

## Terms and Conditions of Purchase

Effective as of November 1, 2006

**1. Offer; Acceptance** Each purchase order or purchase order revision ("Order") is an offer to Seller by Buyer for the purchase of goods and/or services ("Supplies") under these Terms and Conditions of Purchase, together with any applicable Country Supplement (collectively, "Terms"). This Order does not constitute an acceptance of any offer or proposal made by Seller, and this Order, when accepted, supersedes all prior agreements, orders, quotations, proposals and other communications regarding the Supplies covered by the Order, except that a prior agreement signed by authorized representatives of both parties (such as an award letter, statement of work or non-disclosure agreement) will continue to apply to the extent not directly in conflict with the Order including these Terms. Any reference in this Order to any offer or proposal made by Seller is solely to incorporate the description or specifications of Supplies in the prior offer or proposal, but only to the extent that the description or specifications do not conflict with the description and specifications in this Order. Seller's commencement of any work or shipment of Supplies under this Order or any other conduct by Seller that recognizes the existence of a contract with respect to the subject matter of this Order constitutes Seller's acceptance of this Order and these terms and conditions only. This Order is limited to and conditional upon Seller's acceptance of this Order, including the Terms, exclusively. Any additional or different terms and conditions proposed by Seller, whether in Seller's quotation/proposal, acknowledgement, invoice or otherwise, are unacceptable to Buyer, are expressly rejected by Buyer, shall not become part of this Order, but shall not operate as a rejection of this Order if Seller accepts Buyer's offer by commencement of work, shipment of the Supplies, or by other means acceptable to Buyer, in which case this Order shall be deemed accepted by Seller without any additional or different terms or variations whatsoever. **THE TERMS OF THIS AGREEMENT ARE EXCLUSIVE.** This Order can be modified only in the manner described in Section 37. The Terms of each Order may include (and where indicated, are superseded by) the supplemental terms for the country from which the Order is issued and/or the country in which Seller is located, as indicated in the Order ("Country Supplement"). These Terms along with the Country Supplements are available at Dura Automotive Systems, Inc.'s extranet website.

**2. Term of Order.** Subject to Buyer's termination rights, the agreement formed by the Order, and these Terms, is binding on the parties for the life of the program initiated by Buyer's Customer through service, where such customer is an, original equipment manufacturer (OEM) or other automotive supplier ("Customer") from the date the Order is transmitted to Seller or, if an expiration date or time period is stated in the Order or in an agreement signed by Buyer, until that expiration date or the expiration of that time period ("Initial Term"). Subject to Buyer's termination rights, the Order will automatically renew for successive one-year periods after the Initial Term unless Seller provides written notice at least 180 days prior to the end of the current term of Seller's desire that the Order not be automatically renewed, provided that, Buyer may extend the term of this Order for such period of time beyond the Initial Term, or current term, as Buyer determines is necessary, acting reasonably and in good faith, to procure an alternate source for the Supplies that is acceptable to Buyer and to ensure an orderly transition of supply.

**3. Invoicing; Pricing; Taxes; Competitiveness.**

(a) The stated price of Supplies set forth in this Order includes storage, handling, packaging, freight, insurance, transportation, and all other expenses, costs and charges of Seller, unless Buyer agrees otherwise in writing in this Order. Prices are not subject to increase, including any increase based upon changes in raw material, component pricing, labor, or overhead, unless specifically stated in the Order.

(b) All invoices under this Order must reference the purchase order number, amendment or release number, Buyer's part number, Seller's part number where applicable, quantity of pieces in the shipment, number of cartons or containers in the shipment, Seller's name and number, bill of lading number and other information required by Buyer. All correspondence must include the purchase order number. If requested by Buyer, all invoices under this Order must be accompanied by the Seller's sworn statement indicating the status of payments to Seller's subcontractors and suppliers as of the date of invoice, and, if requested by Buyer, all invoices must be accompanied by lien waivers, in form satisfactory to Buyer, executed by Seller and Seller's subcontractors and suppliers. Buyer may return incorrect invoices or related documents.

(c) Payment will be made against invoices and documentation, provided to Buyer in compliance with these Terms, subject to adjustments, set-offs, discrepancies and other unresolved issues.

(d) The stated price set forth in this Order also includes all applicable taxes, excises, duties and other governmental impositions, except for any value added tax (VAT) imposed by a non-USA jurisdiction, which must be shown separately on Seller's invoice for each shipment, and Buyer shall not be liable for any business activity taxes or taxes on or measured by net income, including without limitation the Michigan Single Business Tax.

(e) Seller shall indemnify and hold Buyer harmless for Seller's failure to pay any wages, benefits, taxes, liens or other compensation or amounts owed by Seller on account of the Supplies.

(f) Seller represents and warrants that the prices of Supplies are, and will assure that such prices remain, no less favorable to Buyer than any price which Seller presently, or in the future, offers to any other customer (including any Customer as defined in Section 16) for the same or similar goods and/or services. If Seller offers a lower price for the same or similar goods and/or services to any other customer during the term of this Order, then Seller will immediately offer Buyer the same price on the same terms and conditions as offered to the other customer. Seller also represents and warrants that the Supplies will remain competitive in terms of price, as well as technology, quality and delivery, with substantially similar goods and services available to Buyer from other suppliers.

(g) Seller represents and warrants to Buyer that Seller will fully disclose to Buyer, and give Buyer the full and sole benefit of (unless otherwise expressly agreed by Buyer following disclosure thereof by Seller), any and all discounts, refunds, rebates, credits, allowances or other financial or related incentives or payments of any kind to be provided or agreed to be provided by Seller (or any affiliate thereof) to any direct or indirect customer of Buyer (or any affiliate of such customer) and relating in any way to, and/or based on or determined, in whole or in part, with reference to Buyer's purchases of Supplies from Seller under the Purchase Order.

#### **4. Quantities; Delivery**

(a) Quantities listed in this Order as estimated are Buyer's estimate of the quantities of Supplies it might purchase from Seller for the contract term specified in this Order. Seller acknowledges that any estimates, forecasts of production volumes, or program durations, whether from Buyer or the Customer, are subject to change from time to time, with or without notice to Seller, and shall not be binding upon Buyer. Unless otherwise expressly stated in the Order, Buyer makes no representation, warranty, guaranty or commitment of any kind or nature, whether express or implied to Seller in respect of Buyer's quantitative requirements for the Supplies.

(b) If the face of the Order does not specify the quantities, is left blank, or specifies the quantities as zero, "blanket order", "as released", "as scheduled", "as directed", "subject to Buyer's production releases", or stated in a similar fashion, then, in consideration for ten US dollars (US\$10.00), the payment of which shall be made by Buyer upon the termination or non-renewal of this Order, Seller grants to Buyer an irrevocable option during the term of this Order to purchase Supplies in such quantities as determined by Buyer and identified as firm orders in material authorization releases, manifests, broadcasts or similar releases ("Material Authorization Releases") that are transmitted to Seller during the term of this Order, and Seller shall deliver such quantities on such dates and times at the price and under these Terms; provided that Buyer shall purchase no less than one piece or unit of each of the Supplies and no more than one hundred percent (100%) of Buyer's requirements for the Supplies. All references herein to "this Order" shall include any Material Authorization Releases. If this Order covers services, Buyer is required to purchase such services to the extent expressly stated in a Statement of Work signed by Buyer. Unless expressly stated on the face of this Order, Buyer is not required to purchase Supplies exclusively from Seller. Buyer may require Seller to participate in electronic data interchange or similar inventory management program, at Seller's expense, for notification of Material Authorization Releases, shipping confirmations and other information.

(c) Delivery of Supplies shall be F.O.B. Destination, Freight Collect. The risk of loss passes from Seller to Buyer upon delivery to Buyer's designated facility, unless otherwise agreed to in writing by Buyer. Time and quantities are of the essence under this Order. Seller agrees to 100% on-time delivery of the quantities and at the times specified by Buyer, as set forth in this Order and related Material Authorization Releases. Failure to meet agreed delivery and quantities shall be considered a breach of this Order, and Seller shall pay to Buyer any damages or expenses imposed upon or incurred by Buyer. Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which entitles Seller to modify the price for Supplies covered by this Order. Buyer is not obligated to accept early deliveries, late deliveries, partial deliveries or excess

deliveries. Incoterms 2000 will apply to all shipments except those entirely within the USA, except as otherwise stated in an Order.

**5. Premium Freight; Related Costs**

(a) Seller pays all premium freight costs over normal freight costs if Seller needs to use an expedited shipping method to meet agreed upon delivery dates due to its own acts or omissions. Seller pays any costs incurred by Buyer, including costs charged by Buyer's Customer(s) to Buyer, as a result of Seller's failure to comply with shipping or delivery requirements.

(b) Buyer is not liable for premium freight costs, unless specifically agreed to in advance, in writing, by Buyer.

**6. Packaging; Marking; Shipping; Disclosure; Special Warnings or Instructions**

(a) Seller agrees to: (i) properly pack, mark and ship Supplies in accordance with the requirements of Buyer, the involved carriers and the country of destination, (ii) route the shipments in accordance with Buyer's instructions, (iii) label or tag each package according to Buyer's instructions, (iv) provide papers with each shipment showing the purchase order number, amendment or release number, Buyer's part number, Seller's part number (where applicable), number of pieces in the shipment, number of containers in the shipment, Seller's name and number, and the bill of lading number, and (v) promptly forward the original bill of lading or other shipment receipt for each shipment in accordance with Buyer's instructions and carrier requirements.

(b) Seller will promptly provide Buyer with the following information in the form requested: (i) a list of all ingredients and materials in Supplies, (ii) the amount of all ingredients, and (iii) information concerning any changes in or additions to the ingredients.

(c) Before and at the time the Supplies are shipped, Seller will give Buyer sufficient warning in writing (including appropriate labels on all Supplies, containers and packing, together with disposal and recycling instructions, material safety data sheets and certificates of analysis) of any hazardous or restricted material that is an ingredient or part of the Supplies, together with any special handling instructions that are needed to advise carriers, Buyer and their employees how to take measures to prevent bodily injury or property damage while handling, transporting, processing, using or disposing of the Supplies, containers and packing. Seller agrees to comply with all federal, state, provincial and local laws and regulations pertaining to product content and warning labels, including without limitation the U.S. Toxic Substances Control Act and European Union Directive 2000/53/EC.

(d) Seller will reimburse Buyer for any expenses incurred as a result of improper packing, marking, routing or shipping.

(e) In no event will shipping documents attached to or contained in the shipment display pricing information or any of Buyer's proprietary information.

(f) In the event that no packing requirements are provided by Buyer, Seller will pack the Supplies in accordance with the applicable AIAG packing requirement.

**7. Inspection; Non-Conforming Goods/Services; Audit**

(a) Buyer may enter Seller's facility to inspect the facility, Supplies, materials, and any of Buyer's property covered by this Order. Buyer's inspection of Supplies, whether during manufacture, prior to delivery or within a reasonable time after delivery, does not constitute acceptance of any work-in-process or finished goods. Buyer's acceptance, inspection or failure to inspect does not relieve Seller of any of its responsibilities or warranties. Nothing in this Order releases Seller from the obligation of testing, inspection and quality control. If defective Supplies are shipped to and rejected by Buyer, the quantities under this Order will be reduced unless Buyer otherwise notifies Seller. Seller will not replace reduced quantities without a new order or Material Authorization Release from Buyer. In addition to other remedies available to Buyer, (i) Seller agrees to authorize return, at Seller's risk and expense at full invoice price, plus transportation charges, within one (1) working day of Buyer's notification

and to replace defective Supplies as Buyer deems necessary, and/or (ii) Buyer may have corrected at any time prior to shipment from Buyer's plant Supplies that fail to meet the requirements of this Order, and (iii) Seller will reimburse Buyer for all reasonable expenses that result from any rejection or correction of defective Supplies. Seller will develop and document corrective actions within a commercially reasonable period after receipt of a defective sample and will take whatever measures necessary to correct the defect. Payment for nonconforming Supplies is not an acceptance, does not limit or impair Buyer's right to assert any legal or equitable remedy, and does not relieve Seller's responsibility for latent defects. Upon reasonable notice to Seller, either Buyer or Buyer's Customer may conduct a routine audit at Seller's production facility for the purpose of quality, cost or delivery verification.

(b) During the term of this Order and for at least three (3) years following the later of: the last delivery of the Supplies; the date of the final payment to Seller under the Order; or the expiration of any applicable warranty periods, including Customer's warranty period, for the Supplies or of any applicable governmental or industry required retention periods, Buyer has the right at any reasonable time to send authorized representatives to review/audit all pertinent documents, data, records and other materials in the possession or under the control of Seller relating to the Supplies, Seller's obligations under the Order, and any payments requested by Seller under this Order. During the foregoing period, Seller will retain all pertinent documents, data, records and other materials pertaining to the Supplies, Seller's obligations under this Order, and any payments requested by Seller under this Order. If a review/audit shows Seller's noncompliance with this Order, Seller will reimburse Buyer for any price discrepancy or other loss caused by its noncompliance, together with interest at an annual rate of 12% (or, if less, the maximum rate permitted by law) plus the cost of the review/audit.

**8. Payment** Payment shall be made as set forth in this Order (or any related document(s) made part of this Order). If not otherwise specified, Buyer's payment for undisputed amounts will be net 60 days from invoice. Buyer may withhold payment pending receipt of evidence, in the form and detail requested by Buyer, of the absence of any liens, encumbrances or claims on Supplies provided under this Order. Payment will be made in the currency expressly stated in the Order; if no such currency is noted, payment will be made in U.S. Dollars. Payment will be made by mailing on or before the due date unless otherwise expressly agreed by Buyer.

**9. Changes; Scrap**

(a) Buyer reserves the right to direct changes, or to cause Seller to make changes, to drawings, specifications, samples or descriptions of Supplies. Buyer also reserves the right to otherwise change the scope of the work covered by this Order, including work with respect to such matters as inspection, testing or quality control. Buyer may also direct the supply of raw materials from itself or from third parties. Seller agrees to promptly make any requested changes. Seller agrees to notify Buyer within ten (10) days after receiving notice of a change if Seller expects that the change results in a difference in price or time for performance. Buyer can request additional documentation from Seller of the need for a different price or time for performance. After receiving all requested documentation, Buyer may, at its sole discretion, equitably adjust the price or time for performance. If Seller does not provide timely notice to Buyer that a requested change may result in a difference in price or time for performance, the parties agree that the Buyer's requested change did not affect the price or time for performance.

(b) Seller will not make any change in the Supplies' design, specifications, materials, processing, packing, marking, shipping, or date or place of delivery except at Buyer's written instruction or with Buyer's written approval.

(c) All scrap recovered from raw materials provided by Buyer, or its designate, incident to the Supplies, belong to Buyer and shall be segregated to maintain Buyer's ability to identify the scrap. Buyer retains the right to direct the Seller's disposition of the scrap; including, but not limited to the Buyer's acceptance of the scrap or direction to process the same for Buyer.

**10. Warranties**

(a) Seller warrants that it has good title to the Supplies, free and clear of all liens and security interests. Seller warrants the Supplies will conform to any drawings, specifications, statements of work, samples, and / or other descriptions and requirements relating to the Supplies furnished by Buyer as part of this order. Seller warrants that Supplies will be fit and sufficient for the purpose intended, except to the extent that any defect in the Supplies is due to Seller's conformance to any drawings or specifications provided to Seller by Buyer. Seller also

warrants that all Supplies supplied will be merchantable, of good material and workmanship, free from defect in design, manufacture and / or otherwise, and in compliance with all applicable statutes regulations and standards. These warranties shall survive inspection, test, acceptance of, and payment for the Supplies and shall run to Buyer and its customers, end users and end customers. Buyer shall have all legally available remedies for breach of warranty. These remedies shall be in addition to any other remedies that may be available to Buyer by statute, contract, these terms, or otherwise for breach of warranty. In addition to such other remedies, which shall include the right to require Seller to reimburse Buyer for all payments it may be required to make to its customers, end users and end customers attributable to Seller's breach of warranty, Buyer may either return for credit or refund or require prompt correction or replacement of the defective or nonconforming Supplies or part thereof.

(b) Seller's warranty hereunder will be coterminous with the warranty terms as to time and / or mileage extended by Buyer to its customers, end users or end customers for the Supplies or end products employing any such Supplies as a part or component thereof. If additional warranty periods as to time and / or mileage are imposed by agreement or otherwise on Buyer by its customers, end users, end customers or governmental action, Seller's warranty terms as to time and / or mileage will extend and be coterminous with such additional warranty periods. For the avoidance of doubt, Seller understands that the Supplies or end products employing any such Supplies as a part or component thereof may be subject to different warranty periods as may be provided by Buyer, Buyer's customers, end users or end customers. Consequently, Seller agrees that its warranty obligations under this Section 10, and in particular, under this paragraph of Section 10 will apply also to such different warranty periods.

**11. Supplier Quality and Development; PPAP; Parts Identification** (a) Seller will conform to the quality control and other standards and inspection systems as established by Buyer, and Buyer's direct or indirect Customer(s), including without limitation in relation to quality control, quality certification, health and safety certification and environmental certification including registration all as set forth in Buyer's Global Supplier Quality Assurance Manual electronically published and available on Buyer's website effective at the time of the Order or Material Release which ever is later. (b) Seller will also participate in supplier quality and development programs of and/or as directed by Buyer. (c) Seller agrees to meet the full requirements of industry Production Part Approval Processes (PPAP) as specified by Buyer and (as applicable) Buyer's Customer(s) and agrees to present this information to Buyer upon request, at the level requested. (d) All Supplies that are a completed part shall permanently bear Buyer's part number and name or code name, Seller's part number and Seller's date of manufacture unless otherwise agreed by Buyer in writing.

**12. Remedies** The rights and remedies reserved to Buyer in this Order shall be cumulative with and additional to all other or legal or equitable remedies. Seller will reimburse Buyer for any incidental or consequential or other damages (including lost profits) caused or required in the reasonable judgment of Buyer or Buyer's Customer(s) by Seller's breach or by nonconforming Supplies, including but not limited to costs, expenses and losses incurred or suffered directly or indirectly by Buyer or its Customer(s): (a) in inspecting, sorting, handling, reworking, repairing or replacing the nonconforming Supplies, (b) resulting from production interruptions, (c) conducting recall campaigns, customer field service actions or other corrective service actions, or (d) resulting from personal injury (including death) and/or property damage caused by the nonconforming Supplies. Buyer's damages include attorneys' fees and other professional fees, settlements and judgments incurred by Buyer and other costs associated with Buyer's administrative time, labor and materials. If requested by Buyer, Seller will enter into a separate agreement for the administration or processing of warranty charge-backs for nonconforming Supplies, and will participate in and comply with any warranty reduction or related programs of Buyer or (to the extent directed by Buyer) Buyer's Customer(s) that relate to the Supplies. In any action brought by Buyer to enforce Seller's obligations in connection with the production and delivery of Supplies or transition support, or for possession of property, the parties agree that Buyer does not have an adequate remedy at law and Buyer is entitled to specific performance of Seller's obligations, plus Buyer's reasonable attorneys' fees.

**13. Indemnification**

(a) To the fullest extent permitted by law: (i) Seller hereby assumes the entire, sole responsibility for any injury to person, including death, or damage to property of any kind or nature caused by, resulting from or in connection with the furnishing of Supplies by Seller, its subcontractors, officers, agents, or employees; (ii) Buyer shall not be responsible for any injury to person or damage to property resulting from use, misuse or failure of any apparatus furnished to Seller by Buyer, and the use of any such apparatus by Seller shall constitute acceptance by

Seller of all responsibility for any claims for such injury or damage; and (iii) Seller will defend, indemnify and hold harmless Buyer, Buyer's Customers (both direct and indirect, including manufacturers of vehicles in which Supplies are incorporated), and dealers and users of the products sold by Buyer (or the vehicles in which they are incorporated), including their respective agents, customers, invitees, subsidiaries, affiliates, successors and assigns, against any and all claims, damages, losses, liabilities, and expenses (including attorneys' fees and other professional fees, settlements and judgments) arising out of or resulting in any way from any defective Supplies, or from any negligent or wrongful act or omission of Seller, or Seller's agents, employees or subcontractors, or any breach or failure by Seller to comply with any of Seller's representations or other terms and conditions of an Order (including any part of these Terms) – including without limitation the cost of recall campaigns, customer field service actions or other corrective service actions that, in Buyer's reasonable judgment, are required because of nonconformities in some or all of the Supplies provided by Seller hereunder. Seller's obligation to defend and indemnify under this Section will apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise except for claims that arise as a result of the sole negligence of Buyer.

(b) If Seller performs any work on Buyer's or Buyer's Customer's premises or utilizes the property of Buyer or Buyer's Customer, whether on or off Buyer's or Buyer's Customer's premises: (i) Seller will examine the premises to determine whether they are safe for the requested services and will advise Buyer promptly of any situation it deems to be unsafe; (ii) Seller's employees, contractors and agents will comply with all regulations that apply to the premises and may be removed from Buyer's premises at Buyer's discretion; (iii) Seller's employees, contractors and agents will not possess, use, sell, transfer or be under the influence of alcohol or unauthorized, illegal or controlled drugs or substances on the premises; and (iv) to the fullest extent permitted by law, Seller will indemnify and hold Buyer and Buyer's Customer (and their respective officers, directors, employees, agents, successors and assigns) harmless from and against any and all liability claims, demands or expenses (including attorney's fees and other professional fees, settlements and judgments) for damages to the property of or personal injuries to Buyer, its Customer, their respective employees or agents or any other person or entity if the claims arise from or in connection with Seller's work on the premises or Seller's use of Buyer's or Buyer's Customer's property, except for any liability, claim or demand arising out of the sole negligence of Buyer.

**14. Insurance** Seller shall maintain insurance coverage for the Supplies in amounts customary to the industry or as may be reasonably requested by Buyer or (to the extent directed by Buyer) Buyer's Customer(s), in each case naming Buyer and its affiliates and Customers as "additional insureds" as requested by Buyer. Seller will furnish to Buyer a certificate showing compliance with this requirement or certified copies of all insurance policies within ten (10) days of Buyer's written request. The certificate will provide that Buyer (and, if applicable, Buyer's Customers) will receive thirty (30) days prior written notice from the insurer of any termination or reduction in the amount or scope of coverage. The existence of insurance does not release Seller of its obligations or liabilities under this Order.

**15. Compliance with Laws** Seller, and any Supplies supplied by Seller, shall comply with all applicable laws, including rules, regulations, orders, conventions, ordinances and standards, that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval or certification of the Supplies, including laws relating to environmental matters, hiring, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health or safety, and motor vehicle safety. This Order incorporates by reference all clauses required by these laws. All materials used by Seller in the Supplies or in their manufacture shall satisfy current governmental and safety constraints on restricted, toxic and hazardous materials as well as environmental, electrical and electromagnetic considerations that apply to the country of manufacture, sale or destination. Seller will indemnify Buyer against and hold Buyer harmless from any liability claims, demands or expenses (including attorney's fees and other professional fees, settlements and judgments) relating to Seller's noncompliance.

**16. Customer Requirements**

(a) As directed by Buyer in writing, Seller agrees to comply with the applicable terms and conditions of any agreements ("Customer Purchase Orders") received by Buyer from Buyer's Customer, directly or indirectly applicable to Buyer, pursuant to which or in respect to which Buyer agrees to supply to Customer, or incorporate into goods supplied to Customer, Supplies purchased by Buyer from Seller. Buyer may in its discretion supply Seller with information regarding the Customer Purchase Orders, but Seller shall be responsible for ascertaining any terms and conditions contained in Customer Purchase Orders that may affect Seller's obligations under this Order.

Seller will do everything within its control to enable Buyer to meet the terms and conditions of the Customer Purchase Orders. If this Section conflicts any other paragraph in this Order, Buyer has the right to have the provisions of this Section prevail.

(b) In the event that a Customer files, or has filed against Buyer, a petition in bankruptcy or insolvency and, in the course of such proceeding and in connection with actual or threatened termination (by rejection or otherwise) by the Customer of its contract(s) with Buyer or contracts relating to Supplies purchased by Buyer from Seller, Buyer permits a reduction in the price(s) paid to Buyer for products incorporating the Supplies, the price paid to Seller for the Supplies from and after the date of such reduction will be automatically adjusted proportionally by the same percentage as the price paid to Buyer by its direct Customer and the Order will otherwise remain in effect without modification.

(c) If Buyer's direct or indirect Customer directed or recommended that Seller be the source from which Buyer is to obtain the Supplies: (i) Buyer will pay Seller for the Supplies only following, and in proportion to, Buyer's actual receipt of payment from its Customer for those goods in which the specific Supplies are incorporated, (ii) any lengthening of Customer's payment terms to Buyer will automatically lengthen the payment terms as between Buyer and Seller by the same amount of time; and (iii) within three (3) business days of any change in price, specifications or other terms negotiated or proposed between Seller and Buyer's direct or indirect Customer, Seller shall notify Buyer in writing and immediately adjust its invoices to reflect any price reduction, provided that no change will be binding on Buyer without Buyer's specific written consent.

#### **17. Insolvency; Review of Financial Condition; Related Matters**

(a) This Order may be terminated immediately by Buyer without liability to Seller for any of the following events, or any other comparable events, and Seller shall reimburse Buyer for all costs incurred by Buyer in connection with any of the following, including but not limited to all attorney's and other professional fees: (1) Seller becomes insolvent, (2) Seller files a voluntary petition in bankruptcy, (3) an involuntary petition in bankruptcy is filed against Seller, (4) a receiver or trustee is appointed for Seller, (5) Seller needs accommodations from Buyer, financial or otherwise, in order to meet its obligations under this Order, or (6) Seller executes an assignment for the benefit of creditors. In the event that this Order is not terminated in accordance with the immediately preceding sentence, upon the occurrence of an event described in the immediately preceding sentence, Buyer may make equitable adjustments in the price and/or delivery requirements under this Order as Buyer deems appropriate to address the change in Seller's circumstances, including Seller's continuing ability to perform its obligations regarding warranty, nonconforming Supplies or other requirements under this Order.

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

(c) Seller agrees that if Seller experiences any delivery or operational problems, Buyer may, but is not required to, designate a representative to be present in Seller's applicable facility to observe Seller's operations. Seller agrees that if Buyer provides to Seller any accommodations (financial or other) that are necessary for Seller to fulfill its obligations under this Order, Seller will reimburse Buyer for all costs, including attorneys' and other professionals' fees, incurred by Buyer in connection with such accommodation and will grant access to Buyer to use Seller's premises and machinery, equipment, and other property necessary for the production of the Supplies covered by this Order.

**18. Termination for Breach or Nonperformance** Buyer reserves the right to terminate all or any part of this Order, without liability to Seller, if Seller: (a) repudiates, breaches or threatens to breach any of the terms of this Order, including without limitation Seller's warranties, (b) fails to perform or threatens not to perform services or deliver Supplies as specified by Buyer, (c) fails to make progress or to meet reasonable quality requirements so as to endanger timely and proper completion or delivery of Supplies and does not correct the failure or breach within ten (10) days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written

notice from Buyer specifying the failure or breach, (d) sells or offers to sell a substantial portion of its assets used for the production of Supplies for Buyer, or sells or exchanges or offers to sell or exchange an amount of its stock or other equity interests that would result in a change in control of Seller, or (e) fails to remain competitive with respect to quality, technology, delivery and pricing of the Supplies. Seller shall notify Buyer within ten (10) days after entering into any negotiations that could lead to the situation specified in subsection (d) above; upon Seller's request, Buyer will enter into an appropriate nondisclosure agreement related to information disclosed to Buyer in relation to such transaction.

## **19. Termination**

(a) In addition to any other rights of Buyer to cancel or terminate this Order, Buyer may, at its option and in its sole discretion, terminate all or any part of this Order (other than the minimum quantities specified in Section 4(b)) at any time and for any reason, and notwithstanding the existence of any event of force majeure under Section 21 below, by giving at least fourteen (14) days written notice to Seller.

(b) Upon receipt of and consistent with such notice of such termination, and unless otherwise directed by Buyer, Seller will: (i) terminate promptly all work under this Order, (ii) transfer title and deliver to Buyer the finished Supplies, the work in process, and the parts and materials which Seller reasonably produced or acquired according to the quantities ordered by Buyer and in accordance with the terms and conditions of this Order and which Seller cannot use in producing goods for itself or for others, (iii) verify and settle any claims by subcontractors for actual costs incurred directly and made unrecoverable by the termination and ensure the recovery of materials in subcontractor's possession, (iv) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest until disposal instruction from Buyer has been received, and (v) upon Buyer's reasonable request, cooperate with Buyer in transferring the production of Supplies to a different supplier, including as described in Section 20.

(c) Upon termination by Buyer under this Section 19, Buyer will be obligated to pay Seller only the following: (i) the Order price for all finished Supplies in the quantities ordered by Buyer that conform to the requirements of this Order and were not previously paid for, (ii) Seller's reasonable actual cost of work-in-process and the parts and materials transferred to Buyer in accordance with subsection (b)(ii) above, (iii) Seller's reasonable actual costs of settling claims regarding its obligations to subcontractors required under the Order, to the extent directly caused by the termination, and (iv) Seller's reasonable actual cost of carrying out its obligation under subsection (b)(iv). Notwithstanding any provision to the contrary, Buyer shall have no obligation for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, tooling, facilities and equipment rearrangement costs or rental, unamortized capital or depreciation costs, finished goods, work-in-process or raw materials that Seller fabricates or procures in amounts that exceed those authorized in the Material Authorization Releases, or general administrative burden charges from termination of this Order, unless otherwise expressly agreed to in writing by Buyer in a separate Order issued by Buyer.

(d) Buyer's obligation upon termination under this Section 19 shall not exceed the obligation Buyer would have had to Seller in the absence of termination.

(e) Seller will furnish to Buyer, within one (1) month after the date of termination under this Section 19 (or such shorter period as may be required by Buyer's Customer), its termination claim, which shall consist exclusively of the items of Buyer's obligation to Seller that are listed in subsection 19(c) above. Buyer may audit Seller's records before or after payment to verify amounts requested in Seller's termination claim.

(f) Buyer will not have any obligation under subsections 19(a), (c), (d) or (e) above if Buyer terminates Buyer's obligations under the Order because of a default or breach by Seller.

**20. Transition of Supply.** In connection with termination of this Order by either party or Buyer's other decision to change to an alternate source of Supplies, Seller will cooperate in the transition of supply, including the following (collectively, "Transition Support"): (a) Seller will continue production and delivery of all Supplies as ordered by Buyer, at the prices and other terms stated in this Order, without premium or other condition, during the entire period reasonably needed by Buyer to complete the transition to the alternate supplier(s), such that Seller's

action or inaction causes no interruption in Buyer's ability to obtain Supplies as needed; (b) at no cost to Buyer, Seller will promptly provide all requested information and documentation regarding and access to Seller's manufacturing process, including on-site inspections, bill-of-material data, tooling and process detail and samples of Supplies and components; and (c) subject to Seller's reasonable capacity constraints, Seller will 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 Seller's termination or breach, Buyer will, at the end of the transition period, pay the reasonable, actual cost of Transition Support as requested and incurred, provided that Seller has advised Buyer prior to incurring such amounts of its estimate of such costs. If the parties disagree on the cost of Transition Support, Buyer will pay the agreed portion to Seller and pay the disputed portion into third-party escrow for disbursement in accordance with the dispute resolution provisions of Section 34.

**21. Force Majeure** Any delay or failure of either party to perform its obligations shall be excused if, and to the extent, that it is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence. By way of example, this includes acts of God, restrictions, prohibitions, priorities or allocations imposed by or actions taken by any governmental authority (whether valid or invalid), embargoes, fires, floods, windstorms, severe weather, explosions, riots, natural disasters, wars, sabotage, inability to obtain power, or court injunction or order. Seller's inability to perform as a result of, or delays caused by, Seller's insolvency or lack of financial resources is deemed to be within Seller's control. The change in cost or availability of materials or components based on market conditions, supplier actions, or contract disputes will not excuse Seller's performance, and Seller assumes these risks. Written notice of such delay (including the anticipated duration of the delay and the time the delay will be cured) must be given to the other party as soon as possible (but no more than one (1) day after occurrence). During the delay or failure to perform by Seller, Buyer may, at its option (i) purchase Supplies from other sources and reduce its schedules to Seller by such quantities, without liability to Seller, (ii) 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 this Order, or (iii) have Seller provide Supplies from other sources in quantities and at a time requested by Buyer and at the price set forth in this Order. In addition, Seller at its expense shall take all necessary actions to ensure the supply of Supplies to Buyer for a period of at least thirty (30) days, or such longer period as Buyer's Customer shall require, during any anticipated labor disruption or resulting from the expiration of Seller's labor contracts, and if Buyer requests, Seller shall, within ten (10) days of Buyer's request, provide adequate assurance that the delay will cease within such period. If the delay lasts more than 30 days or Seller does not provide adequate assurances that the delay will cease within 30 days, Buyer may immediately terminate the Order and any funds previously paid by or on behalf of Buyer shall be promptly returned to Buyer, without prejudice to Buyer's other remedies under this Order or applicable law.

**22. Information Disclosed to Buyer by Seller** (a) Unless otherwise agreed to in writing by the Buyer, no information disclosed in any manner at any time by Seller, or Seller's contractors, to Buyer will be treated as secret or confidential. (b) Seller agrees not to assert any claim against Buyer, Buyer's Customers or their respective suppliers, with respect to any information that Seller, or Seller's contractors, has disclosed or may disclose to Buyer, or Buyer's Customers, in connection with the Supplies.

**23. Technology**

(a) All Supplies, tooling (including fixtures, gauges, jigs, patterns, castings, cavity dies and molds, with all related appurtenances, accessions, and accessories), and all other deliverables, data, inventions and information created by Seller and paid for by Buyer under this Order, along with all intellectual property rights relating thereto, are the sole and exclusive property of Buyer. Seller will promptly disclose in an acceptable form, and assign to Buyer, all such deliverables, data, inventions, and information. Seller will cause its employees to sign any papers necessary to enable Buyer to obtain title to and to file applications for patents throughout the world. To the extent that any works of authorship (including, without limitation, software) are created by Seller and paid for by Buyer under this Order, such works shall be considered "works made for hire", and to the extent that such works do not qualify as "works made for hire," Seller hereby assigns to Buyer all right, title, and interest in all copyrights and moral rights therein.

(b) Buyer, Buyer's contractor(s), or Buyer's Customer(s) (including their affiliates and subcontractors) have the worldwide, irrevocable right to repair, reconstruct or rebuild, and to have repaired, reconstructed or rebuilt,

Supplies delivered under this Order without payment of any royalty or other compensation to Seller. Seller hereby grants Buyer an irrevocable, non-exclusive, worldwide, royalty-free, paid-up, license, including the right to sublicense, under any and all proprietary rights controlled by Seller or its affiliates, including, without limitation, any patent, copyright, moral, industrial design right, trademark, technical information, know-how or other proprietary right)("Seller Proprietary Rights"): (i) in the event that this Agreement is terminated by Buyer under Sections 17 or 18, and/or (ii) in the event that Seller for any reason is unable to satisfy the quality, quantity, delivery or related requirements of Buyer for Supplies under this Order (including, for example and without limitation, in the event of force majeure, or increased demand due to volume requirements for a corrective field service action/recall, Remedial Actions, by reason of Seller's insolvency, or in the event of a required change or expansion in relation to the country(ies) of manufacture or delivery): (A) to make, have made, use, sell, offer to sell, and import the Supplies, (B) to copy, modify, use, distribute, publicly display/perform, prepare derivative works of, reproduce in the case of a mask work, and import or distribute in the case of a semiconductor chip product in which a mask work is embodied, any copyrighted or copyrightable portions of such Seller Proprietary Rights relating in any way to Supplies, and (C) to do all other things and exercise all other rights in the Seller Proprietary Rights necessary or useful to avoid, remedy and mitigate, as Buyer reasonably determines to be appropriate, all or any portion of any consequences to Buyer, and to any direct and indirect customers of Buyer, arising from any situation under subparagraphs (i) or (ii) above. At no additional cost, Seller will grant Buyer a license under Seller Proprietary Rights that is necessary or incident to the reasonably intended use or application of the Supplies. Rights under this Section 23(b) are intended to be subject to 11 USC Section 365(n), as executory agreements under which Buyer has license rights to the Seller Proprietary Rights, and are supplementary to any other rights of Buyer under existing Orders and other agreements (if any) with Seller.

(c) All Supplies or other deliverables provided under this Order (including, for example, computer programs, technical specifications, documentation and manuals), shall be original to Seller and shall not incorporate, or infringe upon, any intellectual property rights (including, without limitation, copyright, patent, trade secret, mask work or trademark rights) of any third party, unless otherwise expressly agreed to in writing by Buyer. Seller agrees: (i) to defend, hold harmless and indemnify Buyer, its successors and Customers against any suit, claim or action for actual or alleged direct or contributory infringement of or inducement to infringe any proprietary right (including any patent, trademark, copyright, moral, industrial design right or other proprietary right or misuse or misappropriation of trade secret) and against any resulting damages or expenses (including attorney's and other professional fees, settlements and judgments) arising in any way in relation to Supplies covered by this Order (including without limitation their manufacture, purchase, use and/or sale), including such claims where Seller has provided only part of Supplies, and Seller expressly waives any claim against Buyer that such infringement arose out of compliance with Buyer's specifications, (ii) to waive any claim against Buyer or Buyer's Customer(s), including any hold harmless or similar claim, in any way related to a third-party claim asserted against Seller or Buyer or Buyer's Customer(s) for infringement of any proprietary right (including any patent, trademark, copyright, moral, industrial design right or other proprietary right or misuse or misappropriation of trade secret), including claims arising out of specifications furnished by Buyer, and (iii) that if the sale or use of the Supplies is enjoined or, in Buyer's sole judgment, is likely to be enjoined, Seller will, at Buyer's election and Seller's sole expense, procure for Buyer the right to continue using the Supplies, replace the same with equivalent non-infringing goods or modify such Supplies so they become non-infringing.

**24. Service and Replacement Parts** So that Buyer can satisfy the current model service and replacement parts requirements of itself or its Customers, Seller agrees to supply Buyer with Supplies, component parts and materials that are the same as the Supplies, component parts and materials that Buyer purchases under this Order at the price(s) set forth in this Order plus any actual cost differential for packaging. If the Supplies are systems or modules, Seller agrees to sell each component or part at a price that does not, in the aggregate, exceed the system or module price specified in this Order, less assembly costs, plus any actual cost differential for packaging. After Buyer completes its purchases for its Customers' current model requirements, Seller will sell Supplies to Buyer in order to fulfill Buyer's past model service and replacement parts requirements, at price(s) based on the most recent price(s) under this Order, plus reasonable and justifiable packaging costs. As applicable, at Buyer's request, Seller will make service literature and other materials available at no additional charge to support Buyer's service part sales activities.

**25. Buyer's Property; Warranty Disclaimer; Confidentiality.**

(a) All information and materials (including for example, tooling, packaging, documents, standards, specifications, and samples) furnished by Buyer, either directly or indirectly, to Seller to perform this Order, along with any and all Supplies, tooling, deliverables, data, inventions, and intellectual property rights under Section 23(a), shall be and remain the sole and exclusive property of Buyer, its assignee or Customer (collectively "Buyer's Property"). Any and all goods manufactured by Seller with the use of Buyer's Property may not be used for Seller's own use or sold to third parties without Buyer's express written authorization.

(b) Buyer does not guarantee the accuracy of, or the availability or suitability of, Buyer's Property. Seller agrees carefully to check and approve, for example, all tooling, dies or materials supplied by Buyer prior to using it. Seller shall assume all risk of death or injury to persons or damage to property arising from the use of Buyer's Property. BUYER SHALL HAVE NO LIABILITY TO SELLER OR TO ANYONE CLAIMING BY OR THROUGH SELLER FOR ANY INCIDENTAL OR CONSEQUENTIAL OR OTHER DAMAGES OF ANY KIND WHATSOEVER RELATING TO BUYER'S PROPERTY. BUYER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO BUYER'S PROPERTY, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND SELLER WAIVES, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, ALL CLAIMS OF NEGLIGENCE AND STRICT LIABILITY.

(c) The Property of Buyer, its assignee or Customer will be held by Seller or by a third party, to the extent that Seller has transferred possession of Buyer's Property to a third party, on a bailment basis, as a bailee-at-will without any encumbrances, including placing any liens on Buyer's Property. Seller bears the risk of loss of and damage to Buyer's Property and unless otherwise discharged shall maintain Buyer's Property throughout the term of the Order. Seller shall make all Property of Buyer's or Buyer's customers with indicia of Buyer's or Buyer's customer's ownership so that such property is easily identifiable to Buyer. Buyer's Property shall be housed, maintained, repaired and replaced by Seller at Seller's expense in good working condition capable of producing Supplies meeting all applicable specifications, shall not be used by Seller for any purpose other than the performance of this Order, shall be deemed to be personalty, shall be conspicuously marked by Seller as the property of Buyer, shall not be commingled with the property of Seller or with that of a third person, and shall not be moved from Seller's premises without Buyer's approval. Any replacement of Buyer's Property will become Buyer's property. Seller may not release or dispose Buyer's Property to any third party without the express written permission of Buyer. Seller shall insure Buyer's Property with full fire and extended coverage insurance for its replacement value. Buyer shall have the right to enter Seller's premises to inspect Buyer's Property and Seller's records regarding Buyer's property. Only Buyer (or Buyer's affiliates) has any right, title or interest in Buyer's Property, except for Seller's limited right, subject to Buyer's unfettered discretion, to use Buyer's property in the manufacture of Supplies. Buyer and its affiliates shall have the right to take immediate possession of Buyer's Property at any time without payment of any kind. Seller agrees to cooperate with Buyer if Buyer elects to take possession of Buyer's Property. Likewise, effective immediately upon written notice to Seller, without further notice or court hearings, Buyer has the right to enter the premises of Seller and take possession of all of Buyer's Property. Seller expressly waives any right to additional notice or process and agrees to provide Buyer or its nominee(s) with immediate access to Buyer's Property. Seller grants to Buyer a limited power of attorney to execute and record on Seller's behalf any notice or financing statements with respect to Buyer's Property that Buyer determines are reasonably necessary to reflect Buyer's interest in Buyer's Property. At Buyer's request, Buyer's Property shall be immediately released to Buyer or delivered by Seller to Buyer either (i) FOB transport equipment at Seller's plant, properly packed and marked in accordance with the requirements of Buyer's selected carrier, or (ii) to any location designated by Buyer, in which case Buyer will pay Seller the reasonable costs of delivery. Seller waives, to the extent permitted by law, any lien or other rights that Seller might otherwise have on any of Buyer's Property, including but not limited to molder's and builder's liens.

(d) Seller shall take all reasonable precautions to: (i) disclose Buyer's Property within Seller's organization only to those employees who have a need to know in order to fulfill Seller's obligations hereunder and who have agreed to keep the Buyer's Property confidential, and (ii) prevent any such Buyer's Property from being divulged to third persons not employed by Seller, including having recipients acknowledge the confidential status of such Buyer's Property and agreeing to similar restrictions. This obligation of confidence shall survive termination of this

Agreement and will continue for a period of three (3) years thereafter, or for as long as the Buyer's Property remains a trade secret, whichever is longer. Notwithstanding anything to the contrary in this Order, any confidentiality or non-disclosure agreement between the parties that predates this Order will remain in effect except as expressly modified by this Order, and to the extent of a conflict between the express terms of such an agreement and this Section 25, the terms of that agreement will control.

**26. Seller's Property** Seller, at its expense, shall furnish, keep in good working condition capable of producing Supplies meeting all applicable specifications, and replace when necessary, all machinery, equipment, tools, jigs, dies, gauges, fixtures, molds, patterns, and items other than Buyer's Property that are necessary for the production of Supplies, including Service Supplies ("Seller's Property") for the life of the intended end product through any service period. Seller shall insure Seller's Property with full fire and extended coverage insurance for its replacement value. 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 property, intellectual property, logos, trademarks, tradenames or part numbers. Seller shall not disclose or imply in its marketing efforts that these goods or services are equivalent to those purchased by Buyer. Seller grants to Buyer an irrevocable option to take possession of and title to Seller's Property that is special for, or configured for, the production of Supplies under this Order upon payment to Seller of its net book value less any amounts that Buyer has previously paid to Seller for the cost of these items. This option does not apply if Seller's Property is used to produce goods that are the standard stock of Seller or if a substantial quantity of like goods is being sold by Seller to others.

**27. Customs; Related Matters** Credits or benefits resulting from this Order, including trade credits, export credits, or the refund of duties, taxes or fees, belong to Buyer. Seller will provide all information and certificates (including NAFTA Certificates of Origin) necessary to permit Buyer (or Buyer's Customers) to receive these benefits or credits. Seller agrees to fulfill any customs or NAFTA related obligations, origin marking or labeling requirements, and local content origin requirements. Export licenses or authorizations necessary for the export of Supplies are Seller's responsibility unless otherwise indicated in this Order, in which case Seller will provide the information necessary to enable Buyer to obtain the licenses or authorizations. Seller will promptly notify Buyer in writing of any material or components used by Seller in filling this Order that Seller purchases in a country other than the country in which the Supplies are delivered. Seller will furnish any documentation and information necessary to establish the country of origin or to comply with the applicable country's rules of origin requirements. Seller will promptly advise Buyer of any material or components imported into the country of origin and any duty included in the Supplies' purchase price. If Supplies are manufactured in a country other than the country in which Supplies are delivered, Seller will mark Supplies "Made in (country of origin)." Seller will provide to Buyer and the appropriate governmental agency the documentation necessary to determine the admissibility and the effect of entry of Supplies into the country in which Supplies are delivered. Seller warrants that any information that is supplied to Buyer about the import or export of Supplies is true and that all sales covered by this Order will be made at not less than fair value under the anti-dumping laws of the countries to which the Supplies are exported. To the extent any Supplies covered by this Order are to be imported into the United States of America, Seller shall comply with all applicable recommendations or requirements of the Bureau of Customs and Border Protection's Customs-Trade Partnership Against Terrorism ("C-TPAT") initiative. Upon request, Seller shall certify in writing its compliance with the C-TPAT initiative.

**28. Set-Off; Recoupment** In addition to any right of setoff or recoupment provided by law, all amounts due to Seller shall be considered net of indebtedness of Seller and its affiliates or subsidiaries to Buyer and its affiliates or subsidiaries. Buyer shall have the right to set off against or to recoup from any payment or other obligation owed to Seller, in whole or in part, any amounts due to Buyer or its affiliates or subsidiaries from Seller or its affiliates or subsidiaries, whether that payment or obligation is contested, uncontested, contingent, liquidated or unliquidated, . Buyer will provide Seller with a statement describing any offset or recoupment taken by Buyer.

**29. No Advertising** Seller shall not advertise, publish or disclose to third parties (other than to Seller's professional advisors on a need-to-know basis) in any manner the fact that Seller has contracted to furnish Buyer the Supplies covered by this Order, or use any trademarks or trade names of Buyer in Seller's advertising or promotional materials, without first obtaining Buyer's written consent.

**30. Relationship of Parties** Seller and Buyer are independent contracting parties and nothing in this Order shall make either party the agent or legal representative of the other for any purpose. This Order does not grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Seller will be solely responsible for all employment and income taxes, insurance premiums, charges and other expenses it incurs in connection with its performance of the Order, 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.

**31. Non-Assignment** (a) Seller may not assign or delegate its obligations under this Order without Buyer's prior written consent. In the event of any approved assignment or delegation authorized by Buyer, Seller retains all responsibility for Supplies, including, without limitation, all related warranties and claims, unless otherwise expressly agreed in writing by Buyer. (b) With Buyer's prior written consent, Seller may make an assignment of receivables due or to become due to a single financial institution; provided, however, that any such assignment shall be subject to set-off or other proper method of enforcing any claims that Buyer may have under Section 28 of this Order. (c) Buyer will have the right to assign any benefit or duty under an Order to any third party upon notice to Seller with or without consent.

**32. Suppliers with Particular Needs** Buyer encourages Seller to use suppliers with particular needs. A Supplier with particular needs is a business, which meets one or more of the following conditions: (a) a small business, as defined in Title 15, Section 632 of the United States Code and related regulations; (b) a small business owned and controlled by socially disadvantaged individuals (at least 51% of the business owned and controlled by one or more socially and economically disadvantaged individuals and the management and daily business operations are controlled by one or more such individuals); and (c) a business that is at least 51% owned by a woman or women who also control and operate the business. Upon Buyer's request, Seller will inform Buyer on an annual basis the percentage, based on a dollar value, of the content of the Supplies provided by suppliers with particular needs as well as the basis for claiming that such content was provided by a supplier with particular needs.

**33. Basic Working Conditions** Seller represents that neither it nor any of its subcontractors or suppliers will engage in or permit any substandard working condition or employment standard, including, but not limited to (a) utilization of forced labor, regardless of its form; (b) employment of any underage person, unless it is part of a government approved job training, apprenticeship or other program that would be clearly beneficial to its participants; or (c) engage in physically abusive disciplinary practices. Seller further represents when it delivers the Supplies that it has complied with the requirements of this Section. Buyer may retain an independent third party, or request Seller to retain one reasonably acceptable to Buyer, to: (a) audit the Seller's compliance with this Section 33 and (b) provide Seller and Buyer with written certification of Seller's compliance, including areas for potential improvement. Seller will bear the cost of any third-party audit and certification under this Section 33, regardless of which party retained the auditor. Buyer, at its option, may accept an audit or certification by Seller in lieu of a third-party certification. For purposes of this Section 33, the temporary assignment of employees of one party to the facilities operated by the other party will not affect the status or change the employment relationship of the assigned employees.

**34. Governing Law** (a) This Order is to be construed according to the laws of the State of Michigan, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any conflict of laws provisions that would require application of another choice of law; and subject to the arbitration provision herein, Seller consents to the jurisdiction of the appropriate federal court in the U.S. District Court of the Eastern District of Michigan or of the state courts in Oakland County, Michigan for any and all legal or equitable proceedings arising from or in connection with this Order (b) the arbitration provisions of this Section 34 will be governed by the United States Federal Arbitration Act. At Buyer's option, exercised by written notice any time before or within 30 days following the service of process in a legal action, any dispute regarding the Supplies, the Order, the validity of the Order or any of these Terms, or any other matter between the parties (other than requests for injunctive relief) will be resolved by binding arbitration, conducted in the English language and using a single arbitrator to be selected solely by the Buyer, to be conducted at a location also to be selected solely by the Buyer. The arbitration will be conducted under the commercial arbitration rules of the American Arbitration Association (AAA) and under Rules 26 through 37 of the U.S. Federal Rules of Civil Procedure. The arbitrator will issue

written findings of fact and conclusions of law, and may award attorneys' fees and costs to the substantially prevailing party. In no event will any party be awarded punitive or exemplary damages. A judgment of any court of competent jurisdiction shall be entered upon the award, provided that either party may appeal to the U.S. District Court for the Eastern District of Michigan, for correction of any clear error of fact or law by the arbitrator (provided that the appealing party must first post an appropriate bond and that the prevailing party in any such action will be entitled to its attorneys' fees and costs).

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

**36. Survival** The obligations of Seller to Buyer survive termination of this Order, except as otherwise provided in this Order.

**37. Entire Agreement; Modifications; No Implied Waiver**

(a) Except as described in Section 1, this Order and these Terms, together with the attachments, exhibits, supplements, or other terms of Buyer specifically referenced in this Order, constitutes the entire agreement between Seller and Buyer with respect to the matters contained in this Order and supersedes all prior oral or written representations and agreements. This Order may only be modified by a written amendment executed by authorized representatives of each party or, in the case of changes within the scope of Section 9, by a purchase order amendment issued by Buyer. Buyer may modify these terms with respect to future Orders at any time by posting revised Terms to its web site at \_\_\_\_\_, and such revised Terms will apply to all orders issued thereafter.

(b) The failure of either party at any time to require performance by the other party of any provision of this Order shall in no way affect the right to require performance at any later time, nor shall the waiver of either party of a breach of any provision of this Order constitute a waiver of any later breach of the same or any other provision of this Order.

**38. Conflict of Interest** Seller represents and warrants that in its performance of the Order, Seller and those of its employees and contractors participating in the performance of the Order 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 Order. If a conflict is suspected, Buyer will notify Seller and clear such activities with Buyer's senior management.

**39. Sales Tax Exemption** Buyer certifies that Supplies purchased under this Order and identified as industrial processing are eligible for state and federal sales tax exemption under the federal identification number indicated on the face of this Order or otherwise provided by Buyer.

**40. Tooling; Capital Equipment** The provisions of this Section apply only to tooling or capital equipment orders. Buyer shall have access to Seller's premises, prior or subsequent to payment, to inspect work performed and to verify charges submitted by Seller against this Order or amendment. The price set forth in this Order or amendment shall be adjusted so as to credit Buyer in the amount, if any, by which the price exceeds Seller's actual cost as verified. Seller further agrees to retain all cost records for a period of two (2) years after receiving final payment of the charges. All tools and capital equipment are to be made to Buyer's specifications (or, where directed by Buyer, those of Buyer's Customer). Exceptions are to be covered in writing on this Order or in a signed writing from the Buyer. Notwithstanding any other provision of these Terms, and except as otherwise expressly agreed in writing, where Buyer is entitled to receive reimbursement or other payment from a Customer for Supplies to be provided by Seller to Buyer under this Order that constitute tooling or capital equipment, Seller shall be entitled to receive payment under the Order for such tooling or capital equipment only after and to the extent of, and in proportion to, Buyer's actual receipt of such reimbursement or other payment from the Customer. To the extent permitted by applicable law, any payments made by Buyer for Buyer-owned tooling are expressly intended by Buyer to be held in trust for the benefit of any subcontractor(s) used by Seller to produce the Buyer-owned Tooling that are covered by such payments and Seller agrees to hold such payments as trustee in express trust for such

subcontractor(s) until Seller has paid the subcontractor(s) in full for the Buyer-owned Tooling. Seller acknowledges and agrees that such subcontractor is an intended third party beneficiary of the terms of this Section relating to the express trust and as such, such tooling subcontractor shall have the right to enforce these terms directly against Seller in subcontractor's own name. Seller agrees that Buyer has no obligation to Seller or Seller's tooling subcontractor under this Section other than making the payment to Seller in accordance with a Tooling Purchase Order. In the event Seller's tooling subcontractor brings an action against Seller under this section, Seller agrees that it will not join Buyer in any such action.

**41. Subcontracts.** Seller will inform Buyer in writing of any third parties to whom Seller subcontracts any of the work required under this Order, specifying in detail the work which has been subcontracted to such third party. Seller will ensure that the terms of its contracts with its subcontractors provide Buyer and its Customers with all of the rights and licenses specified in this Order.