any activities on Buyer's or Buyer's Customer's or any of their Related Entities' premises, or causes to be utilized the property of Buyer or Customer or any of their respective Related Entities, whether on or off Buyer's or Buyer's Customer's or their respective Related Entities' premises, (i) Seller shall examine the premises to determine whether they are safe for the requested activities and will advise Buyer promptly of any situation it deems to be unsafe; (ii) Seller's and Seller's Related Entities' employees, contractors, and agents shall comply with all regulations that apply to the premises and may be removed from Buyer's or Buyer's Customer's or their respective Related Entities' premises at their discretion; and (iii) Seller's and Seller's Related Entities' employees, contractors, and agents shall not possess, use, sell, transfer or be under the influence of alcohol or unauthorized, illegal, or controlled drugs or substances on the premises.

- 30.2** If the Agreement includes the removal, moving or installation of production equipment, the following clauses apply:

**30.2.1** Seller agrees that it has inspected the equipment and the site from which it is to be removed or where it will be installed, and that the price includes everything necessary to complete the work, including without limitation the cost of providing access and egress, relocating other equipment, power lines and other utilities, preparing a proper foundation to receive the machinery, and all special permits and equipment required to accomplish the move. If any of the foregoing are to be furnished by Buyer, such items shall have been clearly and specifically identified on the face of the Order. With respect to items or services furnished by Buyer, including without limitation foundations or lifting or moving equipment, Seller agrees to inspect same before use thereof and to be fully and completely responsible for the adequacy thereof.

**30.2.2** Seller or Seller's Related Entities or their respective mover shall provide insurance against any harm to Buyer, Buyer's Related Entities, Buyer's Customer, and Buyer's Customer's Related Entities and their respective employees, Seller's, Seller's Related Entities' or the mover's employees, or the public arising out of its activities hereunder. The minimum combined single limit of such insurance is to be \$5,000,000. In addition, Seller shall maintain Broad Form Property Damage Liability insurance covering the activities described in this Subsection. The obligations in this Subsection are in addition to Seller's obligations under Section 20 above.

### **31 Claims and Remedies.**

- 31.1** In any action brought by Buyer to enforce Seller's obligations in connection with the production or delivery of Supplies or Transition Support, or with respect to Seller's obligations with respect to any confidentiality, non-disclosure, and/or data security requirements under this Agreement, or for possession of property, the parties agree that Seller's failure to perform such obligations will, or is likely to, cause irreparable harm to Buyer or Buyer's Customer, that Buyer does not have an adequate remedy at law, and that Buyer is entitled to an immediate order for specific performance of Seller's obligations (including related temporary and preliminary injunctive relief).
- 31.2** Buyer shall recover actual and reasonable attorneys' fees in any action arising out of the Agreement, unless, after the court's rulings on all dispositive motions and/or the conclusion of trial and the exhaustion of all appeals, Seller is the prevailing party on all claims and defenses in such action.
- 31.3** The rights and remedies reserved to Buyer in the Agreement are not exclusive and are cumulative with and in addition to all other legal or equitable rights and remedies, irrespective of whether, when, and in which order Buyer elects to exercise each such right and remedy.
- 31.4** Any proceeding or action initiated by Seller for breach of contract, tort or any other act or omission arising from or relating in any way to the Agreement and/or the Supplies shall be deemed time-barred and waived unless commenced within one year after the date on which the alleged breach, act, or omission giving rise to Seller's claim(s) occurred, irrespective of whether or to what extent Seller had knowledge of such alleged breach, act or omission or its consequences. Further, notwithstanding the foregoing, Seller's failure to provide any notice, claim or other communication to Buyer in the manner and within the time period required under the Agreement shall constitute a waiver of and shall render time-barred all rights and remedies that otherwise would have been available to Seller upon making such notice, claim or other communication.
- 31.5** Buyer's sole liability under the Agreement (including in connection with termination, expiration or cancellation) is to pay for the Supplies in accordance with Section 5 and to pay the specific termination-related amounts described in Section 13.
- 31.6** In no event shall Buyer be liable for anticipated profits, interest, penalties or incidental, consequential, punitive, multiple, or exemplary damages or liabilities in connection with this Agreement, regardless of the nature of Seller's claimed injury or the nature of the legal claim under which Seller seeks to recover.

## 32 Miscellaneous.

- 32.1 Jurisdiction and Applicable Law.** If (a) Buyer's or Seller's location in the Order is in the United States of America, (b) if Buyer or Seller are entities that are residents of and/or formed under the laws of any jurisdiction in the United States of America, (c) any aspect of any performance by Buyer or Seller under the Agreement occurs or is contemplated to occur in the United States of America, (d) the Supplies, any portions of the Supplies, or any components or systems into which the Supplies are incorporated are produced or procured in, sent to or from, or intended for use or sale in the United States of America, then in each such case, (i) the Agreement shall be governed, interpreted and enforced in accordance with the local, domestic laws of the State of Michigan, exclusive of the choice of law rules thereof, and of the United States of America; and (ii) the state or federal courts of competent subject-matter jurisdiction respectively presiding in Wayne County, Michigan or the U.S. District Court for the Eastern District of Michigan, Southern Division, and, as applicable, any court in which in any action that is the subject of Seller's indemnification obligations under this Agreement, shall have exclusive jurisdiction and venue over any lawsuit arising out of or related to the Agreement. Seller irrevocably waives and agrees not to raise any objection it might now or hereafter have to jurisdiction or venue in any such court with respect to any such claim or proceeding, including any objection that the place where such court is located in an inconvenient forum, that such court lacks personal jurisdiction, or that there is any other claim or proceeding in any other place relating in whole or in part to the same subject matter. *The United Nations Convention on Contracts for the International Sale of Goods shall **not** apply to the Agreement.* If Seller does not maintain a registered office or agent in the United States, Seller hereby irrevocably appoints the Secretary of State of the State of Michigan (or if applicable, of such other state whose law applies) and CT Corporation at its office in Michigan as Seller's non-exclusive agents to receive process on behalf of Seller in any proceeding arising under or related to the Agreement for forwarding to Seller at the address set forth in the Order or elsewhere in the Agreement.
- 32.2 Waiver.** Buyer's delay or failure to insist on the performance by Seller of any term of this Agreement, and/or Buyer's delay or failure to exercise any right or remedy reserved in the Agreement, or Buyer's waiver of any breach or default hereunder by Seller, shall not, thereafter, waive any other terms, conditions, rights, remedies, breaches or defaults, whether of the same or a similar type or not.
- 32.3 Severability.** If any provision of the Agreement, or portion of any provision, is declared or found to be unenforceable, the balance of the Agreement or such provision shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof.
- 32.4 Survival.** All rights and obligations of each party to the Agreement which are expressed to survive termination, cancellation, or expiration and/or non-renewal of the Agreement, or which by their nature or context must survive termination, cancellation, or expiration of the Agreement, will survive the termination, cancellation, or expiration and/or non-renewal of the Agreement. In particular, but without limitation, Seller's obligations and Buyer's rights under the Sections 7-30 of these Terms, shall survive any termination, cancellation, or expiration and/or non-renewal of the Agreement, except as otherwise expressly stated in this Agreement.

- 32.5 Interpretation/Headings.** No provision may be construed against the Buyer as the drafting party. Section headings are for convenience or reference only, and do not affect the meaning of the Agreement.
- 32.6 No Publicity.** Seller will not advertise, publish or disclose to any third party (other than to Seller's professional advisors on a confidential and need-to-know basis) in any manner the fact that Seller has contracted to furnish Buyer with the Supplies or any terms of the Agreement (including prices), or use any trademarks or trade names of Buyer in any press release, advertising or promotional materials, without first obtaining Buyer's written consent.
- 32.7 Relationship of Parties.** Seller and Buyer are independent contracting parties and nothing in the Agreement will make either party the employee, agent or legal representative of the other for any purpose. The Agreement does not grant either party any authority to assume or create any obligation on behalf of or in the name of the other. Seller will be solely responsible for all expenses it incurs in connection with its performance of the Agreement, except as expressly provided in a written agreement signed by Buyer. All employees and agents of Seller or its respective contractors are employees or agents solely of Seller or such contractors, and not of Buyer, and are not entitled to employee benefits or other rights accorded to Buyer's employees. Buyer is not responsible for any obligation with respect to employees or agents of Seller or its contractors.
- 32.8 Conflict of Interest.** Seller represents and warrants that its performance of the Agreement will not in any way conflict with any continuing interests or obligations of Seller or its employees or contractors. Seller further warrants that while the Agreement is in effect, Seller and those of its employees and contractors participating in the performance of the Agreement will refrain from any activities which could reasonably be expected to present a conflict of interest with respect to Seller's relationship with Buyer or its performance of the Agreement.
- 32.9 English as Controlling Language.** The English version of any document constituting a part of the Agreement will apply and control in the event of any conflict between the meaning and/or construction of such document and any version of such document written in any other language.