

**CARLEX GLASS AMERICA, LLC**  
**GENERAL TERMS AND CONDITIONS OF PURCHASE**

**Effective June 2022**

**Table of Contents**

<b>1.</b>	<b><u>Contract Scope and Formation</u></b> .....	5
	(a) <u>Scope</u> .....	5
	(b) <u>Buyer’s Offer and Seller’s Acceptance</u> .....	5
	(c) <u>Seller’s Quotation</u> .....	5
	(d) <u>Inconsistent or Additional Terms</u> .....	5
	(e) <u>Amendments to Terms</u> .....	6
<b>2.</b>	<b><u>Duration of Order</u></b> .....	6
<b>3.</b>	<b><u>Price, Payment, and Security Interest</u></b> .....	6
	(a) <u>Price</u> .....	6
	(b) <u>Payment</u> .....	6
	(c) <u>Customs Invoice</u> .....	6
	(d) <u>Taxes</u> .....	7
	(e) <u>Payment Conditions</u> .....	7
<b>4.</b>	<b><u>Releases, Blanket Orders, Quantities, and Periods</u></b> .....	7
	(a) <u>Releases</u> .....	7
	(b) <u>Period</u> .....	8
	(c) <u>Seller’s Capacity Obligations</u> .....	8
	(d) <u>Claims</u> .....	9
<b>5.</b>	<b><u>Electronic Data Interchange</u></b> .....	9
<b>6.</b>	<b><u>Delivery</u></b> .....	9
<b>7.</b>	<b><u>Changes</u></b> .....	9
	(a) <u>Required Changes and Requests for Adjustments</u> .....	9
	(b) <u>Limitation on Changes</u> .....	9
<b>8.</b>	<b><u>Service and Replacement Parts and Other Deliverables</u></b> .....	10
	(a) <u>Supply</u> .....	10
	(b) <u>Other Deliverables</u> .....	10
<b>9.</b>	<b><u>Risk of Loss and Title to Goods</u></b> .....	10
	(a) <u>Risk of Loss</u> .....	10
	(b) <u>Title to Goods</u> .....	11
	(c) <u>Right to Possession</u> .....	11

10.	<b><u>Maintenance and Safe Use</u></b> .....	11
11.	<b><u>Quality and Inspection</u></b> .....	11
12.	<b><u>Warranties</u></b> .....	12
	(a) <u>Express Warranties</u> .....	12
	(b) <u>Warranty Period</u> .....	12
	(c) <u>Warranty Intent and Purpose</u> .....	12
	(d) <u>Notice of Breach</u> .....	13
	(e) <u>Buyer’s Defense of Third-Party Claims</u> .....	13
	(f) <u>Costs of Remedial Action</u> .....	13
	(g) <u>Cumulation</u> .....	13
	(h) <u>Assignability</u> .....	13
13.	<b><u>Indemnity, Insurance, and Performance on Buyer’s Premises</u></b> .....	14
	(a) <u>Indemnity and Liability</u> .....	14
	(b) <u>Insurance</u> .....	14
	(c) <u>Performance on Buyer’s Premises</u> .....	15
14.	<b><u>Termination for Other than Default</u></b> .....	15
15.	<b><u>Default and Remedies</u></b> .....	16
	(a) <u>General</u> .....	16
	(b) <u>General Remedies</u> .....	16
	(c) <u>Damages</u> .....	17
	(d) <u>Specific Performance</u> .....	17
	(e) <u>Duty to Deliver</u> .....	17
	(f) <u>Disclaimer of Liability for Certain Damages</u> .....	17
	(g) <u>Transition of Supply</u> .....	17
16.	<b><u>Property Furnished or Purchased by Buyer or Its Customer for Seller’s Use</u></b> .....	18
	(a) <u>Ownership</u> .....	18
	(b) <u>Maintenance, Taxes, and Risk of Loss</u> .....	18
	(c) <u>Markings</u> .....	18
	(d) <u>Use and Safety</u> .....	18
	(e) <u>Buyer’s Warranty Disclaimer</u> .....	19
	(f) <u>Express Trust</u> .....	19
	(g) <u>Liquidated Damages</u> .....	19

<b>17.</b>	<b><u>Required Tooling</u></b> .....	19
	(a) <u>Required Tooling Defined</u> .....	19
	(b) <u>Maintenance, Repair, Alteration, Use, Replacement, and Insurance</u> .....	19
	(c) <u>Option to Purchase</u> .....	20
	(d) <u>Buyer’s Right to Possession and Seller’s Duty to Deliver</u> .....	20
	(e) <u>Injunctive Relief</u> .....	21
<b>18.</b>	<b><u>Compliance with Laws</u></b> .....	21
	(a) <u>Contractual Obligations</u> .....	21
	(b) <u>Labor Standards</u> .....	21
	(c) <u>Industry Standards and Law</u> .....	22
	(d) <u>Seller’s Import Obligations</u> .....	22
	(e) <u>Conflict Minerals Reporting</u> .....	22
	(f) <u>Origin and Content Reporting</u> .....	22
<b>19.</b>	<b><u>Confidentiality and Intellectual Property</u></b> .....	22
	(a) <u>Confidentiality</u> .....	22
	(b) <u>Seller’s Non-Confidential Information</u> .....	23
	(c) <u>Indemnification</u> .....	23
	(d) <u>Specific Disclosures Regarding Patents</u> .....	24
	(e) <u>Restrictions on Seller’s Sale Activities</u> .....	24
	(f) <u>Ownership of Background and Developed IP</u> .....	24
	(g) <u>Software Rights</u> .....	24
<b>20.</b>	<b><u>Assignment, Subcontracting and Replacement Orders</u></b> .....	25
<b>21.</b>	<b><u>Security and Solvency</u></b> .....	25
	(a) <u>Security Interest</u> .....	25
	(b) <u>Seller’s Financial Information</u> .....	25
	(c) <u>Seller’s Representation of Solvency</u> .....	25
<b>22.</b>	<b><u>Audit and Examination Rights</u></b> .....	26
<b>23.</b>	<b><u>Force Majeure</u></b> .....	26
<b>24.</b>	<b><u>Cybersecurity</u></b> .....	27
	(a) <u>Enterprise Cybersecurity</u> .....	27
	(a) <u>Goods Cybersecurity</u> .....	27
	(b) <u>Supply Chain Cybersecurity</u> .....	27
<b>25.</b>	<b><u>Applicable Law, Waiver of Liens and Sovereignty</u></b> .....	27

(a)	<u>Applicable Law</u> .....	27
(b)	<u>Liens</u> .....	28
(c)	<u>Joinder</u> .....	28
(d)	<u>Service of Process</u> .....	28
(e)	<u>Limitations of Actions</u> .....	28
26.	<b><u>Arbitration</u></b> .....	28
27.	<b><u>Publicity</u></b> .....	29
28.	<b><u>Ethical Standards</u></b> .....	29
29.	<b><u>Payments to Third Party Representatives</u></b> .....	29
30.	<b><u>Entire Agreement and Modifications</u></b> .....	29
31.	<b><u>Waiver</u></b> .....	29
32.	<b><u>Relationship of Parties</u></b> .....	30
33.	<b><u>Severability</u></b> .....	30

**CARLEX GLASS AMERICA, LLC (“Buyer”)**

**GENERAL TERMS AND CONDITIONS OF PURCHASE**

**1. Contract Scope and Formation.**

(a) Scope. These General Terms and Conditions of Purchase (“Terms”) automatically apply to and are a part of all written and oral purchase orders and amendments thereto and any Releases (as defined below), purchase agreements, supply agreements or similar documents issued to Seller by Buyer (collectively referred to as an “Order”). All goods and services (whether or not ancillary to a sale of goods) such as production and service parts, raw materials, equipment, tooling, Furnished Property, engineering and design work, documents and data, components, intermediate assemblies, work in process, and end products to be provided under an Order are included in the term “Goods.” The Buyer named above may from time to time administer purchasing for its Affiliates and issue Orders containing its name or logo but identifying a different entity as the “Buyer.” Seller acknowledges and agrees that no such Order shall constitute or be interpreted to represent an Order of the Buyer named above or a guaranty by the Buyer named above of any obligations or liabilities of the Affiliate identified on an Order as the Buyer. An “Affiliate” is an entity directly or indirectly controlled by a party, or an entity which directly or indirectly controls or is under common control with a party. “Control” means at least a 51% voting or management interest.

(b) Buyer’s Offer and Seller’s Acceptance. Each purchase order, together with these Terms, is an offer by Buyer or its Affiliate as identified in the Order as the Buyer to the party to whom such Order is addressed (“Seller”) to enter into the agreement it describes. It shall be the complete and exclusive statement of such offer and agreement. Seller accepts an Order by returning a copy thereof signed by Seller within seven days of the date of receipt, by beginning work or performance, including preparation to provide the Goods, by delivering any Goods, or by failing to expressly reject the Order within ten (10) days of receipt. A purchase order is an adequate document to satisfy any statute of frauds.

(c) Seller’s Quotation. An Order does not constitute an acceptance by Buyer of any quotation or proposal of Seller. Reference in an Order to any such quotation or proposal shall not constitute an addition to or a modification of any of the terms or conditions of an Order, except that a specific item of a quotation or proposal referenced and adopted by an Order may be included in an Order and does not constitute adoption of any other portion of the quotation or proposal.

(d) Inconsistent or Additional Terms. BUYER EXPRESSLY OBJECTS TO AND REJECTS ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY SELLER, WHETHER IN A QUOTE, ACKNOWLEDGMENT, INVOICE OR ANY OTHER DOCUMENT ISSUED BY SELLER, AND NO SUCH TERMS SHALL BIND BUYER. Other Provisions. An Order also includes other provisions (as amended from time to time) applicable to the Buyer’s purchase of Goods, which may be found on the Buyer’s website at <http://www.carlex.com/suppliers/> and/or which have been or will be provided to Seller, including but not limited to the Carlex Supplier Quality Manual, Carlex Supplier Route Guide, Carlex International Supplier Routing guide, Carlex Material Identification and Shipping Label

Standards, and other guides and manuals (together, the “Buyer Guides”), which are incorporated into an Order by this reference. In the event of a conflict between any Buyer Guides and these Terms, these Terms shall govern.

(e) Amendments to Terms. No exception to, deviation from, or waiver of these Terms shall be valid or binding on Buyer unless specified on the face of an Order or Order amendment or made in a signed writing by a vice president or senior manager of Buyer. Any such exceptions, deviations or waivers shall apply only to the specific purchase order for which they are granted and shall not constitute a course of dealing.

**2. Duration of Order**. If no specific period or expiration date is stated in an Order, it shall continue for the life of the project or programs for which the Goods are to be used in production or resold by the Buyer, including for service parts, or until otherwise terminated as provided by these Terms or a specific provision in an Order. Expiration or termination of an Order shall not affect warranty, non-disclosure, and other obligations which by their nature may continue beyond an obligation to provide the Goods. If a specific term is stated in an Order it shall continue for such period and then expire, subject to other provisions of these Terms.

**3. Price, Payment, and Security Interest**.

(a) Price. Seller shall furnish the Goods at the firm, fixed prices specified in an Order for the duration of the Order. The prices specified in an Order shall be complete, and no additional charges or surcharges of any type may be charged, and no price increases shall be permitted for any reason, including but not limited to, for current or increased cost of materials, components, fuel, energy, labor, custom duties, tariffs, taxes, currency fluctuations, storage, insurance, packaging, labeling, transportation, or overhead, regardless of foreseeability at the time the Order is issued. All prices are in the currency applicable at the place of issuance of the Order unless otherwise specified on the face of the Order and are DDP destination (Incoterms 2020). Seller warrants that the prices for the Goods are not less favorable than those currently extended to any other customer for the same or similar goods in similar quantities. If Seller reduces its price of goods sold to other customers during the term of an Order, Seller agrees to reduce the prices of the Goods correspondingly.

(b) Payment. Unless otherwise stated on the face of an Order, payment terms are net 60 from the Payment Start Date. The “Payment Start Date” shall be the later of the date on which Seller’s invoice is received by Buyer or the date of receipt of the Goods at the destination. Buyer shall pay for Goods on a Net Settlement Basis for all of the accounts of Seller arising from an Order and other agreements Seller has with Buyer. “Net Settlement Basis” means that, unless prohibited by law, Buyer may set off and recoup against Buyer’s accounts payable to Seller any amounts which Buyer determines in commercial good faith that Seller or any Seller Affiliate is liable to Buyer or any Affiliate of Buyer, under any Order or other agreements between Seller or any Seller Affiliate and Buyer or any Buyer Affiliate. Buyer may do so without advance notice to Seller. Payment shall not constitute acceptance of non-conforming Goods and shall not limit or affect any rights or remedies of Buyer.

(c) Customs Invoice. If Goods will cross an international border during delivery and if Buyer has any responsibilities under an Order for obtaining clearance, Seller shall

provide a commercial invoice to Buyer in the form and content as required by Buyer's Guides or otherwise and for customs clearance within a reasonable amount of time requested by Buyer to facilitate the timely clearance. The invoice shall be in English, or in the specific language of the destination country as directed by Buyer.

(d) Taxes. Seller's price includes all taxes, customs duties, and tariffs, provided that any national, state/provincial and local sales, use, excise, recoverable value added, and/or privilege taxes, if applicable, will be identified on Seller's invoice separately from the price. If Seller is obligated by law to charge any excise, value-added and/or similar tax to Buyer, Seller shall ensure that it is invoiced to Buyer and once collected is promptly remitted by Seller to the appropriate government authority, all in accordance with applicable laws so as to allow Buyer (without any registration with the government) to reclaim such excise, value-added and/or similar tax from the appropriate government authority. Seller transfers to Buyer all taxes, fees, and duties which are recoverable by Seller and shall cooperate with Buyer to enable Buyer to recover such sums.

(e) Payment Conditions. Notwithstanding the particular payment terms applicable to an Order: (i) if Buyer is to be paid by its customer for Furnished Property, Seller shall not earn a right to payment for such Furnished Property before Buyer is paid by its customer for same; (ii) Buyer may, at its option, upon notice to Seller, revise its payment terms for Goods to take into account any change in the payment terms of Buyer's customer applicable to the Goods under any Order; and (iii) for Furnished Property and equipment installed at Buyer's premises, Buyer may demand from Seller sworn statements and waiver of liens before payment.

#### **4. Releases, Blanket Orders, Quantities, and Periods.**

(a) Releases. If an Order is a "blanket order," "requirements contract," or in some other manner indicates Buyer's obligation to purchase is limited to those Goods and quantities in Releases or other written delivery instructions from Buyer ("Blanket Order"), Buyer's obligation to purchase the Goods is expressly contingent upon the issuance of a release, call off, or other written delivery instructions by Buyer ("Releases") identifying the Goods and materials and quantities to be purchased and providing delivery schedules and directions. A Release shall be part of the applicable Order. If a quantity term is not stated in an Order or otherwise provided, all Orders for Goods used in production by Buyer or its customer, or in and for their corresponding service and replacement parts, are presumed to be Blanket Orders for 100% of Buyer's requirements for the life of Buyer's customer's program. As to a Blanket Order, Seller shall not fabricate or assemble any Goods, procure materials, nor ship any Goods, except to the extent specifically authorized by an Order or by written Releases. Seller shall maintain at its expense and risk components, materials and finished Goods necessary to assure a continued supply of Goods in forecasted amounts at the latest design level. Subject to change by Buyer's Releases, Seller is authorized to fabricate and assemble up to two weeks of finished Goods inventory and acquire up to an additional six weeks of component and materials inventory based on Buyer's latest Releases. Buyer shall be obligated only to purchase Goods and those components and materials fabricated or acquired by Seller in reliance on the firm periods provided above or in a Release or Order that specifically establishes a different firm or fixed quantity. Buyer shall have no liability for payment of Goods delivered to Buyer which are in excess of firm quantities specified in an Order (including Releases). Seller accepts the risk associated with the lead times of the various components if they

are beyond the firm Release quantities provided by Buyer. Buyer may return shipments in excess of quantities released or ordered to Seller at Seller's expense for all packing, handling, sorting and transportation charges. Notwithstanding anything to the contrary in an Order, Seller is obligated to provide quantities as required in Releases issued to Seller. A provision providing for Seller to provide a percentage or range of percentages of Buyer's requirements is not a guarantee of any specific quantity of Goods that must be purchased by Buyer, and the actual range of purchases pursuant to Releases can be substantially different from the percentages of estimates given, without any change in the obligation of Seller. A reference in a Blanket Order to a range or a specific quantity of Goods is an estimate based upon information from Buyer's customer or other sources and is not a guarantee of the quantity to be purchased. Releases may be modified by Buyer at any time to the extent not contrary to specific terms of an Order. Buyer may temporarily suspend delivery or modify delivery dates for firm or fixed quantities.

(b) Period. If a Blanket Order has no specific period of validity and/or is not for the life of a program, the obligation of Seller to sell under the prices and other terms of a Blanket Order continues for the longer of the periods in which Buyer issues Releases to Seller and a reasonable period after Buyer's written notice of termination, which shall be not less than 12 months, unless Buyer specifies a shorter period in writing. Buyer has relied and/or will rely in its relations with its customer upon Seller's obligations to sell under an Order, and re-sourcing to an alternate supplier usually cannot occur in less than 12 months. Seller has no right to terminate any Order or Release except for Buyer's failure to pay undisputed amounts due which remains uncured for 60 days after written notice and also subject to other provisions in these Terms, including transition obligations. The inclusion in an Order of prices for periods beyond the term of any firm period of commitment to deliver in an Order obligates Seller to accept a new or renewed Order at such prices, but is not an implied extension of any commitment of Buyer to purchase. If an Order contains a specific period of commitment, the commitment of Seller continues for the period covered by an Order and thereafter, at the prices in effect at the end of the specific period, for a reasonable period (at least 12 months, unless Buyer specifies a shorter period in writing) after written notice by Seller that it no longer wishes to supply under such prices, so that Buyer may have adequate time to resource supply of the Goods.

(c) Seller's Capacity Obligations. A reference to quantities of production Goods contained in an Order for tooling or other Furnished Property is to obtain a warranty of performance for the Furnished Property and/or of the Goods to be produced with the Furnished Property and is not an obligation or commitment by Buyer to purchase any particular quantity of production Goods. A reference in an Order to a minimum or maximum quantity of production of Goods is a warranty by Seller of its commitment to maintain the indicated capacity and production levels and is not a guarantee of a quantity of Goods to be ordered by Buyer. Seller is responsible for any costs incurred to comply with Buyer's Releases, including but not limited to costs to increase capacity to a reasonable amount above estimated or historical maximum quantities. Seller shall maintain production and delivery capacity so that deliveries can be made in accordance with Buyer's Releases. Seller shall immediately inform Buyer if there is any risk of deviation from Releases and shall take all available measures to avoid such deviation. Seller is aware that the actual need for the Goods is driven by the requirements of Buyer's customers and that Seller must remain flexible to adjust to these and other contingencies.

(d) Claims. Any claims by Seller related to Buyer's alleged failure to comply with obligations to release and/or purchase firm or other quantities of Goods must be made in writing within 120 days of the date such claim accrues, or the claim is barred, released and abandoned.

5. Electronic Data Interchange. Seller shall comply with all Buyer Guides and requirements related to participation in electronic data interchange and computer access.

6. Delivery. Seller shall maintain a 100% on time delivery record and a 100% compliance record with other Order requirements. Delivery must be on the date indicated in an Order, if any, unless otherwise directed by Buyer. Seller shall comply with delivery, documentation, marking, and other logistics requirements in Buyer's Guides. If an Order is a Blanket Order or if no delivery schedule is provided, deliveries are to be made only in quantities and at times specified in Releases as they may be amended by Buyer. Buyer may, from time to time, change delivery schedules or direct temporary suspension of scheduled shipments without additional charge. Time is of the essence as to delivery and other performance by Seller.

7. Changes.

(a) Required Changes and Requests for Adjustments. Buyer reserves the right at any time to direct Seller to make changes in quantities, drawings, specifications, testing or quality control, packaging, shipment, scope of work and other specific terms of an Order. Seller shall consider and advise Buyer of the potential impact of a design change on the Goods and on the system or assembly in which the Goods are used, including regarding their performance. Any actual or projected impact on price (higher or lower) or time for performance necessarily resulting from a Buyer directed change shall be reported by Seller to Buyer, and any adjustment to price or schedules shall be requested by Seller in writing, with all supporting documentation, within ten (10) days of receipt of Buyer's written change directive or within such other time as Buyer may direct or as may be required by Buyer's customer. Time is of the essence for Seller's request. Buyer shall issue an Order amendment promptly if it agrees with Seller's request. If Buyer disagrees, the parties shall negotiate in good faith to achieve an equitable adjustment. Seller shall diligently and promptly perform an Order and all Buyer directed changes while its request is being evaluated and during any period of dispute regarding Buyer's directed changes. The price may be adjusted solely to compensate Seller for increased costs of materials and other direct production costs (excluding overhead and profit) directly and necessarily incurred as a result of the changes, and the terms for performance shall be adjusted only for the period actually required to comply with the changes. Buyer shall have the right to audit all relevant records, facilities, work or materials of Seller to verify any request. Except as otherwise specifically required by an Order, any purported change or adjustment in price or time shall be binding on Buyer only if made in a written Order amendment issued by Buyer.

(b) Limitation on Changes. Without the prior approval of Buyer on the face of an Order amendment, Seller shall make no changes to any Order or the Goods covered by an Order, including, without limitation, changing: (i) any third party supplier to Seller of services, raw materials or goods used by Seller in connection with its performance under an Order, (ii) the facility from which Seller or its supplier operates, (iii) the price of any of the Goods covered by an Order, (iv) the nature, type or quality of any services, raw materials or goods used by Seller or its

suppliers in connection with an Order; (v) the fit, form, function, appearance, performance of any Goods covered by an Order; or (vi) the production method or any process or software used in the production or provision of any Goods under an Order. Any changes by Seller to any Order or the Goods covered by an Order without the prior approval by Buyer on the face of an Order amendment or in a signed writing by Buyer's senior manager or vice president shall constitute a breach of an Order.

## **8. Service and Replacement Parts and Other Deliverables.**

(a) Supply. Seller shall sell Goods to Buyer as ordered and released by Buyer for use in production and as service and aftermarket replacement parts. During the period in which Buyer is required by its customer to provide service or replacement parts, if such period has been defined in the Order or some other written communication between Buyer and Seller, or for 15 years after the end of production, whichever is longer, Seller shall sell Goods to Buyer as ordered to fulfill Buyer's or its customer's service and replacement parts requirements. Unless Buyer otherwise agrees in writing, the price during the first five years of this period shall be those in effect at the conclusion of purchases for production for Buyer's customer, plus any actual costs for any unique packaging required for Goods intended for service and aftermarket. For the remainder of this period, the price for Goods shall be as agreed to by the parties, not to exceed the lower of: (i) the actual cost of manufacture and a reasonable percentage contribution to overhead and profit, not to exceed the percentage on production Goods; (ii) the price at which Buyer is obligated to sell to its customer; or (iii) the price at the conclusion of production for use by Buyer's customer, plus any actual costs for any special set up or unique packaging required for Goods intended for service and aftermarket. When requested by Buyer, Seller shall make service literature and other materials available in English at no additional charge to support Buyer's service and replacement part sales activities.

(b) Other Deliverables. Upon Buyer's request and without charge, Seller shall furnish Buyer with design and production documents and data, including the following:

(i) Appropriate Seller and third-party certification of all Goods requiring calibration and testing prior to delivery.

(ii) Product descriptions, specifications, brochures, technical manuals, safe use documents (described below), license agreements, supporting materials and other printed information relating to the Goods or any components of the Goods.

(iii) Complete drawings (including CAD), specifications, and engineering design and production data and reports (including DVP & R, DFMEA, PVP & R) for the Goods and for any Furnished Property.

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

(a) Risk of Loss. All shipments not made by Buyer or an agent engaged by Buyer are at the risk of Seller until receipt at Buyer's location or other final destination designated in an Order or other writing by Buyer, regardless of the delivery point pursuant to the delivery terms, unless risk of loss is assumed by Buyer in writing. Seller shall insure the Goods at their

replacement value for the benefit of Seller and Buyer as their interest may appear and provide to Buyer proof thereof upon request. Risk of loss shall not be governed by transfer of title.

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

(c) Right to Possession. Buyer has the right to possession of all Goods at all times from the time the Goods are identified to an Order, whether or not Seller is in default, subject to Buyer's obligation to pay for the Goods upon obtaining possession. This right is separate and apart from any Security Interest.

**10. Maintenance and Safe Use.** Seller shall provide to Buyer with the Goods, in writing, in English (and in any mandatory translation required by any applicable law in the location of destination or which Seller shall provide), all information necessary: (a) for the safe installation, use, maintenance and repair of the Goods; (b) to maximize the efficient use and useful life of the Goods; and (c) to comply with any applicable labeling, notice, or warning law. Prior to and with the shipment of the Goods, Seller shall furnish to Buyer sufficient warning and notice in writing (including material safety data sheets and appropriate labels on the Goods, containers and packing) of any hazardous material that is an ingredient or a part of any of the Goods, together with such special handling instructions as may be necessary to advise carriers, Buyer, customers, and all their respective employees, and end users how to exercise that measure of care and precaution that will best prevent bodily injury (including death) or property damage in the handling, transportation, processing, use or disposal of the Goods, containers and packing shipped to Buyer. If requested by Buyer, Seller shall promptly furnish to Buyer in such form and detail as Buyer may direct, in addition to standard material safety data sheets: (i) a list of all ingredients in the Goods; (ii) the amount of all ingredients; (iii) information concerning any changes in or additions to such ingredients; and (iv) other information required by International Material Data System, consumer protection laws and conflict minerals regulations, including as needed, as determined by the requestor, to enable compliance with any requirement of a government or Buyer's customer (either mandated or voluntarily agreed upon by Buyer or any of its Affiliates) relating to the hazardous, toxic or other content or nature of the Goods.

**11. Quality and Inspection.** Seller shall comply with all provisions of Buyer's Guides relating to quality, testing, inspection, and related matters. Seller shall provide to Buyer upon request all information and data generated by Seller or any third party engaged by Seller concerning or related to Seller's evaluation of the root cause of any failure or defect in the Goods and shall reasonably cooperate with Buyer and Buyer's customer in all attempts to determine root cause of any failure or defect in or related to the Goods, including responding to requests and attending meetings as may be requested.

## 12. Warranties.

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

(b) Warranty Period. As to each of the Goods, each of Seller's warranties in subsection (a) begins on the date of delivery to Buyer and continues until the last to occur of the following: (i) four years after delivery to Buyer; (ii) the expiration of the longest time period which Buyer or Buyer's customer or the original equipment manufacturer in which the Goods may be installed may be required, by contract or law, to repair or replace the Goods or Buyer's product incorporating the Goods; or (iii) the period provided by applicable law for the Goods as sold to a consumer. The statute of limitations period applicable to any breach of warranty will be the longest statute of limitation period for breach of contract, product liability or indemnity claims in any applicable jurisdiction or, in the case of any recall campaign, the longest time period provided by the government where the Goods are used. If Buyer or its customer, voluntarily or pursuant to a government mandate, issues a service bulletin or instructions to dealers or makes an offer to owners of vehicles (or other finished products) on which the Goods, or any parts, components or systems incorporating the Goods, are installed to provide remedial action to address a defect or condition that relates to safety or the failure of the product to comply with any applicable law, safety standard or guideline, whether in connection with a recall campaign or other customer satisfaction or corrective service action (a "Remedial Action"), the warranty shall continue for such time period as may be dictated by Buyer's customer or by the government where the Goods are delivered or used, and Seller shall fully comply with the requirements of the Remedial Action.

(c) Warranty Intent and Purpose. 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, satisfying any customer-required warranties relating to the Goods

or products into which the Goods are incorporated. All such customer-required warranties are incorporated herein by reference.

(d) Notice of Breach. The following communications shall each constitute notice of breach of warranty under an Order: (i) any communication or notice identifying a defect, default, claim of defect or other problem or quality issue with any Goods; or (ii) any communication to Seller claiming that Seller's Goods are non-conforming or in breach of any warranty or that Seller is in default under an Order. Any such notice of breach by Buyer may only be rescinded in a writing signed by a vice president of Buyer.

(e) Buyer's Defense of Third-Party Claims. To mitigate its damages, Buyer may elect to fully defend or respond to any claim from Buyer's customer or other third party that any Goods supplied by Seller are defective, in breach of warranty, or otherwise did not meet applicable legal or contractual requirements. Seller and Buyer agree that this defense is in the interest of both Seller and Buyer. Seller shall reasonably cooperate in such defense. Seller waives any argument that Buyer's actions in responding or assuming such defense in any way limits or waives Buyer's right to assert a claim against Seller for breach of warranty, contribution, indemnification or other claim that may arise from or be related to the subject matter of any such third party claim. If Seller wishes to participate in negotiations with Buyer's customer or other third party regarding any such claim or in any related litigation or defense of any such claim, which participation shall be at the sole discretion of Buyer, then, in each case that Seller receives a notice of default or claim of breach, Seller shall give Buyer prompt written notice of its request to participate, which notice shall describe with particularity the details of Seller's position regarding the defense of the alleged default or breach.

(f) Costs of Remedial Action. Notwithstanding the expiration of the warranty period set forth in these Terms, Seller shall nonetheless be liable for all costs and damages associated or incurred in connection with the conduct and/or administration of any Remedial Action that is caused in whole or in part by any failure of the Goods to conform to the warranties set forth in an Order, plus all reasonable expenses associated with determining whether a Remedial Action is or was necessary, plus all damages and remedies specified elsewhere in the Agreement. Buyer shall bear the initial burden of proving that a Remedial Action was caused in whole or in part by a failure of the Goods to conform to the warranties set forth in an Order, including, by way of example only, through the use of statistical analysis or other sampling methodology to meet this burden, after which the burden of proof and of persuasion shall shift to Seller to prove that the Remedial Action was caused entirely by some other cause, unrelated to its breach of warranty. Any Remedial Action involving Goods sold to Buyer shall be treated confidentially and separately and distinctly from similar Remedial Actions of other products of Seller; provided that such separate and distinct treatment is lawful, and Seller shall provide at least the same protection and remedies to Buyer on such Goods as Seller provides to its other customers in connection with such similar Remedial Actions.

(g) Cumulation. All warranties and remedies provided by these Terms are cumulative and in addition to those provided by law.

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

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

(a) Indemnity and Liability. In addition to any rights to contribution, common law indemnity, or other remedy provided to Buyer by applicable law, Seller shall defend, indemnify, and hold harmless Buyer and Buyer's employees, officers, directors, and customers ("Indemnitees") from and against any and all Claims, damages, and expenses, including reasonable attorney fees and expenses relating to the investigation, defense and handling of any Claims, for personal injury, death, property loss or damage, or any other loss, expense, or damage ("Liabilities"), to Indemnitees or to any others (including Seller and its employees and agents) arising out of or in any manner connected with: (i) the defective design, engineering, production, labeling, use, sale, storage, condition, and/or safety of the Goods, whether or not incorporated in another product; (ii) any act or omission of Seller; and/or (iii) breach of any representation, warranty or covenant by Seller or a supplier of Seller, or employees or invitees of either of them, and in each case whether or not caused or contributed to by the fault or negligence of any of the Indemnitees. To be clear, Seller shall indemnify, defend and hold harmless Indemnitees even if any or all of the Claims or liabilities incurred by any or all of the Indemnitees are caused in part by the concurrent actions or negligence of one or more of the Indemnitees. Seller waives the application of the doctrine of comparative negligence and other doctrines that may allocate the liability covered by Seller's indemnity to the full extent allowed by law, provided that Seller shall not be obligated to indemnify Indemnitees from any claim which arises from the sole negligence of the Indemnitees. Seller waives and releases any rights of contribution, indemnity or subrogation it may have against any of the Indemnitees as a result of any indemnity claim asserted by another Indemnitee under this Section. Seller waives any provision of any workers' compensation act or other similar law whereby Seller could preclude its joinder by Indemnitees as an additional defendant, or avoid liability for damages, contribution or indemnity in any action at law, or otherwise where Seller's or its subcontractor's employees, heirs, assigns or anyone otherwise entitled to receive damages by reason of injury or death brings an action at law against any Indemnitee. Seller's obligation to Indemnitees shall not be limited by any limitation or exclusion on the amount or type of damages, benefits or compensation payable by or for Seller under an Order or other agreement or under any workers' compensation acts, disability benefit acts, or other employee benefit acts. The obligations in this subsection are in addition to Seller's duty to provide insurance. Seller's obligations hereunder will not be limited to the extent of any insurance available to or provided by Seller. This subsection shall not apply to any liability for which the law prohibits an Indemnitee from obtaining indemnity.

(b) Insurance. Seller shall obtain and maintain insurance coverage in the following minimum amounts with reputable and financially responsible underwriters acceptable to the Buyer and having an A.M Best rating of at least A-VIII: workmen's compensation - statutory limits for jurisdictions in which work is to be performed; employer's liability-\$1,000,000; comprehensive general liability with limits not less than \$10,000,000 per occurrence; automobile liability/bodily injury with limits not less than \$5,000,000 per person for bodily injury and \$10,000,000 per accident for bodily injury, and \$5,000,000 per accident for property damage. An umbrella policy may be used to satisfy the required policy limits. All policies shall be issued by an insurer licensed to do business in the national, state/provincial, and local jurisdiction where Buyer shall use and sell the Goods. The comprehensive general liability insurance shall be an occurrence form of policy and cover global liability arising from products liability, premises, operations, independent contractor, products-completed operations, personal injury and

advertising injury, recall and liability assumed under contract. Buyer shall be named as an additional insured under all policies except workers compensation. The Workers Compensation, General Liability, Automobile Liability and any Umbrella Liability policies each will include a waiver of subrogation in favor of Buyer. Seller also waives subrogation against Buyer. Seller shall furnish to Buyer a certificate of insurance completed by its insurance carriers certifying that the required insurance coverages are in effect and will not be canceled or materially changed until 30 days after prior written notice has been delivered to Buyer. The certificate shall set forth the amount of each coverage, number of policy, date of expiration and Buyer as an additional insured. The purchase of such insurance coverage or the furnishing of a certificate shall not be a satisfaction of Seller's liability hereunder, or in any way modify Seller's obligation to indemnify Buyer.

(c) Performance on Buyer's Premises. If Seller's performance under an Order involves operations by Seller on the premises of Buyer or one of its customers, Seller shall take all precautions necessary to prevent the occurrence of any injury (including death) to persons or damages to property during the progress of such performances. Seller shall defend and indemnify Buyer against any claim which may result in any way from any act or omission of Seller, its agents, employees or subcontractors on the premises of Buyer or one of its customers, to the same degree and with all the same conditions and stipulations as provided in subsection (a).

**14. Termination for Other than Default.** In addition to any other rights of Buyer to cancel or terminate an Order or any Releases, Buyer may at its option immediately terminate all or any part of an Order or any Releases on 14 days' notice for: (a) the termination or material reduction in customer demands; (b) a change in Buyer's requirements; (c) Seller's failure to remain competitive in price, quality, delivery, and/or technology, whether or not such failure would be a default or breach by Seller; or (d) Buyer's convenience. Seller shall cooperate with Buyer in any transfer of production or other performance to a new supplier. Upon a termination under this Section, Buyer shall pay to Seller the following amounts without duplication: (i) the Order price for all conforming Goods which have been completed and delivered in accordance with an Order not previously paid; (ii) the actual direct cost of protecting Buyer's property; and (iii) the actual direct costs of work in process and raw materials reasonably incurred by Seller in furnishing or preparing to furnish Goods under an Order or any Releases to the extent such costs are reasonable in amount and are properly allowable or apportionable, under generally accepted accounting principles, to the terminated firm portion of an Order or any Releases issued pursuant to an Order; less, however, the reasonable value or cost (whichever is higher) of any Goods or materials subsequently used or sold by Seller with Buyer's written consent and of the cost of any damaged or destroyed Goods or materials. Buyer shall not be liable to pay for finished Goods, work in process or raw materials obtained, fabricated or processed by Seller in amounts in excess of those authorized as firm in Releases, for any undelivered Goods which are Seller's standard stock or which are readily marketable, or for any finished Goods or materials which are not promptly delivered to Buyer after request by Buyer. Except as provided in this Section, Buyer shall not be liable for and shall not be required to make any other payments to Seller, directly or on account of claims by Seller or Seller's suppliers or subcontractors, arising from termination of an Order, including but not limited to for loss of anticipated profit, revenue or opportunity, and for business interruption, unabsorbed overhead, product development and engineering costs, facilities and equipment, rearrangement cost or rental, unamortized depreciation costs, general and administrative burden charges, or interest on claims. Within 60 days from the effective date of termination, Seller shall submit a comprehensive termination claim to Buyer with sufficient

supporting data to permit Buyer's audit and shall thereafter promptly furnish such supplemental and supporting information as Buyer shall request. Time is of the essence for such claim. Buyer shall have no obligation to Seller under this Section if Seller does not timely submit a claim or if Buyer terminates its purchase obligations under an Order or any Release for any reason other than for Buyer's convenience under Subsection (d) above, except to the extent Buyer recovers from its customer for amounts otherwise due to Seller from Buyer under this Section. Payment under this Section shall constitute the exclusive liability of Buyer if an Order is terminated by Buyer pursuant to this Section. Seller has no right to terminate an Order except for a material breach by Buyer of Buyer's payment obligations as herein stated, to the extent of an amount not disputed by Buyer, provided that Seller shall first give Buyer written notice of any such breach and a reasonable opportunity (not less than 60 days) to cure.

#### **15. Default and Remedies.**

(a) General. Seller shall be in default: (i) if Seller fails to perform any obligation within the time specified in an Order (including a Release) or any extension thereof granted by Buyer in writing, or upon Buyer's demand if no time has been specified; (ii) if Seller fails to make progress in the performance of any obligation so as to make Buyer reasonably apprehensive about Seller's ability or willingness to perform its obligations; (iii) if Seller repudiates or is in breach of any provisions of an Order, including any of Seller's warranties; or (iv) if Seller's performance of its obligations, or if any of the Goods, are found at any time to be in breach of the warranties set forth in these Terms or an Order or otherwise not in conformity with the requirements of an Order.

(b) General Remedies. Upon Seller's default, Buyer may by written notice of default to Seller, in addition to such other rights, remedies and choices as it may have under an Order or by law, at its option and sole discretion, take one or more of the following actions: (i) rescind, cancel or terminate an Order or any portion thereof; (ii) reject and return non-conforming or defective Goods at Seller's expense; (iii) require Seller to inspect and/or sort the Goods, including at Buyer's location or Buyer's customer's location, and remove and replace non-conforming or defective Goods with Goods that conform to an Order; and/or (iv) take any other action at Seller's cost which Buyer determines in its reasonable judgment is necessary to cure Seller's default and/or mitigate the effect of Seller's default. If Buyer elects option (iii) and Seller fails to promptly make the necessary inspection, removal and replacement, Buyer may at its option and Seller's cost, inspect, sort, repair, and/or replace the Goods. Buyer may take remedial and other action based on one or more Sections of this Agreement as alternative and/or cumulative basis. Seller shall continue performance of an Order to the extent not terminated and shall be liable to Buyer for any excess costs for alternative products or services obtained by Buyer. Buyer, at its sole discretion, may also elect to extend the delivery schedule and/or to waive other deficiencies in Seller's performance, in which case an equitable reduction in an Order price may be established by Buyer to compensate Buyer for its damages. If Seller for any reason anticipates difficulty in complying with a required delivery or other date, or in meeting any of the other requirements of an Order, Seller shall promptly notify Buyer in writing of the potential default, the cause thereof, and the estimated length of the anticipated default. Buyer is under no obligation to waive any default.

(c) Damages. Seller shall reimburse Buyer for all direct, indirect, incidental, consequential and special damages caused by or related to Seller's default, including, but not limited to: (i) lost profits, revenue, opportunity, and business interruption; and (ii) costs, expenses and losses incurred directly or indirectly by Buyer or its customers: (x) in inspecting, sorting, repairing or replacing non-conforming Goods; (y) resulting from production interruptions of Buyer or Buyer's customer; (iii) in conducting any Remedial Action, recall or other corrective service actions; or (iv) resulting from personal injury (including death) or property damage caused in whole or in part by defective Goods. Damages include reasonable actual attorneys' and other professionals' fees incurred by Buyer, including for experts or consultants, and such administrative charges as Buyer establishes from time to time to compensate Buyer for its time and effort in addressing issues related to Seller's default. Buyer may also at its option adjust the price of the non-conforming Goods which it elects to accept to reflect the reduced value of the Goods.

(d) Specific Performance. Seller acknowledges and agrees that money damages would be an insufficient remedy for any actual, anticipatory or threatened breach of any Order by Seller with respect to its delivery of Goods to Buyer and that, in addition to all other rights and remedies which Buyer may have, Buyer shall be entitled to specific performance and interlocutory and permanent injunctive or other equitable relief as a remedy for any such breach, without proof of actual damages, without establishing a "balance of convenience", and without bond or other security being required.

(e) Duty to Deliver. Seller's continued holding of the Goods, Furnished Property, or Required Tooling, after demand has been made by Buyer for delivery, will substantially impair their value, and Buyer shall be entitled to a court order for possession without bond. Seller shall continue to sell and deliver Goods under an Order during any dispute with Buyer provided Buyer continues to pay Seller amounts owed in excess of any right of offset.

(f) Disclaimer of Liability for Certain Damages. UNDER NO CIRCUMSTANCES SHALL BUYER BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, REVENUE, OPPORTUNITY, BUSINESS INTERRUPTION, AND/OR SIMILAR DAMAGES.

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

other than Seller's default, Buyer shall, at the end of the transition period, pay the reasonable, actual cost of Transition Support as requested by Buyer in writing and incurred by Seller, provided that Buyer must approve Seller's estimate of such costs in writing prior to Seller incurring such costs.

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

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

(b) Maintenance, Taxes, and Risk of Loss. Seller shall install, maintain, repair, replace and return Furnished Property in good condition and working order, reasonable wear and tear excepted, at Seller's cost. Seller shall pay all taxes assessed against the Furnished Property or for its use while in the possession or control of Seller, regardless of whether Buyer is or may be required by law to pay such taxes. Risk of loss is on Seller.

(c) Markings. Each individual item of Furnished Property (and the container in which it may be stored) shall be plainly and permanently marked or otherwise adequately identified and permanently marked by Seller as the property of Buyer and/or Buyer's customer, as directed by Buyer, including pursuant to Buyer's tool/asset tagging procedure, as specified in Buyer's Guides, and with the project and part number on which it is used.

(d) Use and Safety. Seller shall not use or permit others to use Furnished Property except to fill Orders. Seller shall not, under any circumstance, sell or transfer any product or service produced with the Furnished Property except to Buyer and its designees. Seller shall use Furnished Property in a careful and safe manner. Seller, at its sole cost and expense, shall furnish any and all appropriate safety systems and training for use of Furnished Property, including any which are integrated into the production process, so as to meet all applicable federal, state,

provincial, and local safety statutes, rules, regulations, and/or codes for the place in which the Furnished Property will be used and otherwise to reduce or eliminate all known or reasonably foreseeable risks of injury to users or bystanders.

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

(f) Express Trust. Payments made by Buyer for Furnished Property are made by Buyer to Seller in express trust for the benefit of Buyer and of any third party toolmaker and other supplier used by Seller or others to produce all or a portion of the Furnished Property who has a perfected toolmaker's lien or similar lien on the Furnished Property which is superior to Buyer's interest in the Furnished Property. Buyer's payments for Furnished Property are in trust, and Seller shall hold these payments as trustee in express trust for Buyer and the toolmaker to satisfy such lien. Seller acknowledges that such toolmaker is an intended third-party beneficiary of this Section and that Buyer and the toolmaker each has the right to enforce the trust directly against Seller only. As an obligation of its position as a trustee, Seller shall provide in its purchase order or other agreement with the toolmaker or other supplier that it shall not include or consent to include Buyer as a party to an action against Seller for payment of all or a portion of the Furnished Property but shall provide notice to Buyer of any action to obtain or retain possession of Furnished Property. Seller shall at Buyer's request defend and/or indemnify Buyer against any action and the costs thereof, including reasonable attorney fees, by the toolmaker or other supplier against Buyer relating to Furnished Property.

(g) Liquidated Damages. Time is of the essence, and any delays will result in substantial damages to Buyer. Seller shall pay to Buyer one (1%) percent of the purchase price of an Order for Furnished Property for each day of delay of the final completion or any interim scheduled completion or deliverable resulting from any breach of an Order by Seller, not to exceed twenty (20%) percent of the purchase price. This liquidated damage provision is only to partially compensate for the period of delay referenced and shall not affect Buyer's right to injunctive relief and other damages.

## **17. Required Tooling.**

(a) Required Tooling Defined. All production aids and equipment which are necessary for Seller to produce Goods in accordance with an Order, including, but not limited to, tooling, jigs, dies, measuring and testing devices, gages, fixtures, molds, patterns, templates, software, hardware, and other personal property used in the production process, whether or not Furnished Property or property which is owned or leased by Seller or its subcontractors, are included in the term Required Tooling.

(b) Maintenance, Repair, Alteration, Use, Replacement, and Insurance. Seller, at its own expense, shall keep in good condition, repair, and replace when necessary all Required Tooling. Required Tooling must be designed, maintained and/or repaired by Seller so as to be

adequate for production of Goods in compliance with all specifications, at capacity levels which meet or exceed all quotations, Buyer's forecasts and historical purchase levels, for the duration of an Order, including for service and replacement parts. Seller shall advise Buyer promptly in writing of any required repair or replacement of Required Tooling. Upon demand, Seller shall submit to Buyer a service schedule and a description of the condition of each piece of Required Tooling, including photographs. Buyer may inspect Required Tooling and Seller's facilities during normal working hours upon one day's prior notice to Seller. Seller shall not relocate the Required Tooling without the prior written consent of Buyer. Seller shall be responsible for obtaining any PPAP required because of movement, modifications, repair, replacement, or other events impacting Required Tooling. Seller shall insure Required Tooling with fire and extended all risk coverage insurance for its replacement value and provide Buyer with certificates of insurance evidencing such coverage. The cost of changes to Required Tooling necessary to make design changes and specification changes to the Goods authorized by Buyer in writing shall be paid for by Seller unless otherwise provided in an Order.

(c) Option to Purchase. Seller grants Buyer an irrevocable option to purchase and take possession of and good title to some or all of the Required Tooling (including leases thereof) as selected by Buyer, that is not Furnished Property and is specific for the production of Goods, upon tender to Seller of a purchase price computed as the book value thereof, less any amounts Buyer has previously paid to Seller in any manner for the cost of Required Tooling (e.g., by separate payment or by an allocated portion of the price of the Goods as shown in an Order or documents provided by Seller such as, for example only, a bill of materials); provided, however, that this option to purchase shall not apply to any Required Tooling used primarily to produce products that are standard stock of Seller and/or sold to purchasers other than Buyer. As soon as Buyer notifies Seller in writing it wishes to make use of its option to take possession of and title to Required Tooling which is not Furnished Property, Seller shall possess such Required Tooling in the name and on behalf of Buyer henceforth, shall mark it as Buyer's property, shall instruct any subcontractor accordingly, and shall take all other measures to safeguard Buyer's title to Required Tooling until instructed to deliver it to Buyer's or any other location as specified by Buyer.

(d) Buyer's Right to Possession and Seller's Duty to Deliver. On Buyer's request, Seller immediately shall deliver any Furnished Property or purchased Required Tooling to Buyer at Seller's or its subcontractor's plant or other location specified by Buyer. Seller is responsible for labor and other costs of dismounting, dismantling, packaging, and otherwise preparing and staging such Required Tooling for delivery. Seller shall cooperate with Buyer in removing such Required Tooling from the location of Seller or its subcontractor. Seller shall have no right, after tender of the purchase price of Required Tooling, to retain possession of any Required Tooling to secure payment of any amounts owed or for any other reason, and Seller waives any common law or statutory lien rights, and acknowledges that a claim for damages (with any bond in the amount of the purchase price of tooling to be purchased as may be required by a court) is an adequate remedy. If the Required Tooling is not utilized to produce any Goods for Buyer for a period of five years, Seller shall so notify Buyer in writing and request instructions as to the disposition of the Required Tooling. Seller shall not dispose of any Required Tooling at any time without obtaining prior written approval from Buyer.

(e) Injunctive Relief. The Required Tooling, including all Furnished Property, is unique personal property which is critical in the production of a unique part or assembly. Seller expressly acknowledges that Buyer is in an industry that has exacting standards for delivery, quality, and other performance including just-in-time delivery requirements. The failure to produce or deliver the Required Tooling in accordance with the requirements of an Order can expose Buyer to significant claims by third parties and a significant loss of business and reputation which will be very difficult or impossible to quantify and for which Seller may be fiscally unable to respond in monetary damages. Whether or not the parties are in a dispute, Buyer shall be entitled to possession of Furnished Property and/or purchased Required Tooling on demand and tender of payment to Seller or Seller's tooling subcontractor of any portion of the unpaid purchase price owed Seller under an Order for such Furnished Property or Required Tooling which is not contested by Buyer, and Seller shall be entitled to orders for specific performance, preliminary and permanent injunctions and/or other extraordinary relief, which relief shall be cumulative and in addition to any and all other remedies to which any party may be entitled under an Order or by law or equity, including but not limited to an *ex parte* order for possession of the tooling. Seller waives any requirement for posting of a bond, provided that, if a waiver is not permitted by law, the amount of the bond shall not exceed the unpaid purchase price of the Furnished Property. CERTAIN JURISDICTIONS PROVIDE THE RIGHT TO A TRIAL BY JURY, BUT THIS RIGHT MAY BE WAIVED. SELLER HEREBY KNOWINGLY, VOLUNTARILY AND WITHOUT COERCION, WAIVES ALL RIGHTS TO A TRIAL BY JURY OF ALL DISPUTES ARISING OUT OF OR IN RELATION TO A PROCEEDING BY BUYER TO OBTAIN POSSESSION OF FURNISHED PROPERTY AND/OR REQUIRED TOOLING TO THE FULL EXTENT ALLOWED BY LAW

**18. Compliance with Laws.**

(a) Contractual Obligations. Seller shall include any provisions, representations, agreements, or contractual clauses required to be included or incorporated by reference or operation of law in any contracts resulting from acceptance of an Order, including, for contracts to be performed in the United States, those dealing with Equal Employment Opportunity, Employment of Veterans, Employment of the Handicapped, Employment Discrimination Because of Age, Utilization of Disadvantaged Business Enterprises and the related Acts and Executive Orders, or, in Canada, the right to equal treatment with respect to employment without discrimination and freedom from harassment in the workplace as provided in the OHSA and the Human Rights Code (Ontario), and any similar applicable state or provincial legislation, as now or hereafter amended or codified and any similar laws of the jurisdiction of production and destination of the Goods. Seller shall comply with all applicable requirements as a subcontractor if an Order qualifies Seller as a subcontractor on a government contract.

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

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

(d) Seller's Import Obligations. To the extent Goods are to be delivered under these or other terms requiring Seller to deliver with duty and taxes paid to the destination country (e.g., DDP), Seller warrants that Buyer will not be a party to the importation of the Goods, that the transaction(s) represented by an Order will be consummated after importation, and that Seller will neither cause nor permit Buyer's name to be shown as "importer of record" on any customs declaration. Seller also warrants that, under DDP terms, it has resident or non-resident importation rights into the destination country with knowledge of the necessary import laws. If Seller is acting as the importer of record into a country for the delivery of Goods to the Buyer or its designee, including any component parts thereof, associated with an Order, Seller shall provide Buyer required documentation and all necessary information for duty drawback purposes.

(e) Conflict Minerals Reporting. Seller warrants that, to its knowledge, no tantalum, tin, tungsten and/or gold ("Conflict Minerals"), contained in any Goods subject to this order, originated from the Democratic Republic of the Congo or an adjoining country, unless the Conflict Minerals were processed by a facility listed as compliant pursuant to the CFSI Conflict-Free Smelter Program. Seller agrees to abide by the terms and conditions in Buyer's Conflict Minerals Policy and any similar policies of Buyer's customers and to communicate to its sub-suppliers its own commitment to responsible sourcing and legal compliance. Seller shall cooperate and work with its sub-suppliers to reasonably ensure traceability of Conflict Minerals at least to smelter or refiner level, to maintain and record all Conflict Minerals traceability documentation for five years, and to provide such documentation to Purchaser upon request.

(f) Origin and Content Reporting. Seller shall furnish promptly to Buyer on request any documentation and information necessary in Buyer's determination to establish the country of origin and/or content requirements, including labor value content, of Goods, under any applicable trade agreement, including but not limited to USMCA, or other similar laws, regulations, or customer requests or requirements. Seller shall inform Buyer immediately in writing of any change of origin and/or labor value content of Goods.

## **19. Confidentiality and Intellectual Property.**

(a) Confidentiality. At all times prior to, during and after an Order, Seller shall:

- (i) maintain the confidentiality of any information disclosed by or on behalf of Buyer or Buyer's customer, including for example only, any technical, process or economic information derived from drawings, specifications, samples and other data furnished by Buyer in connection with an Order, whether or not identified as "confidential" upon disclosure ("Confidential Information");
- (ii) not disclose or permit the disclosure of any Confidential Information to any person other than its employees or subcontractors for whom such knowledge is essential for performance of an Order;
- (iii) not use Confidential Information except for performance of an Order; and
- (iv) not disclose any of the terms of an Order or any details or characterization of Buyer's performance of an Order. Seller shall immediately notify Buyer of any disclosure of any Confidential Information that is not permitted by these Terms or other misuse of any Confidential Information or breach of

these Terms. Except as required for the efficient performance of an Order, Seller shall not: (x) use Confidential Information or make copies or permit copies to be made of Confidential Information without the prior written consent of Buyer; or (y) sell to any third party any products which are constructed with or incorporate Confidential Information obtained by Seller or from reverse engineering of the Goods. If any copies of Confidential Information are made with prior consent, notice referring to the requirements of this Subsection shall be placed on the copies. Without limiting the direct liability of Seller's employees, subcontractors and others who may have received Confidential Information directly or indirectly from Seller, Seller shall be responsible for the improper disclosure or other misuse of Confidential Information by Seller's employees, subcontractors and others obtaining Confidential Information from Seller, and Seller shall immediately take such steps as may be necessary to terminate any continuing improper disclosure or misuse by any of Seller's employees, subcontractors and others of which Seller becomes aware. Seller shall not disclose Buyer's Confidential Information to any third party without Buyer's prior written consent. Buyer makes no representation, condition or warranty of any kind, express or implied, with respect to any Confidential Information. Buyer may, at its sole discretion, elect at any time, by written notice to Seller, to terminate Seller's further use of Confidential Information for any purpose, other than completion of contractual obligations. Upon receipt of such notice, Seller shall, and shall cause Seller's employees, its subcontractors, and others to promptly cease all further use of Confidential Information, return to Buyer all physical materials containing Confidential Information, whether the materials were originally provided by Buyer or copied or otherwise prepared by Seller or any of Seller's employees or subcontractors, and erase or otherwise destroy any Confidential Information kept by Seller or any of Seller's employees or subcontractors in electronic or other non-physical form. Such termination by Buyer shall not affect Seller's continuing obligations in this Subsection. These obligations are in addition to other obligations relating to Confidential Information under other agreements signed by the Parties, but these Terms shall control in the event of any conflict.

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

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

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

(d) Specific Disclosures Regarding Patents. Seller shall specifically identify in a writing delivered to Buyer prior to any shipment, all components, processes, tooling or equipment used in the production of the Goods that are subject to any patent of Seller or third party. Seller shall obtain from third parties for the benefit of Seller, Buyer and Buyer's subcontractors and customers, any rights necessary to make, use and sell the Goods and otherwise to comply with an Order.

(e) Restrictions on Seller's Sale Activities. Except for sale to Buyer, Seller shall not manufacture or sell any product which uses the design or the product model numbers or other designation of the Goods sold under an Order or any product which is produced with the Furnished Property owned by Buyer or its customer used to produce the Goods. Seller shall not sell, attempt to sell, or assist a third party in any way in its attempted sale of any personal property or services to a customer which would replace or reduce any supply by Buyer to a customer of the Goods separately or as a component of an assembly.

(f) Ownership of Background and Developed IP. Each Party shall retain exclusive ownership of all patents, patent applications, inventions, developments, trade secrets, ideas, improvements and other intellectual property rights (hereinafter called "Intellectual Property") which were its property prior to the date of an Order ("Background IP"), provided that Seller hereby grants to Buyer a worldwide, nonexclusive, sublicensable (including to Buyer's customer(s) under an Order), nontransferable and irrevocable during the term of an Order license to use, sell, offer to sell, practice, import, export, distribute, reproduce, modify, make, have made, prepare derivative works from, display, and perform all Background IP in connection with the Goods. Any Intellectual Property which is conceived, reduced to practice, discovered, invented, and/or developed in the performance of an Order, either by a party alone or jointly with others, shall be owned exclusively by Buyer. Upon request, Seller shall sign all documents and otherwise cooperate with Buyer as necessary to assign, confirm and perfect the exclusive ownership of all such Intellectual Property rights. If any of the developed Intellectual Property is not transferable according to applicable law, Seller shall, if necessary, obtain and grant to Buyer all rights for the unrestricted exploitation and usage of such Intellectual Property.

(g) Software Rights. When Goods include computer programs, including, where applicable, object code (including microcode) and source code, and any enhancements, modifications, updates or releases relating thereto ("Software"), Seller shall obtain and provide to Buyer unrestricted usage rights, which shall be freely transferable, and shall provide Buyer with all documentation related to the Software, including user manuals, specifications, technical manuals and supporting materials, developed documents, and other printed or electronic information. No portion of the Software delivered to Buyer will contain any undisclosed features or any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," "virus," or other computer software routines or hardware components designed to (i) permit access or unauthorized use of either the Software or Buyer's computer systems, (ii) disable, damage or erase the

Developed Software or data, or (iii) perform any other such actions, and the Software shall not contain preprogrammed preventative routines or similar devices which prevent Buyer from exercising the rights granted under an Order and/or from utilizing the Software for the purpose for which it was designed.

**20. Assignment, Subcontracting and Replacement Orders.** Assignment by Seller of an Order or any interest therein, or any payment due or to become due to Seller, without the prior written consent of Buyer, shall be void and not binding on Buyer. Subcontracting any part of an Order without the prior written consent of Buyer is prohibited. Buyer shall not be obligated to any subcontractor for the product or services of any subcontractor whether or not Buyer has consented to or designated a subcontractor. Buyer may, however, pay the claim of any subcontractor on an Order if in Buyer's reasonable judgment such monies are owed, Seller has failed to make payment, and payment is required for the subcontractor to continue to perform. Seller shall immediately reimburse Buyer for any such payments. Approval of a subcontractor is not a release or waiver of any obligation of Seller or right of Buyer. Subcontracts related to Seller's performance under an Order shall automatically be for the benefit of Buyer without obligating Buyer. Seller is responsible for all actions or inactions of any subcontractor and shall bind its subcontractors for the benefit of Seller and Buyer to perform its obligations under these Terms.

**21. Security and Solvency.**

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

(b) Seller's Financial Information. Upon request by Buyer, Seller shall promptly deliver to Buyer financial and other information Buyer may reasonably require to demonstrate that Seller will be able to perform its obligations under an Order (including but not limited to financial statements and balance sheets).

(c) Seller's Representation of Solvency. 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 an Order and at the time of each delivery under an Order): (i) that it is solvent and is paying all debts as they become due; (ii) that it is in compliance with all of its loan covenants and other obligations; (iii) that all financial information

provided by Seller to Buyer concerning Seller is true and accurate; (iv) that such financial information fairly represents Seller's financial condition; and (v) that all such financial statements of Seller have been prepared in accordance with generally accepted accounting principles, uniformly and consistently applied. On Buyer's request, Seller shall provide to Buyer annually or as otherwise required by Buyer a written report from an independent financial reporting company acceptable to Seller evaluating Buyer's financial stability and ability to perform an Order. Seller shall provide full cooperation and access to all records and financial personnel to facilitate any such reviews. Seller shall provide Buyer notice in writing if Seller becomes insolvent.

**22. Audit and Examination Rights.** Seller shall maintain general records relating to an Order for a period of not less than ten years after completion of final delivery of Goods pursuant to that Order or for any longer periods which may be required by applicable law. Seller shall maintain records of all purchasing, costing, quoting, manufacture, testing and inspection of or related to the Goods and/or an Order during the performance of an Order and for such longer periods as may be specified in an Order, but not less than ten years after the last delivery of the Goods to Buyer or as required by law. Buyer or its authorized agents and representatives shall have the right at any time during normal business hours of Seller and with one day's prior notice to audit records and to examine facilities, Goods, Furnished Property, Required Tooling, materials, and equipment. If any such audit or examination discloses any inaccurate information, including any overpayment by Buyer to Seller, Seller shall pay Buyer, within 14 days after receipt of notice from Buyer, the amount of any overpayment, with interest at the prime rate then charged by Buyer's bank (expressed as an annual interest rate) plus 4%, plus Buyer's cost incurred in connection with such audit, examination and/or collection activities, including but not limited to actual and reasonable attorney and accounting fees and other costs. Seller shall obtain from its suppliers and subcontractors the same audit and examination rights for the benefit of Buyer.

**23. Force Majeure.** Neither Buyer nor Seller shall be liable for a delay or failure to perform directly attributable to a force majeure event, provided that the party seeking to claim this protection must give written notice of the occurrence of a force majeure event and of the possible delay or non-performance caused by it as soon as reasonably practicable after learning of it. A force majeure event is a cause or event that is beyond the reasonable control of a party and that is not attributable to its fault or failure to exercise due care, including, without limitation, acts of God, war, warlike conditions, blockade, embargoes, riots, governmental restriction, labor disturbances (other than those to Seller's own work force that could have been avoided), epidemics, pandemics, quarantine, flood, earthquake, or fire/explosion not caused by a party's negligence. Delays or non-performance of a subcontractor or supplier of a party are force majeure events only if and only to the extent that the subcontractor or supplier's delay or non-performance is itself attributable to a force majeure event. Force majeure events do not include any failure to comply with applicable law or to take actions that are reasonably necessary to prepare for any event of which public notice has been given, nor does any change in cost of materials, components or services to Seller based on any factor, including market conditions, shortages, supplier actions or omissions, labor disruptions, or contract disputes, constitute a force majeure event. Existence and notice of a force majeure event does not limit Buyer's right to terminate for delay or non-performance, but Seller shall not be liable for damages except as specifically provided. Upon notice, Seller may be required to use alternative means of performance, at Seller's cost, including shipping by different means or procuring substitute materials. In the event that Seller's ability to perform is only partially impacted by a force majeure event, such that allocation between Buyer

and Seller's other customers is necessary, Seller shall supply Buyer before it supplies any other regular customers who did not have outstanding contracts or orders at the time of the force majeure event and before it supplies its own requirements. Seller shall resolve any open issues or options regarding allocation in favor of Buyer. Seller and Buyer shall share information, confer, seek agreement and otherwise act cooperatively to avoid or mitigate the effects of the force majeure event. Buyer may at its option acquire possession of all finished Goods, work in process and raw materials produced or acquired for the work under an Order, and it also may acquire substitute goods from other suppliers for the duration of the force majeure event and for a reasonable time after, and it may reduce accordingly any quantity of Goods ordered from Seller under an outstanding Release.

#### **24. Cybersecurity.**

(a) Enterprise Cybersecurity. Seller must: (i) maintain reasonable, risk-based cybersecurity programs, supported by appropriate technical and operational measures including policies and procedures, to protect the confidentiality, integrity, and availability of Confidential Information, prevent disruption of the supply of Goods, and respond in a timely and effective manner to any cybersecurity incident that may compromise any Confidential Information or disrupt supply of Goods; (ii) promptly, but no more than 48 hours subsequent to the Supplier's first knowledge of the incident, notify the Buyer of any attempted or actual unauthorized possession, access, use, or knowledge of the Buyer's Confidential Information by any person or entity that may become known or suspected by Supplier, including furnishing full details of the attempted or actual unauthorized possession, access, use, or knowledge, with updates as new information becomes known; (iii) adopt other reasonable cybersecurity measures identified by Seller or Buyer; and (iv) upon request, at Seller's expense, demonstrate compliance through a third-party audit or other reasonable measure agreed upon by the Buyer.

(b) Goods Cybersecurity. Seller must maintain a reasonable, risk-based program, supported by appropriate technical and operational measures including policies and procedures, to ensure the cybersecurity of any Goods that include software, hardware, or other electrical components. Seller's Goods cybersecurity program must provide for security by design, vulnerability management, governance, and any additional elements identified by Buyer in a manner consistent with industry best practices, including but not limited to ISO/SAE 21434.

(c) Supply Chain Cybersecurity. Seller shall ensure its subcontractors and suppliers are contractually bound to comply with the provisions of this Section.

#### **25. Applicable Law, Waiver of Liens and Sovereignty.**

(a) Applicable Law. An Order is to be construed and enforced according to the laws of the United States of America and the State of Michigan, including the Uniform Commercial Code and excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and any choice of law provisions that require application of any other law, provided that Buyer may elect to apply the law of its domicile, for Orders issued outside of North America.

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

(c) Joinder. If a Claim arises under or related to an Order or the furnishing of Goods by Seller to Buyer, by or against Seller, which is related to a similar claim by or against Seller in another litigation or in an arbitration, Seller irrevocably consents on the request of Buyer to the resolution of such claims arising under or related to an Order by or against Seller in such litigation or arbitration, which shall be binding on the parties and enforceable in a court of record, provided such joinder is permitted by the applicable procedural law and/or rules of arbitration.

(d) Service of Process. If Seller does not maintain a registered agent or office in the state, province, or country of issuance of an Order, including Michigan and Tennessee, Seller shall appoint a service agent domiciled in the state, province, or country of issuance of the Order to receive process in any proceeding arising under or related to an Order, agreement, or these Terms.

(e) Limitations of Actions. No claims against Buyer can be brought or maintained unless initiated in the proper forum provided herein or in an applicable Supplement within one year of the date in which the claim accrued, as determined under the UCC.

**26. Arbitration**. If both parties agree in writing, or if Buyer elects, any controversy or Claim arising out of or relating to these Terms or an Order, shall be settled by arbitration before one arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be held in Wayne County or Oakland County, Michigan. In rendering an award, the arbitrators are bound by the terms of an Order and must apply the substantive law of Michigan other than its principles of choice of law. If the controversy or Claim involves a common issue of fact or law in another arbitration procedure involving the same or different parties, Seller consents to a joinder of all relevant proceedings if requested by Buyer. Each party has the right before or during the arbitration to seek and obtain from the appropriate court provisional remedies such as attachment, claim and delivery, preliminary injunction, replevin, etc., to avoid irreparable harm, maintain the status quo or preserve the subject matter of the arbitration. All expenses and fees of the arbitration, including the opposing party's attorney fees, shall be borne by the losing party as determined by the arbitration panel and included in the arbitration award. Each party shall advance 50% of the expenses and fees as invoiced by the arbitration organization. The award may be enforced in any circuit court or other court of competent jurisdiction. The arbitration proceedings and award shall be confidential.

**27. Publicity.** Without obtaining the prior written consent of Buyer, Seller shall not in any manner advertise or publish the fact that Seller has contracted to furnish Goods to Buyer (or Buyer's customers), or use any trademark or trade name of Buyer (or Buyer's customers) in Seller's advertising or promotional materials. Seller shall not disclose or imply in its marketing that any of Seller's other products are equivalent to the Goods purchased by Buyer.

**28. Ethical Standards.** Seller shall not: (i) give or offer to give any gift or benefit to Buyer's employees; (ii) solicit or accept any information, data, services, equipment or commitment from Buyer's employees unless it is (a) required under a contract between Buyer and Seller, (b) made pursuant to a written disclosure agreement between Buyer and Seller, or (c) specifically authorized in writing by an officer or Buyer; (iii) solicit or accept favoritism from Buyer's employees; (iv) enter into any outside business relationship with Buyer's employees or suppliers without full disclosure to and prior approval of Buyer's management; or (v) provide to or accept from suppliers any information regarding Buyer or its business. For the purposes of this Section: "employee" includes members of the employee's immediate family and household, plus any other person who is attempting to benefit from his or her relationship to the employee; "Seller" includes all employees and agents of Seller; "gift or benefit" includes money, goods, services, discounts, favors and the like in any form but excluding items with a value of \$200.00 or less; "supplier" includes prospective, current and past suppliers; and "favoritism" means partiality in promoting the interest of Seller over that of other suppliers. Any breach by Seller of its obligations under this Section shall constitute a material default by Seller of every contract and Order with Buyer and may further result in Seller's debarment from doing business with Buyer.

**29. Payments to Third Party Representatives.** Seller represents and warrants that Seller has not and will not pay any third parties any commissions, fees, or other compensation for acquiring or attempting to acquire an Order without providing Buyer with written notice thereof at the time an Order is solicited and all such payments shall not violate any applicable anti-corruption law, including, but not limited to, the United States Federal Corrupt Practices Act, the United Kingdom Anti-Bribery Act, the Canadian Corruption of Foreign Public Officials Act, and any similar law of any jurisdiction.

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

**31. Waiver.** The failure of either party at any time to require performance by the other party of any provision of an Order shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver by either party of a breach of any provision of an Order constitute a waiver of any succeeding breach of the same or any other provision. Payment or performance by Buyer shall not constitute a waiver of any breach, right or remedy.

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

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

2285804