



# Terms and Conditions

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These general purchasing terms and conditions, as amended from time to time ("Terms") will apply when Linamar Corporation or its applicable affiliate or subsidiary ("Buyer") purchases goods and services unless Buyer has entered into a written agreement expressly overriding these Terms.

### **1. Offer and Acceptance; Terms of Order.**

Each purchase order and purchase order revision issued by Buyer, either independently or in conjunction with a fully executed written supply agreement issued by Buyer ("this Order") is an offer to Seller for the purchase of goods and/or services including without limitation raw materials, components, intermediate assemblies, tooling, molds, equipment and end products and services ("Goods"). The Terms apply to each Order and are included in each Order by reference. Any other modification of Buyer's Terms must be expressly stated in the Order. The Order is not an acceptance of any offer or proposal made by Seller. Any reference in the Order to any offer or proposal made by Seller is solely for the purpose of description or specifications of Goods in a prior proposal, and applies only to the extent that the description or specifications do not conflict with the description or specifications in the Order. Seller accepts these Terms and forms a contract with Buyer by doing any of the following: (a) commencing any work under the Order; (b) accepting the Order in writing; or (c) any other conduct that recognizes the existence of a contract with respect to the subject matter 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, acknowledgement, invoice or otherwise, are unacceptable to Buyer, are expressly rejected by Buyer, and will not become part of the Order. An Order can be modified only according to the provisions of Section 45 of these Terms or as provided in this Section.

These Terms apply to all Goods purchased by Buyer from Seller as described in the Order or on any document expressly referenced on the face of such Order. Certain Terms apply only to particular types of Goods, but only where expressly limited to those types of Goods.

Buyer may modify these Terms, at any time, by posting notice of such modified or new Terms through links provided on Buyer's website at <http://linamar.com> under Supplier Information at least ten (10) days prior to any modified or new Terms becoming effective. Seller agrees to review Buyer's website and current Terms periodically. Seller's continued performance under the Agreement without providing written notice to Buyer in accordance with the Agreement detailing Seller's objection to any modified or new Terms prior to the effective date of such modified or new Terms will be subject to and will constitute Buyer's acceptance of such modified or new Terms.

These Terms apply to all Sellers under an Order including, without limitation, any Seller that is a Directed Supplier. A "Directed Supplier" is any Seller from which Buyer has been requested or recommended to procure Goods at the direction or suggestion of Buyer's customer and/or the ultimate Seller for the Goods required. Each Seller that is a Directed

Supplier acknowledges the applicability of these Terms and agrees to be bound by these Terms.

## **2. Quantities; Material Releases.**

Unless Buyer's Vice President of Purchasing has executed a binding agreement (for a minimum quantity commitment), quantities listed in each Order as estimated are Buyer's estimate of the quantities of Goods it might purchase from Seller for the contract term specified in the Order. The quantity specified may be for up to 100% of Buyer's requirements for the Goods. However, unless the Order expressly provides that Seller shall produce 100% of Buyer's requirements for the Goods, Buyer shall have the right to obtain a portion of such Goods from another third party source or from Buyer's internal sources. Buyer is not required to purchase any quantity of Goods unless expressly stated as a "minimum" quantity in the Order. Buyer is required only to purchase those quantities identified as "definite quantities" in material authorization releases, manifests, or similar releases ("Material Releases") submitted by Buyer to Seller. Buyer may purchase additional quantities of the listed Goods using Orders or Material Releases. Seller agrees to 100% on-time delivery of the quantities at the times specified by Buyer as stated in the Order and related Material Releases, except as otherwise agreed in writing by the parties.

Seller agrees to install sufficient capacity to meet the full requirements of the Material Releases. For greater certainty, Seller shall meet this capacity requirement on a 3 shifts/5 day/8 hour work day pattern and must be able to support a 20% volume

increase over the contracted capacity with no additional tooling or capital. Seller shall not meet these requirements through staged or ramped capacity planning unless agreed to in writing by Buyer. No further tooling or capital uplift shall be provided by Buyer to meet requisite capacity other than as agreed to in the Order.

## **3. Delivery.**

Seller will comply, in all respects, with Buyer's delivery and logistics requirements, as amended or updated from time to time. Time is of the essence, and deliveries must be made both in quantities and at times specified in Buyer's delivery schedules. Seller will electronically communicate with Buyer in a secure (encrypted) manner and specifically utilizing electronic data interchange (EDI) with respect to all supply chain communications relating to the Order, including, without limitation, receiving Buyer's production schedules and sending advance shipment notices to Buyer.

Buyer will not be required to make payment for Goods delivered to Buyer that are in excess of quantities specified in Buyer's delivery schedules. Buyer may change the rate of scheduled shipments, the quantity of shipments or direct temporary suspension of scheduled shipments. Where quantities and/or delivery schedules are not specified, Seller will deliver Goods in such quantities and times as Buyer may direct in subsequent delivery schedules. Further, if Seller's acts or omissions result in or are likely to result in Seller's failure to meet Buyer's delivery requirements and Buyer requires a more expeditious method of transportation for the Goods than the transportation method originally specified by Buyer, Seller will be

solely responsible for all costs and expenses associated with such expedited shipments.

Any partial delivery, excess deliveries and early deliveries shall be subject to prior written consent by Buyer. Buyer shall be entitled to store or return any excess quantities at the Supplier's expense and risk. Additional costs for handling, storage and shipping caused hereby shall be borne by Supplier.

Seller must provide all requisite customs documentation, including all necessary documentation to prove product origin and meet tariff preference requirements and all other necessary documentation in advance of shipments to Buyer's facilities. Costs associated with non-compliance with tariff preference requirements or with missing or incomplete documentation will be the responsibility of Seller. Seller must provide all requisite customs documentation and all other necessary documentation in advance of commencement of shipment and must be renewed annually by November 30th. Costs associated with noncompliance with tariff preference requirements or with missing or incomplete documentation will be the responsibility of Seller. Should non-compliance occur, a \$150.00 USD administration fee per occurrence will be debited from the Seller's account.

Upon first shipment of Goods produced from prototype or production tooling, Seller must include tooling on its Commercial Invoice / Customs Invoice. Material certification must be received with each shipment of product. Failure to provide material certification with a particular shipment of Goods may result in rejection of that particular shipment or quarantine of that

particular shipment until material certification is provided.

Seller is responsible for supplying all MSDS information and ensuring that all such documentation is maintained to current dates, as deemed necessary by Buyer. Seller is responsible for supplying information to Buyer relating to IMDS Declarable Materials and the percentage (by weight) of such Material(s) included in the composition of parts purchased by Buyer. The above information will be communicated with each PPAP submission by Seller to Buyer. A list of Declarable Materials can be obtained at [www.mdsystem.com](http://www.mdsystem.com).

#### **4. Volume and Duration Forecasts.**

Buyer may from time to time provide Seller with estimates, projections or forecasts of its future volume or quantity requirements for the Goods and/or the term of a particular program. Those projections, unlike a Release for a firm quantity, are not binding on Buyer, nor are they evidence of a requirements contract. Buyer makes no representation, warranty, guaranty or commitment, express or implied, regarding any volume or duration projections or other estimates or forecasts provided to Seller, including without limitation as to their accuracy or completeness.

#### **5. Flow-Through of Customer Terms.**

In the event the Goods are or will be sold, or incorporated into goods that are or will be sold by Buyer to an OEM of vehicles, whether directly or indirectly through an upper tier supplier, or any other third party customer ("Customer"), Seller shall take all steps and actions as directed by Buyer to enable Buyer to meet Buyer's obligations under the applicable terms, conditions and

requirements of Buyer's Customer, which terms, conditions and requirements shall flow through Buyer. Those terms, conditions and requirements shall include, without limitation, delivery, packaging, labeling, warranties, warranty periods, intellectual property rights, indemnification, confidentiality, access to facilities and records, and replacement and service parts. Seller shall be responsible for ascertaining the Customer Terms that may affect Seller's obligations hereunder and agrees to be bound to such Customer Terms. In the event of a conflict between the Customer Terms and the provisions of this Order, Buyer shall have the right to have the provisions of the Customer Terms prevail to the extent necessary or desirable to resolve such conflict. In the event the Seller is a Directed Supplier, unless otherwise expressly agreed to by Buyer: (a) Buyer will pay Seller for the Goods only after Buyer's receipt of payment from its Customer for those Goods (but with payment terms no less than the Buyer's normal payment terms); and (b) any price reduction negotiated between Seller and Customer shall be reflected in a price adjustment to Buyer.

#### **6. Invoicing and Pricing; Premium Freight.**

Prices for the Goods listed on the Order are not subject to increase, including without limitation any increase based upon changes in raw materials or components, labor or overhead. Seller warrants that the prices for the Goods are, and shall ensure that such prices remain, not less favorable to Buyer than the prices currently extended to any other Customer of Seller for the same or substantially similar goods in the same or substantially similar quantities and delivery

requirements. If Seller reduces the prices of such same or substantially similar goods during the term of this Order, Seller shall reduce the prices of the Goods correspondingly. Seller will participate in Buyer's cost savings and productivity programs and implement its own cost savings and productivity programs. Except as expressly stated in the Order under the heading "Freight," the price of Goods includes storage, handling, packaging and all other expenses and charges of Seller. Except as otherwise stated in the Order, Goods will be shipped F.O.B. at Seller's final production location, using Buyer's transportation. Buyer will pay proper invoices in compliance with all of the terms of the Order.

Each invoice must comply with applicable law, if any, and include the following information regarding the corresponding shipment of Goods: (a) amount due (in the currency specified in this Agreement); (b) location of delivery or performance; (c) shipment or delivery information; (d) if applicable, purchase order number; (e) if applicable, the intra-EU VAT number; and (f) net weight of the Goods. Buyer may reject any invoice that is inaccurate or does not conform to these requirements, and Seller will promptly reissue any such rejected invoice. Buyer's failure to reject an invoice does not constitute Buyer's acceptance of the invoice or the Goods to which such invoice pertains. It is the Seller's responsibility to ensure that all of its invoices on all programs are correct. If the Seller discovers a bona fide error on invoice amounts, Buyer shall only pay a retroactive adjustment of up to a maximum of 90 days prior to when said error was discovered

(“Adjustment Period”). Seller shall bear any loss for invoicing errors outside of this Adjustment Period.

The total price also includes all duties and taxes except for any value added tax (VAT) imposed by a non-USA jurisdiction. Buyer is not responsible for any business activity taxes, payroll taxes or any other taxes assessed or imposed on Seller's income or assets.

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

### **7. Payment.**

Unless different payment terms are stated in the Order, Buyer will pay proper invoices on a Net 60 day basis. Invoices for tooling must be issued only as approved, and as provided in the Order. Invoices for tooling will be paid on a Net 60 day basis only after completion of, and Buyer customer's written approval of, a fully warranted, five (5) level Production Part Approval Process (PPAP), or the appropriate level of PPAP required by Buyer and Buyer's customer, for Buyer's product and the related Goods, and the receipt of payment funds from Buyer's customer. Payments may be made electronically (including, without limitation, by bank transfer or recorded bill of exchange, where applicable). Where Buyer has reasonable grounds to believe the Goods may be subject to any liens, claims or encumbrances, Buyer may withhold

payment pending receipt of evidence, in such form and detail as Buyer may direct, that such Goods are free of any liens, claims and encumbrances. Any charges incurred by Buyer's Customer to Buyer as relates to the Goods provided by Seller under this Agreement will automatically be transferred to Seller as a flow through, until such time as fault may be determined.

### **8. Changes.**

Buyer may at any time by a written order make changes within the general scope of this Order, in any one or more of the following: (a) drawings, designs or specifications where the Goods to be furnished are specifically manufactured for Buyer in accordance therewith; (b) method or shipment of packing; (c) place of delivery; and (d) the amount of Buyer-furnished property. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any work under this Order, whether changed or not, an equitable adjustment shall be made in the contract price or delivery schedule or both, and the Order shall be modified in writing accordingly. Seller shall proceed with the Order as changed unless such changes will result in an increase in the cost and/or time of performance. Seller must notify Buyer in writing to that effect within five (5) working days after receipt of changes (such notification to include an estimate of the extent of the effect of the changes on the cost and/or time of performance) so that Buyer can determine if it wishes to proceed with the changes in view of the impact on cost and/or time of performance. After such notification, Buyer shall specifically instruct Seller in writing to proceed or not proceed with the changes.



Nothing in this clause shall excuse Seller from proceeding with the Order as changed. Where the cost or property made obsolete or excess as the result of the changes is included in Seller's claim for adjustment, Buyer shall have the right to prescribe the manner of disposition of such property.

Seller will not relocate the production, manufacture or assembly of the Goods from the facilities approved by Buyer, or change the location from which the goods are shipped, without first following Buyer's relocation requirements and obtaining Buyer's advanced written consent.

### **9. Supplier Quality and Development; PPAP; Required Programs.**

Seller shall meet all quantity requirements of Buyer and all quality requirements of Buyer's Customer. Buyer is committed to the efforts of the automotive manufacturers and suppliers who, through the Automotive Industry Action Group (AIAG), have created and published a number of harmonized documents. Seller shall conform to all of the requirements of the Buyer's Supplier Quality Manual as amended from time to time and which is incorporated here by reference and can be downloaded at [www.linamar.com/contactus/default.aspx](http://www.linamar.com/contactus/default.aspx). Seller may be held responsible for any and all costs associated with quality issue investigation, containment and remedial measures on account of Goods provided by Seller to Buyer. Seller's responsibility includes that for all sub-tier providers of Goods. Seller must assure that all Goods provided to Buyer conform to all specifications, standards, drawings, samples and descriptions, including, without limitation, as to quality, performance, fit,

form, function and appearance, under the Order. Seller also will participate in supplier quality and development programs of Buyer as directed by Buyer. Seller agrees to meet the full requirements of industry PPAP as specified by Buyer and (as applicable) Buyer's Customer(s) and agrees to present this information to Buyer on request, at the level requested. Seller shall act in accordance with all applicable data privacy laws, including the General Data Protection Regulation and the Canadian Personal Information Protection and Electronic Documents Act as well as the Linamar Data Protection Requirements for Suppliers which are incorporated here by reference and can be downloaded at:

<http://www.linamar.com/sites/default/files/DATA%20PROTECTION%20REQUIREMENTS%20FOR%20SUPPLIERS.pdf>.

To the extent the Goods included related services provided by Seller (or its employees, agents, representatives, or designees) ("Services"), Seller shall perform all Services in accordance with the highest standards of professional and ethical competence and integrity in Seller's industry and shall ensure that all employees assigned to perform any Services under any Order will conduct themselves in a manner consistent therewith. Seller shall perform all Services in a diligent, prompt and professional manner by individuals with the necessary knowledge, skills, expertise and training to provide the Services. In performing the Services, Seller shall comply with all applicable federal, state, local and foreign laws, statutes, regulations and orders and with all reasonable policies and procedures of Buyer. Seller shall provide Buyer with reasonable access to persons

performing Services under any Order and shall promptly replace any such person that Buyer considers unfit or otherwise unsatisfactory. In the event that any employees of Seller are physically located on Buyer's premises, Seller shall cause such employees located on Buyer's premises to sign and deliver to Buyer a confidentiality agreement reasonably acceptable to Buyer. Seller shall also ensure that employees, agents or subcontractors of Seller that are physically located on Buyer's premises are acting in accordance with all Buyer health and safety policies and are appropriately insured and licensed to perform the subject Services.

#### **10. Packaging.**

Seller will comply, in all respects, with Buyer's shipping and packaging requirements as amended or updated from time to time and as incorporated in the Order by reference. Any charges or costs relating to handling, packaging, storage or transportation of goods are borne by Seller and have been included in the piece price of the Goods as set forth herein. Further, Seller will (a) properly pack, mark and ship goods in accordance with the requirements of Buyer, the involved carriers, and laws and regulations of the country of manufacture, the country of destination and any country in which the Goods will be transported, including, without limitation, laws and regulations governing the handling and transportation of dangerous goods or hazardous materials; (b) route shipments in accordance with Buyer's instructions and the Terms; (c) provide with each shipment packing slips with the Order and/or release number and date of shipment marked thereon; (d) promptly forward the original

bill of lading or other correct classification of the Goods. The marks on each package and identification of the goods on packing slips, bills of lading and invoices (when required) must be sufficient to enable Buyer to easily identify the Goods purchased.

#### **11. Inspection; Non-Conforming Goods; Audit.**

Buyer may enter Seller's facility to inspect the facility, Goods, materials, and any of Buyer's property related to the Order. Buyer's inspection of Goods, whether during manufacture, prior to delivery, or within a reasonable time after delivery, does not represent acceptance of any work-in-process or finished Goods. Buyer's acceptance, inspection, or failure to inspect Goods does not relieve Seller of any of its responsibilities or warranties regarding the Order. Nothing in the Order releases Seller from its obligation regarding testing, inspection and quality control of the Goods. If defective Goods are shipped to Buyer and rejected by Buyer, the quantities for the Order will be reduced unless Buyer otherwise notifies Seller. Seller shall, at Buyer's request, and at no additional cost to Buyer, promptly deliver replacement parts conforming to the specifications and delivery instructions. Seller will not replace reduced quantities without a new Material Release or Order from Buyer. In addition to other remedies available to Buyer: (i) Seller agrees to accept return, at Seller's risk and expense at full invoice price, plus inbound and outbound transportation charges, and to replace defective Goods as Buyer deems necessary; (ii) Buyer may have corrected, at any time prior to shipment from Buyer's plant, Goods that fail to meet the requirements of the Order; and/or (iii) Seller

will reimburse Buyer for all reasonable expenses that result from any rejection or correction of defective Goods. Seller will 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 Goods 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 its direct or indirect customers may conduct a routine audit at Seller's production facility for the purpose of quality, cost or delivery verification. Seller will ensure that the terms of its contracts with its subcontractors provide Buyer and its customers with all of the rights specified in this Section.

## **12. Intellectual Property.**

This Section will apply except where the parties have entered into a separate written agreement signed by their respective authorized representatives prior to or contemporaneous with the effective date of the Order with respect to the parties' Intellectual Property Rights (defined below) that expressly prevails over these Terms.

“Intellectual Property Rights” means any patent, patented articles, patent applications, designs, industrial designs, copyrights, software, source code, database rights, moral rights, inventions whether or not capable of protection by patent or registration, techniques, technical data, trade secrets, know-how, and any other proprietary right, whether registered or unregistered, including applications and registrations thereof, all related and continuing rights, and all similar

or equivalent forms of protection anywhere in the world. Intellectual Property Rights excludes all brands, trademarks, trade names, slogans and logos of Seller and Buyer unless specifically identified as a deliverable or work product of Seller pursuant to this Agreement. “Background Intellectual Property Rights” means any Intellectual Property Rights of either Buyer or Seller relating to the Goods (i) existing prior to the effective date of

the Order or prior to the date Buyer and Seller began any technical cooperation relating to the Goods or services contracted, whichever is earlier, or (ii) that each party acquires or develops after these dates but in a strictly independent manner and entirely outside of any work conducted under this Agreement. “Foreground Intellectual Property Rights” means any Intellectual Property Rights, except Background Intellectual Property Rights, (i) that are developed in whole or in part by Buyer alone, by Buyer and Seller jointly or by Seller alone, in connection with this Agreement or (ii) relating to the Goods or services contracted.

Buyer and Seller will each retain ownership of any Foreground Intellectual Property Rights that are solely created or made by their respective employees, agents or subcontractors (“Personnel”). Buyer and Seller will jointly own any Foreground Intellectual Property Rights that are jointly created or made by Personnel of both Buyer and Seller with the ability to grant licenses without consultation and no duty of accounting to each other for any use or purpose. For clarity, unless an express written period of exclusivity has been

promised to Buyer, Foreground Intellectual Property Rights owned or controlled by Seller may be immediately exploited by Seller in connection with its business with its other Customers and will not be exclusive to Seller's performance of the Order. Seller hereby grants to Buyer and causes its affiliates and Personnel to grant to Buyer, an irrevocable, worldwide, nonexclusive, perpetual to the maximum extent permitted by law, royalty free, fully paid-up license, with right to sublicense, to all Foreground Intellectual Property Rights to make, have made, use, reproduce, modify, improve, prepare derivative works of, distribute, display, perform, offer to sell, sell and import, without limitation. Buyer and Seller will each retain ownership of their respective Background Intellectual Property Rights.

Seller hereby grants to Buyer and causes its affiliates and Personnel to grant to Buyer, an irrevocable, worldwide, nonexclusive, royalty free, fully paid-up license, with right to sublicense to Buyer's affiliates, to all Background Intellectual Property Rights to make, have made, use, reproduce, modify, improve, prepare derivative works of, distribute, display, perform, offer to sell, sell and import the Goods or services that are the subject of this Agreement (the "Limited License"), provided that Buyer or its affiliates will only use this Limited License in the event that (i) Seller breaches or repudiates its obligations by being unable or unwilling to deliver Goods or services under the Order, or (ii) in the event Seller is unable to supply Goods or services under the Order as a result of a force majeure event, but in such event only for the duration of Seller's inability to supply. In no event will the term

of the Limited License extend beyond the expiration date of the Order.

To the extent that this Agreement is issued for the creation of copyrightable works, the works will be considered "works made for hire" for Buyer except to the extent that the works do not qualify as "works made for hire" for Buyer in which case Seller hereby assigns to Buyer all right, title and interest in all copyrights and if lawfully permitted waives all moral rights therein.

For the avoidance of doubt, Buyer Group, its dealers, its Customers, and its subcontractors have the right to repair, reconstruct, remanufacture, reflash, or rebuild the specific goods delivered under this Agreement without payment of any royalty to Seller.

Goods manufactured based on Buyer's drawings, designs, and/or specifications as well as any software code or models provided by Buyer may not be used for Seller's own use or sold to third parties without Buyer's express written authorization.

Nothing in this Agreement is an admission by Buyer of the validity of any Intellectual Property Rights claimed by Seller, including an admission that any license is required by Buyer to manufacture the Goods. Seller will claim and acquire all rights and waivers of Seller's Personnel required to enable Seller to grant Buyer the rights and licenses in this Agreement. Seller assumes full and sole responsibility for compensating Seller's personnel for such rights and waivers, including the remuneration of employees.

Seller, on behalf of itself and Buyer Group and its dealers and Customers will comply

with all obligations with respect to software that forms any part of the Goods contracted, including obligations under any licenses.

Seller will investigate, defend, hold harmless and indemnify Buyer, its successors, its affiliates (collectively “Buyer Group”) and its dealers and Customers against any actual or alleged claims of infringement or other assertions of proprietary rights violations (including patent, trademark, copyright, industrial design right, or other proprietary right, misuse, or misappropriation of trade secret) and resulting damages and expenses (including reasonable attorney’s and other professional fees) arising in any way in relation to the Goods contracted, including such claims where Seller has provided only part of the Goods (collectively “IP Claims”). Seller expressly waives any claim against Buyer that any such IP Claims arose out of compliance with Buyer Group’s or its dealers’ or Customers’ specification or direction.

### **13. Warranties.**

Seller expressly warrants and guarantees to Buyer, to Buyer’s successors, assigns and Customers, and to any end-users of the Goods, that all Goods delivered to Buyer will: (a) conform in all respects to the drawings, specifications, samples and other descriptions and requirements relating to the Goods that have been furnished, specified or approved by the Buyer; (b) comply with all governmental requirements of the countries in which the Goods or the vehicles into which the Goods are to be installed are to be sold; (c) be merchantable; (d) be free from defects in design to the extent furnished by Seller, its Related Companies or their subcontractors, even if the design has been

approved by Buyer and or Buyer’s customer; (e) be free from defects in materials and workmanship; and (f) Seller acknowledges that Seller knows of Buyer’s or Buyer’s customer’s intended use of the goods covered by this Agreement and warrants and guarantees that such goods have been selected, designed, manufactured or assembled by Seller based upon Buyer’s stated use and will be fit and sufficient for the particular purposes intended by Buyer.

Unless otherwise set forth in the Order, the duration of the warranty provided by Seller to Buyer for production Goods will begin on the date of receipt of the Goods by Buyer and end on the later of (a) the date of expiration of any warranty period provided under applicable law for the Goods, (b) expiration of any warranty applicable to the Goods provided by Buyer to Buyer’s Customer for the vehicle into which the goods are incorporated, or (c) the expiration of any specific warranty period or performance standard provided in any document incorporated by reference into the Order, including in Buyer’s and Buyer’s Customer’s specifications or quality standards. If Buyer or Buyer’s customer offers a longer warranty to end-users for Goods installed on or as part of vehicles, the longer period will apply. The warranty period for non-production Goods shall be the longer of one (1) year after final acceptance by Buyer or the period stated in a separate agreement between the parties.

Costs incurred by Buyer or its Customer including all direct, incidental and other damages, losses, costs and expenses (i.e. sorting charges, labour, damaged tooling, rework, line down times, and other regress

teardown activities) resulting from defective Seller-supplied parts will be settled within a ten working day time period from notification by Buyer or Buyer's Customer to Seller. Costs incurred shall be charged back to Seller. Buyer's rights under this Section apply even if the defect or nonconformity does not become apparent until after delivery of the Goods to Buyer and or to Buyer's Customer. This shall include any potential "Field Service Actions" or campaigns and their respective remedy that are or may be initiated by Buyer's customer. Payment will not constitute acceptance of nonconforming Goods, nor will it limit or affect any of Buyer's rights. Seller acknowledges that Buyer may have warranty obligations to its Customer on a "no fault" basis and agrees to share such warranty costs with Buyer on the same terms as the Buyer has with its Customer.

Seller will deliver only Goods that conform in all respects to the requirements of Buyer. Buyer is not required to inspect Goods prior to their use. Seller waives any right to require the Buyer to conduct an inspection. Changes in design, material, material source, processing or manufacturing source from the Goods previously approved for PPAP requires Buyer's engineering approval in writing prior to each such change.

In the event that Buyer or its Customer voluntarily or pursuant to a government mandate, makes an offer to owners of vehicles (or other finished products) on which the Goods, or any parts, components or systems incorporating those Goods, are installed to provide remedial action to address a defective or nonconforming Good

or condition that relates to motor vehicle safety or the failure of the vehicle to comply with any applicable law, safety standard or guidelines, whether in connection with a recall campaign or other Customer satisfaction or corrective service action (a "Remedial Action"), the warranty shall continue for such time period as may be dictated by Buyer's Customer or the federal, state, local or foreign government where the Goods are used or provided and Seller shall fully comply with the requirements herein.

With respect to all Services, and without limitation of the foregoing, Seller expressly warrants that all Services will be provided in the manner required under the Order and these Terms, and will conform to any applicable Statement of Work and to all specifications, standards, drawings, samples or descriptions specified in the Order or otherwise furnished to or by Buyer. Seller acknowledges that it is responsible for the accuracy, reliability, completeness, validity and timeliness of all Services and warrants that all Services shall be provided in the manner and within time frames set forth in the Order.

Notwithstanding the expiration of the warranty period set forth herein, Seller shall nonetheless be liable for all costs and damages associated with the conduct of any Remedial Action to the extent that such Remedial Action is based upon a reasonable determination that the Goods failed to conform to the warranties set forth in the Order. Such costs and damages shall include, without limitation, all costs and expenses associated with determining whether a Remedial Action is necessary. Seller will immediately notify Buyer in

writing when it becomes aware of any ingredient, component, design or defect in Goods that is or may become harmful to persons or property. The warranty in clause (e) will continue for the life of the Goods. All warranties are intended to provide Buyer with protection from any and all warranty claims brought against Buyer by its Customer. This includes, but is not limited to, meeting any Customer-required warranties relating to the Goods in question or products into which the Goods are incorporated. All such Customer-required warranties are incorporated by reference.

#### **14. Recall and Product Liability.**

Upon the occurrence of a “Recall” or “Products Liability” situation, as those terms are defined herein (collectively referred to as a “Reimbursement Event”), Seller and Buyer agree to negotiate in good faith with one another, to reasonably allocate the costs of complying with or contesting any Reimbursement Event and of providing the remedial rights to the Customer(s) and to Buyer in connection with any such Reimbursement Event. Notwithstanding the foregoing, Buyer shall be entitled to (but not limited to) any and all rights and remedies under these Terms and applicable law, and Seller will indemnify and hold Buyer harmless for the costs of any services or other actions (including, without limitation, Remedial Actions) undertaken by Buyer or Buyer’s Customer to correct or remedy any Reimbursement Event that is determined to be attributable to Seller. Buyer’s remedies shall include, but not be limited to, a claim for actual, direct, incidental and other damages (including, without limitation, attorneys’ fees and administrative costs and expenses) arising out of, resulting from or

related to any such Reimbursement Event. Notwithstanding anything contained in these Terms that might be interpreted to the contrary, the provisions of this section survive the termination or expiration of the Order and the duration of Seller’s warranties as set forth in this Agreement.

The term "Recall" shall mean (i) a determination by Buyer or Buyer’s Customer that Goods are nonconforming and/or contain a defect related to motor vehicle safety, or otherwise fail to comply with applicable manufacturing or legal requirements, (ii) a decision by Buyer or Buyer’s Customer to voluntarily recall any Goods or vehicles incorporating Goods due to a determination that such Goods failed to meet Buyer or Buyer’s Customer’s requirements or otherwise failed to comply with applicable manufacturing or legal requirements, (iii) a determination by a government agency or authority that Goods failed to meet Buyer’s or Buyer’s Customer’s requirements and/or contains a defect related to motor vehicle safety or otherwise failed to comply with applicable manufacturing and legal requirements; (iv) any activity by Buyer or Buyer’s customer, whether as a safety, maintenance or improvement campaign or otherwise, that would be deemed or constitute a recall under applicable manufacturing or legal requirements; or (v) any activities of Buyer or its Customer relating to the above, including without limitation sorting charges, labor, damaged tooling, rework, line down times, and other regress teardown activities. Any decision of Buyer in its sole discretion to contest in a legal proceeding any Recall decision, including without limitation a determination by a governmental agency or

authority with respect to a Recall, is made without prejudice and shall not waive or diminish in any manner any rights of Buyer under the provisions of these Terms.

The term “Products Liability” shall include any action brought for or on account of personal injury, death or property damage caused by or resulting from the manufacture, construction, design, formulation, development of standards, preparation, processing, assembly, testing, listing, certifying, warning, instructing, marketing, advertising, packaging or labeling of any Goods. Furthermore, as used in this Agreement, the term “Products Liability Situation” shall refer to any Products Liability contested by Buyer in a court of competent jurisdiction or applicable agency, and a determination is made by such court or agency as a result of the proceeding that there is Products Liability on the part of Buyer or Seller with respect to any Goods.

### **15. Warranty Services and Replacement Parts.**

Seller shall provide prompt and efficient after-sales support and warranty services with respect to all Goods sold under this Agreement. Such after-sales support and warranty services shall be provided in accordance in such a manner as to meet all reasonable expectations of Buyer and Buyer's customers. All costs related to after-sales support the warranty services, which shall include but is not limited to, costs incurred by Buyer to properly administer any cross-border access required for service technicians, shall be borne by Seller.

Except as otherwise expressly agreed in writing, at Buyer's request, during the term of the Order and for fifteen (15) years after a

vehicle design or specific part concludes production, Seller will supply Buyer's written "service parts" orders with Goods, component parts and materials that are the same as the Goods, component parts and materials that Buyer purchases under the Order, at the price(s) set forth in the Order plus any actual cost differential for special packaging. If the Goods are systems or modules, Seller will sell each component or part at a price that does not, in the aggregate, exceed the system or module price specified in the Order, less assembly costs, plus any actual cost differential for packaging. Seller's obligation with respect to service or replacement parts shall survive the termination or expiration of this Order. 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.

### **16. Remedies for Breach by Seller.**

The rights and remedies reserved to Buyer in the Order will be cumulative with and in addition to all other or legal or equitable remedies. At Buyer's request, Seller will reimburse Buyer for any direct, incidental and/or other damages caused by nonconforming Goods, including without limitation costs, expenses and losses incurred directly or indirectly by Buyer or its Customer(s) (a) for inspecting, sorting, repairing or replacing the nonconforming Goods; (b) resulting from production interruptions; (c) for conducting Recall campaigns, corrective service actions or other Reimbursable Event; or (d) resulting from Product Liability caused by the defective or nonconforming Goods, including, without limitation, reasonable attorney's and other professional fees



incurred by Buyer. If requested by Buyer, Seller will enter into a separate agreement for the administration or processing of warranty charge-backs for nonconforming Goods, and will participate in and comply with warranty reduction or related programs as directed by Buyer that relate to the Goods. In the event that Goods are discovered to be defective or non-conforming, during or after assembly with Buyer's components, and Buyer's customer will not permit disassembly of the components and/or use of the disassembled, conforming Goods or components, Seller shall reimburse Buyer for the full cost of Buyer's products rejected by Buyer's customer under such circumstances. In any action brought by Buyer to enforce Seller's obligation to produce and deliver Goods under the Order, the parties agree that Buyer does not have an adequate remedy at law, and Buyer is entitled to specific performance of Seller's obligations under the Order without proof of actual damages and without bond or other security being required.

#### **17. Indemnification.**

To the fullest extent permitted by law, Seller will defend, indemnify and hold harmless Buyer, Buyer's Customers (both direct and indirect, including manufacturers of vehicles in which Goods are incorporated), and dealers and users of the products sold by Buyer (or the vehicles in which they are incorporated) and all of their respective agents, successors and assigns, against all damages, losses, claims, liabilities and expenses (including without limitation all items described in the "Warranties," "Recall and Product Liability" and "Remedies" Sections hereof, reasonable attorney's and other professional fees, settlements and

judgments) relating in any way to, arising out of, or resulting from any defective or non-conforming Goods, 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 and warranties or other terms and conditions of an Order (including any part of these Terms). Seller's obligation to indemnify will apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise, except to the extent of any such liability arising solely out of the gross negligence of Buyer. Seller's indemnification obligations will apply even if Buyer has contributed to the claims or losses, and even if Buyer furnishes all or a portion of the design and specifies all or a portion of the processing used by Seller.

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: (a) 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; (b) 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; (c) 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 (d) to the fullest extent permitted by law, Seller will indemnify and hold Buyer and Buyer's customer, and their respective agents, successors and assigns,

harmless from and against any liability, claims, demands or expenses (including reasonable attorney's and other professional fees, settlements and judgments) for damages to the property of or personal injuries to Buyer, its customer, their respective agents, or any other person or entity to the extent arising 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 to the extent caused by Buyer's gross negligence.

All of Seller's obligations with respect to indemnity throughout these Terms are cumulative and are intended to, and shall, survive the termination or expiration of the Order.

#### **18. Insurance.**

Seller will obtain and maintain insurance coverage at its sole expense in amounts 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 customer(s) as "additional insured" as requested by Buyer. Without limiting the foregoing, said coverage shall include, without limitation, full fire and extended coverage, insurance for the replacement value of Seller's Property and any Bailed Property, both for their full replacement value. Seller agrees to maintain worldwide Recall insurance with coverage limits of not less than \$5,000,000 per occurrence covering all direct, indirect and other costs and expenses of a Recall of the Goods (or any product or vehicle into which the Goods becomes a part of), including but not limited Recalls initiated by a government authority such as NHTSA. Such coverage shall also include all other costs

and expenses of Buyer and its Customer relating to or resulting from the nonconforming or defective Goods, including without limitation sorting charges, labor, damaged tooling, rework, line down times, and regress teardowns.

Prior to commencing work on Buyer's premises or utilizing Buyer's property, Seller will maintain and upon request furnish to Buyer a certificate evidencing (1) general liability insurance with coverage limits reasonably acceptable to Buyer (but not less than \$1,000,000 for property damage and \$5,000,000 for personal injury) and naming Buyer as an additional insured, (2) all risk property perils insurance covering the full replacement value of Buyer's property while in Seller's care, custody, or control and naming Buyer as loss payee, and (3) worker's compensation insurance as required by applicable law.

Seller will furnish to Buyer a certificate showing compliance with this requirement or certified copies of all insurance policies within 10 days of Buyer's written request. The certificate will provide that Buyer (and, if applicable, Buyer's customers) will receive 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 the Order. If Seller fails to maintain such insurance under any Order, Buyer shall have the right to procure such insurance and be reimbursed for all actual costs and expenses of procuring such insurance, on demand by Buyer.

### **19. Financial and Operational Condition of Seller.**

Seller represents and warrants to Buyer as of the date of each Order (which representations and warranties shall be deemed repeated as of the date of Seller's acceptance of each Release under the Order and at the time of each delivery under the Order) that it is not insolvent and is paying all debts as they become due; that it is in compliance with all loan covenants and other obligations; that all financial information provided by Seller to Buyer concerning Seller (which Seller is entitled but not obligated to review) is true and accurate; that such financial information fairly represents Seller's financial condition; and that all financial statements of Seller have been prepared in accordance with generally accepted accounting principles, uniformly and consistently applied. Seller shall permit Buyer to review Seller's books and records concerning compliance with each Order and Seller's overall financial condition, and agrees to provide Buyer with full and complete access to all such books and records for such purpose upon Buyer's request. Seller agrees that, if Buyer provides to Seller any accommodations (financial or other) that are necessary for Seller to fulfill its obligations under any Order, Seller shall reimburse Buyer for all costs including attorney's and other professional fees, incurred by Buyer in connection with such accommodation and shall grant a right of access to Buyer to use Seller's premises, machinery, equipment and other property necessary for the production of goods covered by such Order (and a lien to secure the access right) under an access and security agreement.

### **20. Buyer's Right to Terminate for Customer Cancellation/Termination.**

Buyer may terminate the Order immediately in the event Buyer's Customer cancels or terminates its agreement with Buyer to purchase the Goods (or the assembly or product the Goods are incorporated into). If Buyer exercises its right to terminate solely as a result of a Customer cancellation or termination, Buyer agrees to consume all safety stock or it will be disposed at Buyer's expense. This shall be Buyer's only liability to Seller (or any Related Company or sub-supplier) for termination under this provision. Without limitation of the foregoing, Buyer has no liability to Seller or any Related Company or sub-supplier of the Seller or sub-supplier for lost profits, unabsorbed overhead, capital investment, interest expense, product development and engineering costs, facilities and equipment rental or purchase or rearrangement costs, unamortized depreciation costs, penalties, or general administrative charges, whether incurred directly or indirectly by Seller, any of its Related Companies, or their suppliers.

### **21. Buyer's Right to Terminate for Cause.**

Buyer may terminate the Order in whole or in part at any time with Cause, upon written notice of termination to Seller. Termination for "Cause" shall include any of the following events: (a) Seller does not observe or perform any covenant or obligation of Seller or otherwise breaches the Order (including without limitation these Terms) and such default or breach is not remedied within 10 calendar days after notice has been given by Buyer to Seller; (b) Seller ceases or threatens to cease to carry on the business currently being carried on by it or a substantial portion thereof or makes or

agrees to make an assignment, disposition or conveyance, whether by way of sale or otherwise, of its assets in bulk or commits or threatens to commit any act of bankruptcy; (c) the commencement of any proceeding or the taking of any step by or against Seller for the dissolution, liquidation or winding up of Seller or for any relief under the laws of any jurisdiction relating to bankruptcy, insolvency, reorganization, arrangement or compromise, or for the appointment of one or more of a trustee, receiver, receiver and manager, custodian, liquidator or any other person with similar powers with respect to Seller; (d) Seller needs accommodations from Buyer, financial or otherwise, in order to meet its obligations under the Order; (e) the change in the control of the Seller such that (i) more than 50% of its voting shares are held directly or indirectly by persons other than those person presently holding such shares and (ii) any shareholder directly or indirectly, has an interest in a company, partnership or other entity that sells products that the same, similar to or competitive with those products sold by the Buyer. Seller will provide Buyer with Written Notice of a change of control within 10 calendar days after the change of control has become effective.

Buyer will have no liability or obligation for payment to Seller under this Section if Buyer cancels or terminates the Order (or portion thereof) because of a default or breach by Seller, or for any other termination for Cause.

## **22. Buyer's Right to Terminate for Convenience.**

In addition to any other rights of Buyer to terminate this Agreement, Buyer may, at its

option, terminate all or any part of the Order before the end of the Term, at any time and for any reason, by giving written notice to Seller. In the event Buyer exercises its right to terminate for convenience under this Section, Buyer will pay to Seller only the following amounts, without duplication: (a) the contract price for all Goods that have been completed in accordance with the Order and not previously paid for; and (b) the actual costs of work-in-process and raw materials incurred by Seller in furnishing the Goods under the Order, to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting principles to the terminated portion of the Order; less, however, the sum of the reasonable value or cost (whichever is higher) of any goods or materials used or sold by Seller with Buyer's written consent and the cost of any damaged or destroyed goods or material. Seller will promptly make available for delivery to Buyer, as specified by Buyer, any Goods completed but not delivered as of the time of Buyer's termination hereunder. Any request for payment submitted to Buyer under this Section must include sufficient supporting data to permit an audit by Buyer, including, without limitation, such supplemental and supporting information as Buyer may request. Any request for payment under this Section must be in writing and include, without limitation, a statement setting forth the contract price for the Goods, invoices reflecting the actual cost of work-in-process and raw materials, the basis for the allocation of such costs to the terminated portion of this Agreement, and any other supporting documentation reasonably requested by Buyer. Any amount otherwise

due to Seller pursuant to this Section will be reduced by any amount owed by Seller to Buyer under the Order or otherwise. Any payment under this Section will not be deemed a waiver of any of Buyer's other rights arising under any Order or applicable law. Notwithstanding any other provision of this Agreement, Buyer will make no payments under this Section for finished goods, services, work-in-process or raw materials fabricated or procured by Seller in amounts in excess of those authorized in Buyer's Material Releases or delivery schedules, or any undelivered Goods that are in Seller's standard stock or that are readily marketable. Further, any payments made under this Section will not exceed the aggregate price payable by Buyer for finished Goods that would have been produced or performed by Seller under Buyer's delivery schedules outstanding at the date of termination. Except as expressly provided in this Section, Buyer will not be liable for and will not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, overhead, interest on claims, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, or general and administrative burden charges from termination of this Agreement. Buyer will not be liable directly to any sub-suppliers of Seller. Any liability to Directed Suppliers hereunder is subject to the other Terms hereof. The payment specified in this Section is Seller's sole remedy for termination of any Order under this Section.

### **23. Termination by Seller.**

Because Buyer's commitments to its Customers are made in reliance on Seller's

commitments under each Order, Seller has no right to terminate all or any part of any Order.

### **24. Transition of Supply Following Expiration/Cancellation or Termination.**

Upon expiration or earlier cancellation or termination of any Order for whatever reason, Seller agrees to take such action as may be reasonably required by Buyer to accomplish the transition from Seller to an alternative supplier (including without limitation a Buyer-owned facility), including without limitation the action set forth above and herein. Seller shall provide all notices necessary or desirable for Buyer to re-source the Order to an alternative supplier. Seller shall provide a sufficient bank of Goods covered by the Order to ensure that the transition to any alternative supplier chosen by Buyer will proceed smoothly. Seller will return to Buyer all Bailed Property and any other property furnished by or belonging to Buyer or any of Buyer's Customers in as good condition as when received by Seller, reasonable wear and tear excepted, and otherwise in accordance with these Terms. Seller shall, at Buyer's option (a) assign to Buyer any or all supply contracts or Orders for raw material or components relating to the Order; (b) sell to Buyer, at Seller's cost, any or all inventory and work in process relating to the Order; and (c) sell to Buyer, at the unamortized portion of the cost of such items, less any amounts Buyer has paid to Seller for the cost of such items, any or all of Seller's Property relating to the Order. Upon termination of this Agreement, Seller shall immediately cease its use of the tooling and the drawings, designs and know-how relating thereto and shall immediately

deliver such tooling, drawings, designs and all other documents and other property of Buyer relating thereto to the Buyer. Buyer shall have the right to inspect Seller's premises to confirm that all such materials have been returned by Seller to Buyer.

#### **25. Force Majeure.**

Any delay or failure of either party to perform its obligations will 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, 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; terrorism, sabotage; inability to obtain power; or court injunction or order. For greater certainty, actions taken by any governmental authority that qualify as force majeure shall not include the imposition of new or increased trade barriers or tariffs or the withdrawal from trade preferences arrangements or any other like actions. As soon as possible (but no more than one full business day) after the occurrence, Seller will provide written notice describing such delay and assuring Buyer of the anticipated duration of the delay and the time that the delay will be cured. During the delay or failure to perform by Seller, Buyer, at its option: (a) may purchase Goods from other sources and reduce its schedules to Seller by such quantities, without liability to Seller; (b) may ask 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 Order; or (c) have Seller provide Goods from other sources in quantities and at a time requested

by Buyer and at the price set forth in the Order. In addition, Seller at its expense will take all necessary actions to ensure the supply of Goods to Buyer for a period of at least 30 days during any anticipated labor disruption or resulting from the expiration of Seller's labor contracts. Seller acknowledges that a change in the cost or availability of materials, components or services based on market conditions, supplier actions or contract disputes are reasonably foreseeable and will not excuse performance by seller under theories of force majeure, commercial impracticability or otherwise, and Seller expressly assumes these risks.

#### **26. Technical Information Disclosed to Buyer.**

Seller agrees not to assert any claim against Buyer, Buyer's Customers, or their respective suppliers, with respect to any technical information that Seller has disclosed or may disclose to Buyer in connection with the Goods covered by the Order, except to the extent expressly covered by a separate written confidentiality and/or license agreement signed by Buyer or by a valid patent expressly disclosed to Buyer prior to or at the time of the Order. At Buyer's request, Seller will provide technical information required by the Buyer to install, assemble or otherwise use the Goods. Technical Information includes engineering, package, testing protocols and results, documents, data and other information relating to the Goods and Tooling.

#### **27. Buyer's Property.**

All supplies, materials, machinery, equipment tooling, (fixtures, gauges, jigs, patterns, forgings, castings, consigned

material, cavity dies and molds, with all related appurtenances, accessions, and accessories), packaging and all documents, designs, blueprints, standards or specifications, trade secrets, proprietary information and other materials and items furnished by Buyer, either directly or indirectly to Seller to perform the Order or for which Seller is reimbursed by Buyer (collectively, "Buyer's Property" or "Bailed Property"), will remain Buyer's property. Buyer's Property 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. Seller bears the risk of loss of and damage to Buyer's Property. Buyer's Property will be housed, maintained, repaired and replaced by Seller at Seller's expense in good working condition, capable of producing Goods meeting all applicable specifications; will not be used by Seller for any purpose other than the performance of the Order; will be deemed personal property; will be conspicuously marked by Seller as the property of Buyer; will not be commingled with the property of Seller or with that of a third person; and will not be moved from Seller's premises without Buyer's prior written approval. Seller may not release or dispose of Buyer's Property to any third party without the express written permission of Buyer. Buyer will 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 sole discretion, to use Buyer's Property in the manufacture of Goods. Buyer and its

affiliates 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. Effective immediately upon written notice to Seller, without further notice or legal action, 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 and irrevocable power of attorney, coupled with an interest, to execute and record on Seller's behalf any notice 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 will be immediately released to Buyer or delivered by Seller to Buyer either (i) F.O.B. (F.C.A. for international shipments) 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

#### **28. Seller's Property.**

Seller, at its expense, will furnish, keep in good working condition capable of producing Goods meeting all applicable specifications, and replace when necessary, all machinery, equipment, tools, jigs, dies,

gauges, fixtures, molds, patterns and other items that are not Buyer's Property and that are necessary for the production of Goods ("Seller's Property"). Seller will 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 goods or services for other customers, including aftermarket customers, such goods or services will not incorporate any of Buyer's logos, trademarks, tradenames or part numbers. Seller will not disclose or imply in its marketing efforts that such 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 the production of Goods under any Order upon payment to Seller of its net book value less any amounts that Buyer has previously paid to Seller for the cost of such items. This option does not apply to the extent that Seller's Property is used to produce goods that are the standard stock of Seller or if substantial quantities of like goods are being sold by Seller to others. Buyer's right to exercise the option under this section is not conditioned on a breach by Seller or Buyer's termination of this Order.

29. Tooling. This Section applies only to Orders for Tooling. Buyer will have access to Seller's premises, prior and subsequent to payment, to inspect work performed and to verify charges submitted by Seller against the Order or amendment. The price set forth in the Order or amendment will 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

years after receiving final payment of the charges. All tools are to be made to Buyer's specifications (or, where directed by Buyer, those of Buyer's customer). Any exception to such specifications must be stated in writing on the Order or otherwise in a signed writing by Buyer. To the extent the Order expressly states that it is for "tooling" and unless otherwise stated in the Order, freight terms are F.O.B. Origin, Freight Collect; and Seller should not prepay or add freight charges. Payment for tooling is subject to the payment terms in these Terms.

There shall be no Tooling charges for the life of all programs in excess of the initial program tooling funds paid by Buyer unless agreed by Buyer in writing in advance of program launch.

Buyer may ask Seller at any time to provide status reports on the construction or acquisition of the Tooling. Each status report will identify the Tooling, identify any subcontractors working on the Tooling, state the percentage of completion of the Tooling, and state the percentage of sunk costs already expended.

If, at any time, the Seller believes that the Tooling might not be completed by the completion date specified on the Purchase Order, Seller shall notify the Buyer by Written Notice as soon as possible. Sending this notice will not relieve the Seller of either its obligation to complete the Tooling on the completion date or its liability for any additional costs and expenses incurred by Buyer as a result of any delay, unless otherwise agreed to in writing by Buyer.

Seller shall defend, indemnify and hold harmless the Buyer for all liabilities or costs



incurred in connection with any Adverse Claim. The scope of Seller's obligations shall be as described in the Indemnity provisions of these Terms and as otherwise provided by law. An "Adverse Claim" is one that challenges the Buyer's sole right, title and interest in the Tooling, or right to possession of the Tooling, brought by any third-party, including without limitation toolmakers, subcontractors and/or lending institutions. In any dispute involving ownership of the Tooling, there is a rebuttable presumption that the Buyer is the sole owner of the Tooling.

Seller must obtain Buyer's prior written consent before moving Tooling to another location of the Seller or to a third-party. Seller has the obligation to use Tooling solely in the production of Goods for Buyer. Seller will not use Tooling for any purpose other than as provided under this Agreement, including the production, manufacture, sale or design of after-market Goods, unless specifically authorized in writing by Buyer or as may be required to comply with a Government Requirement.

Buyer acknowledges that Seller retains ownership of all technical information and know-how used by Seller for Tooling under the Order that Seller can demonstrate was either created by Seller or became available to Seller from a source other than Buyer or its representatives in either case prior to Seller being retained hereunder to supply Goods that use such technical information and know-how. Buyer shall have a perpetual, royalty-free, transferrable right and license to access and use Seller's technical information and know-how to the extent such information is used or

incorporated into Tooling hereunder including without limitation technical information relating to processes and cycle times employed to ensure machining and product quality is maintained at sufficiently high levels. Except as set forth in the preceding sentence, Buyer retains all rights to technical information generated from said Tooling relating to processes, cycle times, etc. employed to ensure machining and product quality is maintained at sufficiently high levels. This paragraph shall survive the termination of the Order, and is intended to be read as cumulative with Section \_\_\_\_\_ ("Intellectual Property") of these Terms.

Seller acknowledges that the purchase price for Tooling includes accruals for all tooling items including, without limitation, the replacement of patterns, impressions, core boxes and trim dies, for the life of the program and Seller agrees to return, either through the reduction of the purchase price or payment to Buyer the amount by which such accruals exceed amounts actually expended by Seller for such replacements.

Seller will be responsible for all regular Tooling maintenance and consumable supply costs at its own expense.

### **30. Set-Off; Recoupment.**

In addition to any right of setoff or recoupment provided by law, all amounts due to Seller will be considered net of indebtedness of Seller and its affiliates or subsidiaries to Buyer and its affiliates or subsidiaries. Buyer will 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. Buyer will provide

Seller with a statement describing any offset or recoupment taken by Buyer. If an obligation of Seller or any of its subsidiaries or affiliates to Buyer or any of its subsidiaries or affiliates is disputed, contingent or unliquidated, Buyer or any of its subsidiaries or affiliates may defer payment of all or any portion of the amount due until such obligation is resolved. Without limiting the generality of the foregoing and by way of example only, in the event of a bankruptcy of Seller, if all of the Orders between Buyer and Seller have not been assumed, then Buyer may defer payment to Seller, via an administrative hold or otherwise, for Goods against potential rejection and other damages.

### **31. Confidentiality.**

Seller acknowledges that proprietary and confidential information will be received from Buyer or developed for Buyer under the Order, regardless of whether such information is marked or identified as confidential. The confidential information includes, without limitation: (1) Volume Projections; (2) the Buyer's or any of its Related Companies' future product plans or details of those plans; or (3) any other information identified by the Buyer or any of its Related Companies (orally or in writing) as confidential. Seller agrees to keep all proprietary or confidential information of Buyer in strictest confidence, and further agrees not to disclose or permit disclosure to others, or use for other than the purpose of the Order, any proprietary and confidential information of Buyer.

Following the expiration or termination of the Order, upon Buyer's request, Seller will promptly deliver to Buyer any and all documents and other media, including all

copies thereof and in whatever form that contain or relate to Buyer's confidential or proprietary information. Seller's obligations under this Section will continue for a period of five (5) years from the date of disclosure of information covered by this Section, unless a longer period is specified in writing by Buyer, or such information constitutes a "trade secret" under applicable law, in which case Seller's obligations will continue so long as the information remains a trade secret.

The Buyer and the Seller will each use Reasonable Care to protect the confidentiality of Confidential Information of the Other Party. "Reasonable Care" is the standard of care that the party holding the information would use in protecting the confidentiality of its own confidential information. Some of the Buyer's and its Related Companies' electronic systems are or maybe designed for collaboration and the sharing of information among multiple parties, including other Sellers. The Seller should not input Seller Confidential Information into any electronic system of the Buyer or any of its Related Companies unless the Buyer or any of its Related Companies has advised the Seller with Written Notice that the system is suitable for receipt of Seller Confidential Information.

The obligations under this Section do not apply to any information that: (1) is or becomes publicly available through no breach of any agreement between the Buyer and the Seller; (2) is approved for release by the disclosing party in a Written Notice; (3) is lawfully obtained from a third party without a duty of confidentiality; (4) was already known to the receiving party prior to

its disclosure; (5) is required to be disclosed by a valid court order; or (6) is input by the Seller into an electronic system for which the Seller has not received in Written Notice described in Obligations of Standard Care B).

The Buyer and Seller may share Confidential Information of the Other Party with their: a) Related Companies; and b) consultants, contractors, experts and agents; provided, that the person or entity with whom or which the information is being shared has agreed in writing to be bound by confidentiality provisions comparable to those specified herein. The Seller will first obtain the written consent of the Buyer if the Seller or any of its Related Companies wants to share Buyer Confidential Information with any party.

Notwithstanding anything to the contrary in these Terms, any confidentiality or nondisclosure agreement between the parties that predates the Order will remain in effect except as expressly modified by these Terms, and to the extent of a conflict between the express terms of such an agreement and this Section, the terms of that agreement will control.

### **32. Compliance with Laws.**

Seller, and any goods or services supplied by Seller, will comply with all applicable laws, rules, regulations, orders, conventions, ordinances or standards of the country(ies) of destination or that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval or certification of the goods or services, including, without limitation, those relating to environmental matters, the handling and transportation of dangerous goods or

hazardous materials, data protection and privacy, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety. Seller further represents that neither it nor any of its subcontractors, vendors, agents or other associated third parties will utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in abusive employment or corrupt business practices, in the supply of Goods. Seller agrees to comply with all applicable anti-corruption laws, including, without limitation, the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act, and that neither it nor any of its subcontractors, vendors, agents or other associated third parties will engage in any form of commercial bribery, nor directly or indirectly provide or offer to provide, anything of value to or for the benefit of, any official or employee of a governmental authority or of any government-owned, government-controlled or government-affiliated entity to obtain or retain any contract, business opportunity or other business benefit, or to influence any act or decision of that person in his/her official capacity. At Buyer's request, Seller will certify in writing its compliance with the foregoing.

Seller will promptly furnish to Buyer in such form and detail as Buyer may direct: (a) a list of all ingredients and materials incorporated in the Goods; (b) the amount of such ingredients and materials; and (c) information concerning any changes in or additions to such ingredients and materials. Prior to and with the shipment of the Goods, Seller agrees to furnish to Buyer sufficient advance warning and notice, in writing

(including, without limitation, appropriate labels on the goods, containers and packing), of any dangerous Goods or hazardous material that is an ingredient or a part of any shipment of Goods, together with such special handling instructions as may be necessary to advise carriers, Buyer and their respective employees of how to exercise that measure of care and precaution that will comply with any applicable laws or regulations and best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the Goods, containers and packing shipped to Buyer. Upon Buyer's request, Seller will certify to Buyer in writing the origin of any ingredients or materials in the goods. Seller will promptly provide, in writing, any information regarding the goods requested by Buyer so that Buyer may comply in a timely manner with reporting requirements under applicable law with respect to Consumer protection, "conflict minerals" or similar materials or ingredients, if any.

### **33. No Publicity.**

Seller will 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 Goods covered by the Order or the terms of the Order, or use any trademarks or trade names of Buyer in any press release, advertising or promotional materials, without first obtaining Buyer's written consent.

### **34. Relationship of Parties.**

Seller and Buyer are independent contracting parties and nothing in the Order will make either party the employee, agent or legal representative of the other for any

purpose. The 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.

### **35. Conflict of Interest.**

Seller represents and warrants that its performance of the Order 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 Order is in effect, 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.

### **36. Successors.**

Subject to the other Terms hereof, the Order is binding upon the Parties and will bind and inure to the benefit of their respective heirs, executors, legal and personal representatives, successors, and permitted assigns. Seller will require any successor (whether direct or indirect, by purchase of

stock or assets, merger, consolidation, or otherwise) to all or substantially all of its business and/or assets to expressly assume and agree to perform its obligations under the Order in the same manner and to the same extent that Seller would be required to perform those obligations if no such succession had taken place.

### **37. Assignment.**

Seller may not assign or delegate its obligations under the Order without Buyer's prior written consent. In the event of any approved assignment or delegation authorized by Buyer, Seller retains all responsibility for Goods, including all related warranties and claims, unless otherwise expressly agreed in writing by Buyer. Any sale or other transfer of stock or other securities of Seller that would result in a change in contract of Seller shall be deemed an assignment under the Order. Seller may assign its claims for money under any Order as collateral security for indebtedness of Seller, but Buyer shall not be required to pay the assignee until Buyer received written notice of the assignment, a true copy of the assignment, and a release from Seller reasonably acceptable to Buyer. Any such assignment shall not prohibit Buyer from enforcing its rights against Seller or the assignee, including, without limitation, Buyer's rights to setoff and recoupment, all of which rights of Buyer against Seller or its assignee are senior to any rights of such assignee. Buyer may freely assign to any third party its rights and obligations under any Order without the consent of Seller.

### **38. Subcontracting.**

Seller shall not subcontract any of its duties or obligations under any Order without prior written consent of Buyer. Any subcontractor so approved shall comply with all PPAP requirements and any other requirements of Buyer. Notwithstanding any approved subcontracting hereunder, Seller remains fully liable for any work subcontracted. Seller shall provide Buyer with written evidence that the subcontractor agrees to be bound by these Terms and Conditions and the Order.

### **39. Sales Tax Exemption.**

Buyer certifies that Goods purchased under the Order and identified as industrial processing are eligible for state and federal sales tax exemption under the federal identification number indicated in the Order or otherwise provided by Buyer.

### **40. Governing Law; Jurisdiction; Venue.**

This Agreement shall in all respects be governed by, and construed in accordance with, the laws of the province of Ontario, and the federal laws of Canada, including all matters of construction, validity, and performance, without regard to conflicts of law principles. The United Nations Convention on the International Sale of Goods shall not apply. THE PARTIES HEREBY AGREE THAT ALL SUITS, CLAIMS, ACTIONS OR PROCEEDINGS BROUGHT BY THE PARTIES TO THIS AGREEMENT WITH RESPECT TO ANY MATTER ARISING OUT OF THIS AGREEMENT, WILL BE HEARD AND DETERMINED IN THE JURISDICTION OF THE PROVINCE OF ONTARIO, CANADA. THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY

SUBMIT TO THE EXCLUSIVE JURISDICTION OF ANY SUCH COURTS IN ANY SUCH SUIT, CLAIM, ACTION OR PROCEEDING, IRREVOCABLY AGREE THAT ANY SUCH COURT IS A PROPER VENUE THEREFOR, AND IRREVOCABLY WAIVE THE DEFENSE OF AN INCONVENIENT FORUM. EACH PARTY IRREVOCABLY CONSENTS TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH SUIT, CLAIM, ACTION OR PROCEEDING BY THE MAILING OF COPIES OF SUCH PROCESS TO SUCH PARTY AT ITS ADDRESS SPECIFIED IN THE NOTICE PARAGRAPH OF THIS AGREEMENT.

#### **42. Waiver of Jury Trial.**

**TO THE EXTENT APPLICABLE,** BUYER AND SELLER, AFTER CONSULTING (OR HAVING THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO ANY ORDER OR ANY OTHER DOCUMENT PERTAINING TO ANY ORDER.

#### **43. Language; Severability; No Implied Waiver.**

The parties acknowledge that it is their wish that these terms and all documents relating thereto be in the English language only. If any term of the Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, the term will 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 the Order will remain in full force and effect. The failure of either party at any time to require performance by the other party of any provision of the Order will not affect the right to require performance at any later time, nor will the waiver of either party of a breach of any provision of the Order constitute a waiver of any later breach of the same or other provision of the Order.

#### **44. Survival.**

The obligations of Seller to Buyer survive termination of the Order, except as otherwise expressly provided in these Terms.

#### **45. Entire Agreement; Modifications.**

The Order, together with any written agreement incorporating its terms, and the attachments, exhibits, supplements or other terms of Buyer specifically referenced therein, constitutes the entire agreement between Seller and Buyer with respect to the matters contained in the Order. Except as described in Section 1 of these Terms, the Order may only be modified by a written amendment executed by authorized representatives of each party or, for Buyer changes within the scope of these Terms, in strict accordance with that provision.