



D & N BENDING CORP.
PRODUCTION PURCHASE ORDER TERMS AND CONDITIONS

SELLER'S ACCEPTANCE OF ANY PURCHASE ORDER IS EXPRESSLY CONDITIONED UPON SELLER'S ASSENT AND ACCEPTANCE OF THE FOLLOWING TERMS AND CONDITIONS, WHICH MAY BE ADDITIONAL TO OR DIFFERENT FROM THOSE STATED OR REFERENCED IN ANY DOCUMENT OF THE SELLER. THE FOLLOWING TERMS AND CONDITIONS ARE THE ONLY TERMS AND CONDITIONS UPON WHICH BUYER WILL ISSUE ANY PURCHASE ORDER AND AGREE TO PURCHASE GOODS AND/OR SERVICES FROM SELLER AND THAT APPLY TO THE AGREEMENT BETWEEN THE PARTIES.

1. APPLICATION: These Production Purchase Order Terms and Conditions (hereafter, "Terms and Conditions") are a part of an Agreement and apply to the purchase of any Goods and/or Services by D & N BENDING CORP., a Michigan corporation (the "Buyer") from a person or legal entity identified in an Order as selling the Goods or performing the Services (hereafter, "Seller"). The Agreement is effective upon, and Seller shall be deemed to have accepted these Terms and Conditions by, the Seller's Acceptance.
2. DEFINITIONS: In addition to capitalized terms defined elsewhere in these Terms and Conditions, for purposes of these Terms and Conditions:
 - a. "Agreement" means an agreement between Buyer and Seller regarding the sale of Goods and/or furnishing of Services, and consists exclusively of one or more Orders accepted by Seller, an Acceptance (if any), these Terms and Conditions, information and provisions contained in Buyer's requests for proposals, and any other documents or attachments specifically incorporated by reference on the face of an Order or separately agreed to in a Signed Writing, such as specifications, drawings, and requirements of Buyer, Buyer's Customer or End User.
 - b. "Buyer's Customer" means any third party that directly or indirectly purchases any goods or services from Buyer, which goods or services, directly or indirectly, in whole or in part, relate to, incorporate or are based on any Goods or Services, and any such third party's affiliates, successors, and assigns.
 - c. "Buyer's Property" means the tooling, jigs, dies, gauges, fixtures, molds, patterns, supplies, materials and other equipment and property used by Seller to manufacture, store and transport Goods if: (i) the property is so designated in the Agreement; or (ii) Buyer or Buyer's Customer has provided or paid for the property.
 - d. "End User" means a third party that uses, leases, operates or in any way receives the benefit of utilizing any of the Buyer's or Buyer's Customer's goods or services that are, directly or indirectly, in whole or in part, relate to, incorporate or are based on any Goods or Services, including any purchaser of an end product incorporating the Goods, any such third party's affiliates, successors, and assigns.
 - e. "Goods" means any goods identified in the Order.
 - f. "Intellectual Property Rights" means the rights to, in, and under any and all patents, trade secrets, trademarks, service marks, copyrights and other intellectual property rights, including but not limited to any invention, discovery, development, utility model, design right, works of authorship, moral right, know-how, mask works, industrial rights, rights under unfair competition Laws and any right or form of protection of a similar nature or having equivalent effect to any of the foregoing which may subsist anywhere in the world, and applications, renewals, registrations, extensions and restorations for any of the foregoing now or hereinafter in force or effect. For purposes of this definition, rights under any patent Laws shall include rights under any and all patent applications and patents (including letters, patent and inventor's certificates) anywhere in the world, including any provisionals, substitutions, extensions, supplementary patent certificates, reissues, renewals, divisions, continuations in part (or in whole), continued prosecution applications, requests for continued examination, and other similar filings or stages thereof, and improvements to any of the foregoing, which was or were created before, on or after the date of the Agreement anywhere in the world.
 - g. "Laws" means any applicable statute, regulation, ordinance, rule, order, decree or governmental requirement enacted, promulgated or imposed by any governmental authority. As applicable to the Seller, Laws include any and all governmental or industry agency or association standards or other standards applicable to Seller or to the provision, manufacture, labeling, transporting, licensing, approval or certification of Goods and/or Services.

- h. "Manuals" means Buyer's and Buyer's Customers' codes, guidelines, quality control requirements, inspection standards, safety and quality assurance manuals, and other related documents, each as may be amended from time to time, that impose any requirements on suppliers or subcontractors of goods or services.
 - i. "Order" or "Purchase Order" means a purchase order, Release, agreement, contract, award letter, kick-off letter, correspondence or other writing that Buyer provides to Seller (whether in paper or electronic format) requesting Seller to manufacture and/or sell Goods and/or furnish Services to Buyer.
 - j. "Quotation" means a quotation issued by Seller (whether in paper or electronic format) to Buyer in connection with any proposed sale of Goods or furnishing of Services.
 - k. "Signed Writing" means a document executed by an authorized representative of Seller and a corporate officer of Buyer, which specifically references the Order to which such a document applies.
 - l. "Services" means the services identified in the Order.
3. QUOTATIONS: These Terms and Conditions apply to any Quotation issued by Seller. With respect to each Quotation, Seller shall be deemed to have accepted these Terms and Conditions upon the issuance of a Quotation in response to Buyer's request for proposal that includes or references these Terms and Conditions. Any references in the Order to a Quotation or other Seller document(s) are for information only and Buyer hereby rejects all terms and conditions proposed by Seller therein. Seller is responsible for correctness of all information it provides to Buyer. Any information in a Quotation is not subject to change for a period of ninety (90) days after the date Buyer receives the Quotation.
4. PURCHASE ORDERS: Each Order is an offer to purchase Goods and/or Services identified in the Order. Seller's acceptance of any Order is expressly conditioned upon Seller's assent and acceptance of these Terms and Conditions, which may be additional to or different from those stated or referenced in a Quotation or other documents or materials of Seller. These Terms and Conditions are the only terms and conditions upon which Buyer will issue any Order and agree to purchase any Goods and/or Services from Seller and that apply to the Agreement, and each Order shall be governed exclusively by the Agreement. These Terms and Conditions will apply to the Order except as expressly modified or waived on the face of the Order or in a Signed Writing. In the event of a conflict between the Order and any prior or contemporaneous agreement or document exchanged between Buyer and Seller, the Order governs.
5. QUANTITY AND DURATION:
- a. Quantities of Goods referenced in any Order represent Buyer's estimate of its anticipated needs for such Goods, are provided for Seller's planning purposes only, and may be for up to one hundred percent (100%) of Buyer's requirements for the Goods. Buyer makes no representation, warranty or guarantee as to the quantity of Goods or Services it will actually purchase from Seller, and Buyer may purchase some or all of the same or similar Goods and/or Services from third parties.
 - b. An Order is not firm until Buyer provides Seller with a release indicating quantities of Goods needed (the "Release"). Buyer may from time to time issue one or more Release for all or a designated portion of Buyer's requirements for the Goods for a period of time specified in the Order, without specifying a quantity of the Goods, and Seller agrees to sell all of such designated requirements of the Goods to Buyer, and such an Order shall be deemed a requirements contract as described in Section 2306(1) of the Michigan Uniform Commercial Code, MCL §440.2306(1). If quantities of Goods or dates for delivery of Goods and performance of Services are not specified in the Agreement, they will be as reasonably determined by Buyer and may be stated in one or more Release issued to Seller from time to time, and Seller acknowledges and agrees that Seller shall provide Goods to Buyer in the quantity specified in any Release and comply with the specified delivery dates. Seller acknowledges and agrees that it will be responsible for assuring all Goods are sufficient to meet the quantities stated in the Release.

- c. A Release may include projections, but a Release is only binding upon Buyer for, and Buyer will have no obligation or liability beyond, the firm quantity of Goods specified in the Release. No over-shipments or shortages will be allowed or accepted without a prior written consent of Buyer.
 - d. Unless stated otherwise on the face of the Order, the duration of each Order shall be for the life of the OEM vehicle program(s) into which the Goods ultimately are incorporated, plus applicable service and replacement parts requirements or so long as Buyer's contract on the program with the OEM remains active, whichever is longer in duration. Buyer and Seller acknowledge, however, that this Section 5.d does not affect or otherwise change Buyer's rights of termination set forth herein.
6. ACCEPTANCE: Seller shall be deemed to have accepted an Order and any amendment thereto by (i) issuing a written acceptance or order acknowledgment document, (ii) failing to reject or object to the Order or an amendment thereto, as applicable, within ten (10) days of receipt, (iii) commencing performance under the Order, such as commencement of performance of Services, or commencement of work on or shipment of Goods, (iv) issuing an invoice to Buyer or receiving any payment from Buyer, in whole or in part, under the Order (any of the foregoing, the "Acceptance"). Acceptance is expressly limited to these Terms and Conditions and such terms and conditions as are otherwise expressly referenced on the face of the Order or in a Signed Writing. Any reference to an Order in the Acceptance shall be for reference purposes only and shall not be deemed to include any terms or conditions of Seller included or referenced in the Acceptance.
7. SELLER'S TERMS AND CONDITIONS EXCLUDED: To the extent any Quotation, Acceptance or any other Seller documents or materials at any time include or reference any terms or conditions that are additional to or different from those contained in these Terms and Conditions, these Terms and Conditions shall control, supersede and replace the Seller's additional and/or different terms and conditions, as may be applicable, and all such Seller's terms and conditions are hereby objected to and rejected without further notification and are not part of the Agreement. The Agreement excludes any and all codes, guides, policies and procedures of Seller, and any amendments or modifications to any of them, which may grant additional rights to Seller or impose additional costs or obligations on Buyer. No modification or waiver of any of these Terms and Conditions and no additional or different terms and conditions shall be effective unless and to the extent expressly agreed to in a Signed Writing. Under no circumstances is the performance or failure to perform by Buyer or the payment of any amount to Seller, is to be construed as Buyer's acceptance of any of Seller's terms or conditions.
8. CHANGES:
- a. Buyer may change the Order in any respect at any time by notice to Seller, including, including changes to the drawings, specifications, materials, packaging, testing, quality, quantity, time or method of delivery or shipment, or similar requirements prescribed in the Agreement. If any such changes affect cost, time for performance or other terms, Seller must so notify Buyer and request an adjustment in cost, time for performance or other terms (an "Adjustment Request") within ten (10) business days after receipt of notification of the change. If Seller does not timely provide an Adjustment Request to Buyer, then Seller's requested change shall be deemed not to affect the price, time for performance or other terms. If Buyer timely receives an Adjustment Request, Buyer and Seller will promptly discuss, reasonably and in good faith, any pricing (up or down) and other adjustments, if any, to be made in connection with such changes, and Seller will promptly implement such changes as directed by Buyer without delay even if such discussions are ongoing. If the parties are unable to agree upon the adjustment, Buyer may, at its discretion, equitably adjust the price and/or time for performance after receipt of documentation in such form and detail as Buyer may reasonably direct, provided however, that where Buyer directs any such change as a result of a request from Buyer's Customer, then any adjustment shall be made only to the extent of what Buyer's Customer authorizes for Buyer for the changes attributable to the Seller's scope of work. Any adjustments to the price or other terms approved by Buyer must be documented in a Signed Writing.
 - b. If Seller learns of a possible change that may reduce costs, improve quality or otherwise be beneficial to Buyer or Buyer's Customers, or any issue(s) that may adversely or beneficially impact the nature or quantity of any Goods or Services, Seller will inform Buyer of the possible issue or change. Seller will not make any change to the Order or adjust the specifications, composition, design, processing, packing, type, volume, delivery terms or price of any Goods or Services,

change any suppliers or subcontractors or the location used by Seller in the performance of this Agreement, or cancel, suspend or reschedule any performance or deliveries, without Buyer's prior written consent.

- c. Seller shall during the term of the Agreement continuously support Buyer's and Buyer's Customer's cost reduction and lean manufacturing initiatives, at Seller's own costs. Seller shall make good faith efforts to identify and implement cost reductions and pass them on to Buyer in the form of lower prices for Goods. Such efforts shall include Seller's participation in meetings, studies and analysis with Buyer to identify and implement actionable cost reduction initiatives. Except as Seller and Buyer otherwise agree, all Seller's cost reductions for Goods shall be shared equally with Buyer; provided that cost reductions resulting from changes to Buyer's or Buyer's Customer's specifications, engineering changes or other changes, implemented by Buyer, or jointly developed by Seller and Buyer (in each case, which result in a reduction in the cost to produce Goods), shall be provided solely to Buyer and shall not be shared. Buyer's share of cost reductions shall be provided to Buyer in the form of a reduction in the price of the Goods.
9. **PACKING AND SHIPMENT:** Seller will properly pack, mark and ship the Goods in accordance with the Buyer's instructions, the requirements of applicable common carriers, and all applicable Laws, including laws and regulations governing the handling and transportation of dangerous goods or hazardous materials. Unless otherwise stated in the Order or herein, Seller will arrange for and shall bear all costs and expenses of delivering the Goods, including shipping and insurance charges, duties, taxes and other charges. Buyer's count or weight will be final and conclusive for all shipments. Buyer has the right to review each receipt for any discrepancies and will, within seven (7) days of receipt thereof, notify Seller of any discrepancies found upon such review and submit a list of disputed charges. Seller will ensure that any third parties who supply packaging for the Goods agree to comply with Buyer's requirements. Seller will reimburse Buyer for all costs and expenses incurred by Buyer, including costs charged by Buyer's Customer, as a result of improper packing, marking, routing, shipping or delivery. Seller will not charge separately for packing, marking, or shipping, or for materials used therein unless the parties agree otherwise in a Signed Writing. Seller shall furnish all shipping documents required by Buyer and plainly mark Buyer's name and the Order number on all packages and documents, and all shipments should include documentation indicating part number, part description, Order, and quantity of Goods. If Seller is required to use Buyer's returnable packaging, then Seller shall package and deliver Goods in the in the original containers or packaging as received from Buyer, shall be responsible for cleaning and returning the returnable packaging, and shall be responsible for any damage to the Goods as a result of improper packaging.
10. **DELIVERIES, RISK OF LOSS:**
- a. Delivery Time. Time, quality and quantity are of the essence as to all Goods and Services and the Seller's performance of the Order. Seller will deliver all Goods in accordance with Buyer's instructions about volume, mix and 100% on time delivery. If any Goods are delivered in excess of volumes ordered or in advance of schedule, Buyer may return them at Seller's expense and risk, or may retain them and invoice Seller for any resulting handling and storage costs. Buyer will not process invoices for Goods shipped in advance of schedule until the scheduled delivery date. Buyer may change scheduled deliveries at any time by written notice to Seller and will reimburse Seller for reasonable, documented incremental costs incurred by Seller due to such changes.
 - b. Late Deliveries. Seller shall promptly notify Buyer whenever anything threatens to delay the timely manufacture or delivery of any Goods, including the reasons for the delay and the anticipated length of the delay, and shall use best efforts to resolve the issue causing the delay. If for any reason Seller does not, or Buyer reasonably believes that Seller will not, meet the delivery schedule, then Buyer may, at its option and in its sole discretion, approve a revised delivery schedule, require Seller to arrange for and pay for special or expedited transportation, or terminate the Order in whole or in part without liability, and/or purchase substitute goods, in which event Seller shall reimburse Buyer for its costs in procuring the substitute goods. Seller is responsible for excess costs associated with late delivery. This shall include (but will not be limited to) expedited freight, loss of production, and excess costs charged to Buyer by Buyer's Customer due to late delivery.
 - c. Risk of Loss. Notwithstanding any agreement concerning payment of freight expenses, delivery shall not have occurred and the risk of loss shall not have shifted to Buyer until the Goods have been delivered to Buyer's facility specified in the Order and have been accepted at that facility.

11. **INSPECTIONS:** Buyer, Buyer's Customer and/or any of their representatives may, but shall not be required to, inspect and/or test the Goods following delivery by Seller. Buyer, Buyer's Customer and/or any of their representatives may, but shall not be required to, inspect and/or test the Goods, materials and any property belonging to Buyer or Buyer's Customers that is in the possession or under the control of Seller or its suppliers or subcontractors, as well as to review and inspect the Seller's and its suppliers' and subcontractors' facilities, testing, inspection, quality control and reliability procedures and any of their records related to performance under the Agreement at any time, and Seller, at no charge, will make its facilities available (and will use its best efforts to arrange for its suppliers and subcontractors to make available their respective facilities) for this purpose and provide any necessary assistance to make the inspection safe and convenient. If any such inspection discloses any breach or default by Seller under the Agreement, Seller shall reimburse Buyer for the cost of such inspection. No inspections and/or tests by Buyer or Buyer's Customer will relieve or modify Seller's obligations, representations and warranties under the Agreement, and Seller acknowledges that any inspection by Buyer or Buyer's Customer whether during manufacture, prior to delivery or after delivery, shall not constitute acceptance of any work-in-progress or finished Goods or Services and shall not preclude rejection or other relief for any defects or non-conformities subsequently discovered.
12. **NON-CONFORMING GOODS OR SERVICES:** In addition to any other remedies it may have, and notwithstanding the inspection, acceptance or payment of any Goods or Services, if Buyer or Buyer's Customer finds any Goods or Services to be defective or not in conformity with Buyer's specifications or requirements, then Buyer may, in its sole discretion and as may be applicable, revoke acceptance, return them to Seller for a refund of the purchase price, require Seller to repair or replace the Goods or re-perform the Services, or rework or repair the Goods or arrange to perform the Services itself or through third parties, all at Seller's sole cost and expense and Seller will reimburse Buyer for all costs and expenses incurred by Buyer as a result of any defective or non-conforming Goods and/or Services. If Buyer accepts any of the Goods or Services, it shall be without prejudice to its claims and remedies against Seller. If Buyer rejects any Goods as failing to meet the requirements of this Agreement, Buyer may hold or return such Goods at Seller's sole risk and expense and, unless Buyer otherwise notifies Seller, the quantities under the Agreement will automatically be reduced. Additionally, Buyer may require Seller to implement, at its expense, containment, inspection, sorting, and other quality assurance procedures if Buyer reasonably determines (through statistical sampling or other quality assessments) that any quantity of incoming Goods does not conform to the specifications, requirements or warranties of the Agreement. Further, segregation and lot integrity must be maintained on all Goods and Services performed under any Order; all nonconforming Goods must be identified and segregated by Seller prior to delivery to Buyer. Seller must obtain Buyer's approval for disposition of any nonconforming Goods or materials.
13. **PRICES:** Stated prices apply to the type and quantities of Goods and Services described in the Order, are firm for the duration of the Agreement, and are not subject to increase for any reason, including increased raw material or third party components costs, increased labor or other manufacturing costs, increased development costs, currency fluctuations, or changes in volumes or program length from those estimated or expected. All prices are based upon the design for the Goods as approved by the Seller and Buyer. Seller shall be responsible for all costs incurred in producing the Goods and performing the Services and, except as otherwise provided in the Order, prices include the cost of raw materials and third party components, the sales, use, excise, privilege and other taxes, export and import fees (including costs incurred for export packing and for duties, tariffs, licenses and other governmental impositions), packing and handling costs, and any insurance charges, and Seller shall pay all such taxes, fees, costs and charges. All amounts must be quoted in and are payable in U.S. Dollars unless otherwise specified in the Order.
14. **INVOICES; PAYMENT:**
 - a. Invoices. Seller will issue correct and complete invoices or other agreed upon billing communications to Buyer for the Goods upon delivery of the Goods or any part of the Goods to Buyer's facility, and for the Services upon completion of the Services. Seller shall invoice Buyer not later than 90 days after delivery of the Goods and/or completion of the Services, unless otherwise specified in the Order.
 - b. Payment Terms. Buyer's standard payment terms are 45 days, provided, however, that this time period shall commence when Buyer receives a correct and complete invoice, all supporting materials and any other required information is received and verified. Buyer may withhold payment of any invoiced charges that it disputes in good faith, and payment

of any charges shall not be deemed an approval of such charges, and Buyer may later dispute such charges. Payment will not constitute acceptance of any defective or non-conforming Goods, limit or impair Buyer's right to assert any legal or equitable right or remedy, or relieve Seller's responsibility under the Agreement. Buyer shall not be responsible for any late payment fees or any costs or expenses Seller incurs in collecting any amounts owed by Buyer or in enforcing its rights and remedies under the Agreement.

- c. Set Off. In addition to any right of setoff or recoupment under the Laws or in equity, Buyer has the right to deduct, set off and/or recoup from Seller any amounts that Buyer reasonably determines Seller owes to Buyer, or any amount that Buyer pays or is required to pay to Buyer's Customer or End User, including any late delivery, quality administration and/or similar fees and costs, in connection with any actual or alleged claims by Buyer against the Seller, or by Buyer's Customer or End User against Buyer, that arise out of Seller's obligations, representations or warranties under the Agreement, upon written notice to Seller. For purposes of this Section 14.c, "Buyer" includes Buyer's parent, subsidiaries and affiliates, and "Seller" includes Seller's parent, subsidiaries and affiliates.

15. CONFIDENTIALITY:

- a. Confidential Information. Seller shall maintain the secrecy and confidentiality of all information disclosed by Buyer to Seller during the course of work under the Agreement ("Confidential Information"), including, but not limited to, any information regarding Buyer or its business or Buyer's Customers, the existence and terms of any request for proposal or Order, and any drawings, specifications, or other documents prepared by either party in connection with any request for proposal or Order.
- b. Use and Disclosure, Return. Seller will use the Confidential Information only to issue one or more Quotations and to perform its obligations under, and for the purposes of, the Agreement, and will not disclose Confidential Information to or use Confidential Information with or for the benefit of itself or any third party without prior written authorization from Buyer. Seller will maintain the confidentiality of Confidential Information in the same manner in which it protects its own information of like kind, but in no event will it take less than commercially reasonable precautions to prevent unauthorized use or disclosure of the Confidential Information. Confidential Information shall not include any information that (i) was in the possession of Seller before receipt from Buyer; (ii) is or becomes available to the public through no fault of Seller; or (iii) is received by Seller in good faith from a third party having no duty of confidentiality to Buyer. The obligations of Seller with respect to Confidential Information shall remain in effect during the time that any Confidential Information is considered by Buyer to be secret or confidential or otherwise qualify for protection under the applicable Laws. Upon request by Buyer, Seller will promptly return or, where specifically authorized by Buyer, destroy the original and all copies of Confidential Information it maintains in any form and if so requested, certify such destruction, except to the extent the retention of Confidential Information is required by any Laws.
- c. Required Disclosures. If Seller believes it is required by Law or is otherwise obliged to disclose any Confidential Information to any third party for any reason, Seller Shall provide Buyer with immediate written notice of such requirement or obligation (together with a copy of any relevant access request, court order, or other evidence giving rise to such belief) to enable Buyer to seek appropriate protective relief or to take steps to resist or narrow the scope of any required disclosure. Seller shall cooperate with Buyer with respect to such matters and will in any event disclose only such Confidential Information as it has ascertained, after taking legal advice, it is legally compelled to disclose, and Seller will use best efforts to ensure that all Confidential Information so disclosed is accorded confidential treatment. Seller will notify Buyer in writing of the means, content and timing of such disclosure prior to such disclosure being made.
- d. Seller's Information. Unless otherwise agreed in a Signed Writing, Seller shall ensure that any information or documents that it provides to Buyer in any form or medium does not constitute confidential or proprietary information of Seller or any third party, and all information provided by Seller to Buyer in connection with each Quotation and Order shall be disclosed on a non-confidential basis, and Buyer shall have no duty to maintain the secrecy or confidentiality of such information.

16. INSURANCE:

- a. By Buyer. Buyer shall maintain such insurance coverage as it determines in its sole and absolute discretion and/or as may be required by Buyer's Customers. Buyer is not required to name Seller as an additional insured or a loss payee, or to waive the right of subrogation or other recovery against Seller, on any of Buyer's insurance policies.
- b. By Seller. Seller shall obtain and keep in force for the benefit of the Seller and Buyer the following insurance, with minimum limits as set forth below:
 - i. Comprehensive General Liability – \$5,000,000 combined single limit per occurrence;
 - ii. Comprehensive Automobile Liability – Bodily injury/property damage covering all vehicles used in connection with the Goods and/or Services in the amount of \$1,000,000 combined single limit each occurrence;
 - iii. Statutory Workers' Compensation and/or Employer's Liability as required by applicable Laws.

Seller shall provide Buyer with a certificate of insurance evidencing that the required minimum coverage is in effect and that Buyer is named as an additional insured, provide a waiver of subrogation clause in favor of Buyer, and provide that all coverage provided by the Seller shall be primary. Such insurance shall not exclude the actions of any subcontractor that Seller may utilize under the Agreement. The Seller will provide to Buyer at least a thirty (30) days' notice before any such policy is altered or cancelled in any material respect. The insurance provided by Seller hereunder shall have no effect on any other obligations imposed upon Seller under the Agreement or create any cap on Seller's liability under the Agreement.

17. MATERIALS, EQUIPMENT, TOOLS AND FACILITIES:

- a. Buyer's Property. As between Buyer and Seller, Buyer will own the Buyer's Property. All replacement parts, repairs, additions, improvements, and accessories to Buyer's Property will become part of Buyer's Property. Seller hereby assigns and will assign to Buyer any contract rights or claims in which Seller has or at any time acquires an interest with respect to Buyer's Property, and will execute bills of sale or other documents reasonably requested by Buyer to evidence its or Buyer's Customer's ownership of Buyer's Property. Seller will hold Buyer's Property on a bailment basis and will be responsible for loss or damage to Buyer's Property while in its possession or control. To the extent permitted by Laws, Seller waives any lien or similar right it may have with respect to Buyer's Property. Seller authorizes Buyer and Buyer's Customers to record financing statements as Buyer or Buyer's Customer deems necessary to evidence their respective interest in the Buyer's Property.
- b. Seller's Responsibilities. Seller shall, at its cost and expense: (i) maintain Buyer's Property in good condition and repair, normal wear and tear excepted, throughout the useful life of Buyer's Property; (ii) keep Buyer's Property insured at Seller's expense against loss or damage in an amount equal to the replacement cost thereof, and will provide Buyer with proof of insurance upon request; (iii) use Buyer's Property only for the manufacture, storage and transport of Goods for Buyer unless otherwise provided in a Signed Writing; (iv) retain Buyer's Property for a period of at least six (6) months after final shipment of Goods or the spare or replacement parts, as applicable, and not dispose of or remove Buyer's Property from Seller's premises without Buyer's written approval; (v) mark Buyer's Property as belonging to Buyer or Buyer's Customer; and (vi) maintain proper accounting and property control records for Buyer's Property in accordance with sound industrial practices so that Buyer's Property is readily identifiable.
- c. Return of Buyer's Property.
 - i. Seller will immediately return to Buyer upon request, and Buyer may retake immediate possession of, Buyer's Property and other property of Buyer or Buyer's Customers at any time, with or without cause and without payment to Seller of any kind. Seller will either release the requested Buyer's Property and other property to Buyer, at Seller's cost and expenses and properly packed and marked in accordance with the requirements of Buyer's carrier, or deliver the requested Buyer's Property and other property to a location designated by Buyer.
 - ii. If Seller does not release or deliver Buyer's Property or other property of Buyer or Buyer's Customers in accordance with Section 17.c.i., Buyer shall be entitled to (a) obtain an immediate court order for possession without notice and without posting a bond, and/or (b) enter Seller's premises, with or without legal process, and take immediate

possession of Buyer's Property and the other property. To the extent permitted by applicable Laws, Seller waives any right to object to Buyer's repossession of Buyer's Property and such other property in a bankruptcy or other proceeding.

18. REPRESENTATIONS AND WARRANTIES:

- a. General. Seller covenants, represents and warrants that: (i) Seller will perform all of its obligations under the Agreement in a professional and workmanlike manner, in accordance with applicable Laws, industry standards and the terms of the Agreement; (ii) Seller has the right and ability to enter into, and the capacity to perform its obligations, under the Agreement; and (iii) to the extent any Order is or may be subject to any U.S. government flow down requirements, Seller agrees to comply with all of these requirements that may apply to the Seller and/or the Seller's performance under the Agreement.
- b. Goods. With respect to the Goods, Seller covenants, represents and warrants as follows: (i) the Goods shall strictly conform to all specifications, drawings, instructions, descriptions and samples; (ii) the Goods shall be free from defects in workmanship and material and shall be new and of the highest quality; (iii) Buyer shall receive title to the Goods that is free and clear of any liens and encumbrances; (iv) to the extent designed by Seller, be free from defects in design, even if the design has been approved by Buyer; (v) the Goods shall be merchantable; (vi) the Goods shall be fit and sufficient for the Buyer's intended purposes, safe for any use that reasonably foreseeable, and conform to the Buyer's Customer's and End Users' reasonable expectations, which purposes, uses and expectations have been made known to Seller; (vii) the Goods shall be adequately contained, packaged, marked and labeled; and (viii) the Goods shall be manufactured in compliance with all applicable Laws.
- c. Services. Seller represents and warrants that it will perform all Services: (i) in accordance with the Agreement and in a competent, workmanlike manner and in accordance with best industry standards; (ii) if performed on a time and materials basis, efficiently and in a cost-effective manner; and (iii) using qualified personnel with suitable training, education, experience and skill to perform the Services.
- d. Compliance with Laws. Seller covenants, represents and warrants that Seller shall comply with all Laws applicable to its business and the performance of its obligations under the Agreement, and that the Goods and Services, Seller's manufacture and provision thereof and their intended use by Buyer and Buyer's Customers shall comply with all applicable Laws. Buyer shall not be responsible to notify or instruct Seller of any Laws that may apply to or affect Seller, any Goods or Services or the Seller's rights or obligations under the Agreement.
- e. Intellectual Property. Seller covenants, represents and warrants that: (i) it owns or has the right to use all Intellectual Property Rights necessary to produce the Goods, perform the Services and to fulfill its obligations under the Agreement ("Seller's Intellectual Property Rights"); (ii) it has the right to prohibit any third party from infringement, misappropriation or violation of the Seller's Intellectual Property Rights; and (iii) none of the Goods or Services infringe, misappropriate or violate Intellectual Property Rights of any third party, either on its own or in combination with any reasonably foreseeable goods and/or services.
- f. Price Warranty. Seller covenants, represents and warrants that the purchase price for the Goods or Services, as applicable, does not exceed the price charged to any other customer of Seller for the same or substantially similar goods or services, and that if Seller at any time after the date of Order quotes or sells goods or services substantially similar to the Goods or Services to any other customer at lower prices than those stated in the Order, such lower price shall be substituted for the prices stated in the Order. Moreover, Seller agrees to refund any excess amounts charged by Seller to Buyer in violation of this provision.
- g. Additional Warranties. The representations and warranties provided in the Agreement are in addition to all representations or warranties implied and/or required by applicable Laws. To the extent Buyer makes any representatives and/or warranties to Buyer's Customers or End Users that are in addition to or are different than those contained in the Agreement, then the Agreement shall be deemed to include, and Seller shall be deemed to have made, such additional

and/or different representations and warranties to Buyer as if Seller was expressly making such representations and warranties under the Agreement.

- h. Future Performance. All representations and warranties of Seller related to the Goods shall extend to future performance of the Goods, and are not modified, waived or discharged by delivery, inspection, tests, acceptance or payment. Buyer's approval of any design, drawing, material, process or specifications will not relieve Seller of any of its representations and warranties.
- i. Application of Warranties. All representations and warranties of Seller are for the benefit of Buyer, Buyer's Customers, End Users and their respective affiliates, successors and assigns.
- j. Notice, Corrective Action. Seller shall immediately notify Buyer if Seller breaches or is likely to breach any of its representations or warranties under the Agreement, or if it becomes aware of any ingredient, component, design or defect in the Goods that is or may become harmful to persons or property, or fails or is likely to fail to meet the requirements of the Agreement, and shall develop, document and implement corrective actions in accordance with all applicable quality control policies and standards of Buyer and Buyer's Customers.
- k. Claims for Breach of Warranty. In the event that any Goods and/or Services fail to conform to the warranties set forth in this Agreement or under applicable Law, Buyer may direct Seller to take all necessary action to address the breach, including without limitation requiring Seller to replace or repair the defaulting Goods and correct or perform again any defaulting Services, all at the sole cost and expense of Seller. Seller shall follow and comply with Buyer's instructions in resolving the warranty claims, including providing reasonably-detailed information and documents to Buyer of the facts and circumstances giving rise to the claim and allowing Buyer's employees and representatives entry to Seller's premises to investigate and remedy the claim as Buyer deems appropriate. Seller shall pay for all transportation and repair or replacement charges, as well as Buyer's time, travel and lodging expenses incurred in connection with the warranty claims. The Seller's representations and warranties shall apply to any repaired and/or replaced Goods and Services.

19. DAMAGES:

- a. Seller shall be liable for any and all damages suffered by Buyer arising out of or in connection with any breach of the Agreement by Seller, including damages and other amounts that Buyer pays or is responsible to pay to any Buyer's Customer or End User. Without limiting the generality of the foregoing, Seller shall be liable for damages suffered by Buyer as a result any delay or failure of performance, whether directly or indirectly caused by Seller, any of Seller's suppliers or subcontractors, or anyone under Seller's direction or control.
- b. BUYER SHALL HAVE NO LIABILITY OR OBLIGATION FOR ANY DAMAGES SUFFERED BY SELLER WITH RESPECT TO ANY PURCHASE ORDER OR ANY GOODS OR SERVICES PROVIDED BY SELLER IN EXCESS OF THE PURCHASE PRICE FOR THE GOODS OR SERVICES WITH RESPECT TO WHICH THE LIABILITY OF BUYER AROSE.
- c. BUYER SHALL NOT BE LIABLE TO SELLER IN CONNECTION WITH OR IN ANY WAY RELATED TO THE AGREEMENT UNDER ANY CIRCUMSTANCES OR LEGAL THEORY (WHETHER TORT, CONTRACT, PRODUCT LIABILITY, WARRANTY, RECALL, INDEMNIFICATION OR OTHERWISE) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL, NON-ECONOMIC OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFITS, LOSS OF INCOME OR REVENUE, LOSS OF GOODWILL, LOSS RELATED TO PRODUCTION OR SALES INTERRUPTION, LOSS OR DAMAGE TO SELLER'S PREMISES OR ANY EQUIPMENT, SYSTEM OR COMPONENT THEREIN, EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- d. ALL LIABILITY (IF ANY) OF BUYER RESULTING FROM, ARISING OUT OF OR CONNECTED WITH ANY GOODS AND SERVICES SOLD OR PROVIDED TO BUYER UNDER THE AGREEMENT UNDER ANY CIRCUMSTANCES OR LEGAL THEORY (WHETHER TORT, CONTRACT, PRODUCT LIABILITY, WARRANTY, RECALL, INDEMNIFICATION OR OTHERWISE), SHALL TERMINATE THREE (3) YEARS AFTER THE DELIVERY OF THE GOODS OR THE COMPLETION OF THE PERFORMANCE OF THE SERVICES.

- e. In no event shall Buyer have any liability to Seller for (i) any loss of use or downtime related to any equipment or machinery, (ii) any attorneys' fees or other costs and expenses of Seller incurred in connection with the Agreement, or (iii) any other costs of Seller unless expressly provided for in the Order.

20. INDEMNIFICATION:

- a. By Seller. In addition to other indemnification obligations of Seller under the Agreement, Seller shall indemnify and hold harmless, and at Buyer's request defend, Buyer, Buyer's Customers, End Users and each of their respective affiliates, insurers, officers, directors, agents, representatives, employees, customers, successors and assigns (each, an "Indemnified Party"), from and against any and all demands, claims, suits, liabilities, losses, damages, awards, judgments, costs and expenses, including reasonable attorney fees, related to or arising out:
 - i. The Seller's performance under the Agreement and/or any Goods or Services;
 - ii. Any alleged or actual breach by Seller of the Agreement or any of the Seller's representations, warranties or covenants contained in the Agreement;
 - iii. Any recall campaign or other corrective action, voluntary or involuntary, resulting from Seller's breach of its obligations, representations or warranties under the Agreement;
 - iv. Any act or omission of Seller or any of its officers, directors, agents, representatives, employees, suppliers or subcontractors;
 - v. Any damage or loss to property or injury to or death of any person arising out of or in any way connected with the installation, operation or repair of Goods, any equipment or product for which the Goods are intended, the provision of any Services, or the operation or condition of the Seller's machinery or equipment;
 - vi. Damage to property or personal injuries to the extent arising from or in connection with Seller's work or any presence on Buyer's premises or Seller's use of Buyer's Property; and
 - vii. Any infringement claims concerning Seller's Intellectual Property Rights and/or if the use of any Goods or any products or systems that incorporate the Goods, in whole or in part, is enjoined or otherwise impaired by reason Seller's infringement of a third party's Intellectual Property Right. For purposes of this subsection, Seller's indemnification obligations shall apply to any suit, claim or action for actual or alleged misuse or misappropriation of Intellectual Property Rights resulting directly or indirectly from Seller's actions or for infringement of any present or future Intellectual Property Right that results from Seller's activities under the Agreement or Seller's manufacture, sale or use of the Goods (A) alone, or (B) in combination by reason of their content, design, or structure, or (C) in combination in accordance with Seller's recommendations, and Seller's obligations indemnification, defense and hold harmless obligations shall apply even though Buyer may furnish, review and/or approve any portion of the design and/or specifies all or any portion of the processing of the Goods.

If Buyer requests the Seller to defend any third party demand, claim or suit, Buyer may participate in the defense or settlement thereof, but Seller may not settle or compromise any such third party demand, claim or suit without Buyer's prior written consent. Further, in claims, if any are permitted by applicable Laws, by an Indemnified Party against Seller or anyone for whose acts Seller may be liable, the indemnification obligation set forth in this Section 20.a shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Buyer or Seller under any applicable workers' compensation, disability or other employee benefit or act.

- b. By Buyer: Under no circumstances shall any Indemnified Party be required to indemnify, defend or hold harmless the Seller, any affiliate of Seller, or any of their respective insurers, officers, directors, agents, representatives, employees, suppliers or subcontractors. Subject to the foregoing, to the extent Buyer is required by Law to indemnify Seller or any of the above-referenced persons or entities, then (i) Buyer shall have the right to defend and settle claims subject to Buyer's indemnity in its sole and absolute discretion, and (ii) Buyer's indemnification obligation shall be limited to the extent of its fault in causing the injury, death or damage that triggered its indemnification obligation, and further provided that Buyer shall not be responsible or liable to the extent the injury, death or damage is attributable to the negligence or intentional conduct of Seller, any affiliate of Seller, or any of their respective officers, directors, agents, representatives, employees, suppliers or subcontractors.

21. **LIMITATIONS OF ACTIONS:** Except as otherwise provided in these Terms and Conditions, all claims against Buyer must be made in writing and received by Buyer, as soon as possible and in any event within thirty (30) days from the date when the Seller knew or should have known, whichever is earlier, of the breach, loss or damage, and Seller's failure to provide a timely notice shall be a complete defense to any claim, suit or action asserted or commenced by Seller with respect to such claim. All legal actions against Buyer must be filed and properly served on Buyer within one (1) year after the delivery of the Goods (or the applicable portion of the Goods) or the completion of the Services, as applicable, and thereafter shall be forever barred.

22. **SUSPENSION OF PERFORMANCE, TERMINATION:**

- a. Suspension of Performance. Seller may not suspend or delay its performance or delivery of any Goods for any reason. Buyer may suspend its performance at any time if Buyer's Customer suspends its performance or requests Buyer to suspend Buyer's performance for any reason. Buyer may also suspend its performance while Seller is in breach of this Agreement until the breach has been cured and/or pending receipt of assurances, adequate to Buyer in its sole and absolute discretion, of Seller's ability to perform as required by the Agreement.
- b. Immediate Termination. Buyer has the right to terminate the Agreement and any or all Orders, in whole or in part, for convenience at any time upon the provision of a written notice to Seller specifying the date and extent of termination. Without limiting the general right to terminate under the preceding sentence, Buyer's right to terminate upon notice shall apply if (i) Buyer's Customer terminates, in whole or in part, and for any reason, its agreement with Buyer or any purchase order issued to Buyer that Buyer uses as the basis to purchase any Goods or Services from Seller, (ii) Seller's failure to provide assurances of performance to Buyer as required by subsection 22.a, above, (iii) Seller or any Buyer's Customer becomes insolvent, makes an assignment for the benefit of creditors or is unable to meet its obligations as they become due, or (iv) a petition in bankruptcy or insolvency is filed by or against Seller or Buyer's Customer. Buyer's right to terminate under this provision shall apply during any event of Force Majeure.
- c. Termination for Cause. Buyer has the right to terminate the Agreement and any or all Orders, in whole or in part, in the event of any breach of the Seller's obligations, representations or warranties under the Agreement that has not been cured to Buyer's satisfaction within a reasonable period of time under the circumstances, not to exceed ten (10) business days, following Buyer's written notice to the Seller specifying the nature of the breach.
- d. Change of Control. Seller shall notify Buyer, in reasonable detail, of any anticipated or actual change of control of the Seller or any holding company, subsidiary or division of Seller involved in the performance of the Agreement. Buyer has the right to terminate the Agreement and any or all Orders, in whole or in part, in the event of any such change of control.
- e. No Termination for Convenience by Seller. Seller may not terminate the Agreement or any Order, in whole or in part, for convenience or at will, or as a result of any change of control of Buyer.

23. **CONSEQUENCES OF TERMINATION:**

- a. Upon the expiration or termination of this Agreement or any Order for any reason, in whole or in part, Seller shall: (i) immediately stop the work on the terminated part of the Order; (ii) place no further orders or subcontracts, except to the extent necessary to complete the continued portion of the Agreement; (iii) terminate all other orders and subcontracts in connection with the terminated scope of work; (iv) protect Buyer's Property and other property in Seller's possession in which Buyer or Buyer's Customer may have or may acquire an interest; (v) complete delivery to Buyer of any Goods, and where requested by Buyer, Buyer's Property, work in process and/or raw materials inventory in Seller's possession.
- b. In event of expiration or termination of the Agreement or any Order, in whole or in part, for any reason, Buyer shall only be responsible to pay to Seller, and Seller shall accept as payment in full the contract price for all Goods and Services which have been completed in accordance with the Agreement, following delivery of the Goods to Buyer. Buyer may also elect to purchase from Seller any or all work in process and/or raw materials inventory in Seller's possession, and Seller shall sell these items to Buyer at the Seller's cost for these items. Notwithstanding the foregoing, Buyer shall not be liable

to Seller for any costs or damages whatsoever if Buyer terminates as a result of the cancellation or termination, in whole or in part, of any program by Buyer's Customer or End User for which program the Goods were intended or the bankruptcy or insolvency of such Buyer's Customer or End User.

- c. Except and only to the extent expressly agreed upon in a Signed Writing, Buyer shall not be responsible to pay Seller for any of the following: (i) except as otherwise provided in Section 23.b, above, Seller's work-in-process or raw materials fabricated, purchased or ordered, (ii) Seller's costs of settling all claims with subcontractors and suppliers utilized in connection with the Agreement, (iii) Seller's cost to store the items to be purchased and, if necessary, relocate production to an alternate source; (iv) any unamortized or unabsorbed tooling costs, development/design costs, engineering costs, start-up costs, program capital costs or supplies, (v) Seller's expected profit from the performance of the Agreement, or (vi) any other damages that Seller may incur as a result of termination of the Agreement.
- d. Within thirty (30) 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 may request. Buyer, or its agents, shall have the right to audit and examine all books, records, facilities, work material, inventories, and other items relating to any termination claim of Seller.
- e. In connection with the expiration or termination of Agreement or any Order for any reason, or Buyer's decision to procure some or all of the Goods from any alternate supplier(s), Seller shall cooperate with Buyer in the transition of supply of the Goods as may be reasonably requested by Buyer. The parties shall in good faith negotiate the reasonable cost for the Seller's transition support, provided, however that if Buyer terminates for cause under Section 22.c, then Seller shall provide the transition support at no additional charge.

24. INTELLECTUAL PROPERTY:

- a. Ownership. As between Buyer and Seller, Buyer has any and all rights, title and interest in and to all of the Intellectual Property Rights that have been or are hereafter conceived, written, designed, developed, discovered, invented, derived, made or otherwise produced by Buyer, Buyer's Customer or Seller, whether individually or in collaboration with others, in connection with the Agreement, and none of these rights, title or interest, express or implied, shall transfer in any way to Seller, in whole or in part, for any reason or in any way except for a limited, non-exclusive, non-transferrable, revocable license for Seller to use these Intellectual Property Rights during the term of the Agreement to the extent necessary to perform its obligations under the Agreement, and to the extent that Seller attempts to impose or automatically obtain any other right or license with respect to any of these Intellectual Property Rights, whether by Law or contract, such attempt, right and license are hereby rejected and objected to by Buyer without further notification. Seller agrees not to contest or assist anyone else to contest Buyer's or Buyer's Customers' ownership of their respective Intellectual Property Rights, and has no right to transfer, in whole or in part or directly or indirectly, any such Intellectual Property Rights to any third party. Seller shall assist Buyer in every legal way to evidence, record and perfect Buyer's rights in and to the Buyer's Intellectual Property Rights, including executing and requiring its employees and subcontractors to execute all patent applications, assignments and other instruments.
- b. Drawings: Without limiting the generality of Section 24.a, all drawings, layouts, diagrams, specifications and other material or information acquired or developed by Seller or furnished to Seller by Buyer concerning the Goods and/or Services is and shall remain the exclusive property of Buyer, and all of such materials and information and Buyer's other Intellectual Property Rights shall be Confidential Information under this Agreement. All technical information disclosed by Buyer to Seller shall be AS IS without any representation or warranty, express or implied.
- c. License to Seller's Intellectual Property Rights. Seller hereby grants to Buyer, Buyer's Customers, End Users and their respective affiliates, successors and assigns a non-exclusive, perpetual, transferable, royalty free, fully paid, worldwide license to use, copy and modify any Seller's Intellectual Property Rights relating to the Goods and Services, to make derivative works of Seller's Intellectual Property Rights, in connection with the sale, test, qualification, adaptation, modification, servicing, and/or repair of Goods and/or Services, including where the Goods and/or Services or any part thereof are incorporated into or are otherwise a part of another system, product or equipment. If and to the extent the

ownership of any Intellectual Property Rights may not be transferred to or retained by Buyer as described in Section 24.a as a result of the provisions of any governmental subcontract that includes Seller's retention of ownership of any such Intellectual Property Rights, then such Intellectual Property Rights Shall be considered Seller's Intellectual Property Rights.

- d. Infringement Claims. If the use of any Goods or any products or systems that incorporate the Goods, in whole or in part, is enjoined or otherwise impaired by reason Seller's infringement of a third party's Intellectual Property Right, upon Buyer's request and election, Seller shall at its own expense and in addition to Seller's obligations under Section 20: (i) replace or modify the Goods to render them non-infringing provided that following such a replacement or modification the Goods still meet Buyer's specifications and any such replacement or modification may not degrade the performance or quality of the Goods, or (ii) get a license from the third party who is the owner of the Intellectual Property Right to continue manufacturing and selling the Goods and, where applicable, for Buyer to continue using the Goods as required by Buyer's agreements with Buyer's Customers.
25. SELLER'S RECORDS: Seller shall maintain, and shall require and ensure that its suppliers and subcontractors maintain, all information and documents related to its and/or their performance under the Agreement, including records substantiating the cost of Goods or Services, memoranda of negotiations showing the principal elements of price negotiations, and all financial, business, quality control and other documents related to its business and performance under the Agreement, using best industry practices and as may be required by applicable Laws, Buyer, or Buyer's Customers or End Users, during the term of the Agreement and for at least ten (10) years following the expiration or termination of the Agreement for any reason or such longer period of time as may be specified in an Order or by Buyer's Customer or End User. Seller shall deliver to Buyer copies of any such records, as Buyer may request from time to time. Seller and its suppliers and subcontractors may dispose of any such records only after Seller obtains a prior specific written authorization from Buyer and, if such authorization is provided, then prior to disposal, records shall be defaced or shredded to illegibility.
 26. BUYER'S CUSTOMERS: Seller acknowledges and agrees that:
 - a. Each Buyer's Customer is a third party beneficiary under the Agreement with the right to enforce, and Buyer has the right to enforce on behalf Buyer's Customer, the Seller's obligations under the Agreement.
 - b. To the extent Buyer's agreement with any Buyer's Customer imposes additional duties or obligations on Seller, or requires Buyer to take any action with respect to the Seller, such additional duties, rights, obligations and shall be deemed to be a part of the Agreement.
 - c. Seller has received and reviewed copies of the Manuals and other pertinent documents of Buyer's Customers, including their respective terms and conditions of purchase from Buyer, and agrees to comply with the provisions of the Manuals and such other documents to the extent applicable to Buyer and Buyer's suppliers and subcontractors. To the extent of any inconsistency between the provisions of any Manuals regarding Seller's obligations, the provisions of the Manuals that require the highest levels and standards, including those that apply to confidentiality, documentation, service and spare parts, quality assurance, safety and inspection, shall control.
 - d. Seller shall provide and maintain, without additional charge, a testing, inspection, quality control and reliability system or procedures in compliance with the Manuals covering the materials and workmanship utilized in the performance of this Agreement. Upon Buyer's request, Seller shall furnish certificates of compliance with such requirements.
 27. SERVICE AND REPLACEMENT PARTS: During the term of the Agreement and for the time period required by Buyer's Customer (which is at least between 10 and 15 years after termination of a program for which the Goods were intended), and regardless of whether the Agreement or any Order has been terminated for any reason, Seller shall (a) sell to Buyer quantities of Goods sufficient to fulfill 100% of Buyer's and Buyer's Customers' service and replacement parts requirements for past model years, and (b) maintain the ability to provide, and shall provide, product support for the Goods, which shall include, without limitation, assuring that subcomponents and materials are available, maintaining tooling and other production capability and re-engineering components or systems to address obsolescence for such a period of time. Except as may be otherwise

specified on the face of the Order, Seller shall sell such service and replacement parts at the then-current production prices, and if the Goods are systems, modules or assemblies, Seller shall sell the component or parts of such systems, modules or assemblies at prices that will not in the aggregate exceed the then current production price of the system, module or assembly less the costs of labor involved in connection with the system, module, or assembly plus any actual net cost differential for required unique packaging. Any Seller requests for price increases shall be approved only to the extent that said price increases are approved by Buyer's Customer. If a dispute arises between Seller and Buyer regarding the price of service or replacement parts under this Section, Seller shall continue to supply Buyer's requirements for service and replacement parts at the production prices set forth in the Order pending resolution of such dispute.

28. FORCE MAJEURE:

- a. Seller shall be liable for any failure or delay in performance in connection with the Agreement, except where such failure or delay results from causes that are, at one and the same time, unforeseeable, unavoidable, outside of its control and without its fault or negligence, including acts of God, acts of any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor strikes, government-declared pandemic, or court injunction or order (any such event, "Force Majeure"), provided that Seller gives Buyer, within 3 days of Seller's learning of such cause, written notice to the effect that a failure or delay by Seller will occur or has occurred and the period of the expected delay. If a failure or delay in performance is caused by an event affecting any of Seller's suppliers or subcontractors, such failure or delay shall not be excusable unless such event is a Force Majeure as defined above and the good or service to be provided by such supplier or subcontractor is not obtainable by Seller from other sources in time for timely delivery of the Goods to Buyer. Buyer may cancel without liability to Seller its purchase of any Goods or Services affected by Seller's failure or delay in performance and, if the delay is expected to last for a period that could impact deliveries to Buyer's Customers or End Users, Buyer may cancel, without liability, any portion of or the entire Agreement or all or any portion of a Order.
- b. Any delay or failure of Buyer to perform its obligations under the Agreement shall be excused if, and to the extent that, it is caused directly or indirectly by any Buyer's Customer or End User or any event or occurrence beyond reasonable control of Buyer, including an event of Force Majeure. Seller may not terminate or modify the Agreement or any Order that is a part of or is subject to the Agreement, in whole or in part, while an event of Force Majeure continues, and Buyer may resume performance after the event of Force Majeure no longer affects its performance.

29. INTERNATIONAL SALES: The Agreement and all Orders that are a part of or are subject to the Agreement shall be governed by the Uniform Commercial Code as adopted in the State of Michigan, and not the United Nations Convention for the International Sale of Goods. Seller shall be responsible for any necessary export or import licenses, and for any documentation, costs and fees that may be necessary for the Goods to be shipped internationally. Seller shall be responsible for the payment of all export and import duties, tariffs and taxes (including those of Seller's country), and for any additional costs associated with clearance of the Goods through foreign and U.S. Customs. None of the customs drawbacks shall be reserved or retained for, or credited to, Seller.

30. MISCELLANEOUS:

- a. Entire Agreement. The Agreement constitutes the entire agreement between Buyer and Seller with respect to the purchase and sale of Goods and Services, and supersedes all prior understandings and agreements. Any objection, payment, agreement or other attempt by Seller purporting to amend, add to or modify the Agreement shall not apply or be binding upon Buyer unless and to the extent expressly approved in a Signed Writing.
- b. Governing Law. The Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of Michigan, without reference to its conflict of law principles.
- c. Dispute Resolution. The State of Michigan shall be the exclusive jurisdiction for all claims, disputes or proceedings related to the Agreement. The parties agree that the Macomb County Circuit Court and the Federal District Court for the Eastern District of Michigan are convenient forums, and the parties stipulate that the referenced venues are convenient and

acknowledge that all decisions issued by the forum court, including all injunctions and other decrees shall be binding and enforceable in all jurisdictions. Notwithstanding the foregoing, in the event of a legal dispute between Buyer and Buyer's Customer or End User related in whole or in part, directly or indirectly, to the Agreement or any Order, then the Seller consents to the jurisdiction and venue and the method of dispute resolution described in the agreement between Buyer and Buyer's Customer.

- d. Costs of Enforcement. Seller shall pay or reimburse Buyer for the costs and expenses, including but not limited to reasonable and actual attorney fees, expert witness fees and other fees and costs, incurred by Buyer in enforcing its rights or remedies, and/or Seller's obligations, under the Agreement.
- e. Relationship. Each party is an independent contractor and is not an agent, employee, or legal representative of the other and persons engaged by each of them shall not be employees, legal representatives or agents of the other party. Neither party is authorized to do business in the other party's name or to obligate the other party in any way. No provision contained in the Agreement may be interpreted as creating a joint venture or partnership between the parties.
- f. Extensions, Waivers. No waiver by Buyer of any breach of any provision of the Agreement shall constitute a waiver of any preceding or succeeding breach of the same provision. No extension by Buyer of the time for performance of any obligation or other act shall be deemed to be an extension of the time for the performance of any other obligation or any other act.
- g. Captions. Captions and Section headings in these Terms and Conditions or elsewhere in the Agreement are inserted for convenience or reference only, shall not be deemed to be a part of the Agreement for any other purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions herein.
- h. Remedies. Each of the rights and remedies reserved to Buyer in the Agreement shall be cumulative with, and additional to, all other rights and remedies of Buyer under applicable Law or in equity, and the assertion by Buyer of any right or remedy shall not preclude the assertion of any other rights or the seeking of any other remedies.
- i. Severability. Each and every provision of the Agreement is completely severable, and the invalidity of any provision shall not affect the validity of the remaining provisions of the Agreement as a whole. "Including" means "including without limitation."
- j. Assignment. Seller shall not, without Buyer's prior written consent, assign, transfer, subcontract or delegate the Agreement or any interest therein, or any rights or obligations under the Agreement or any Order, in whole or in part, either voluntarily or by operation of any applicable Laws. Buyer may assign, subcontract or delegate some or all of its obligations under the Agreement to one or more third parties, without a prior consent from Seller.
- k. Publicity. Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has contracted to furnish Buyer any Goods or Services, any Buyer Customer's program for which the Goods are intended, or the identity of any Buyer's Customers for which Buyer intends to use such Goods or Services, or use any trademarks or trade names of Buyer or Buyer's Customers in Seller's advertising or promotional materials.
- l. Notices. Any notice or other communication to a party required or permitted hereunder shall be made in writing and shall be delivered in person, or sent by first-class mail, overnight courier, fax or electronic mail, addressed to the address of the party set forth in the Order or to such other address as such party shall have communicated in writing to the other. Any such notice shall be considered to have been given when personally delivered, or given one day (excluding weekends or public holidays at the point of receipt) after the date of transmission if sent by fax or electronic mail, or after the date sent by a nationally recognized overnight courier, or given three (3) days (with similar exclusions) after the date of forwarding by first-class mail.

- m. Electronic Communications. Seller shall comply with the method of electronic communication specified by Buyer from time to time, including requirements for electronic funds transfer, purchase order transmission, electronic signature, and communication.
 - n. Survival. The provisions of Sections 1, 2, 7, 12, 14.c, 15, 17, 18, 19, 20, 21, 23, 24.d, 25, 26, 27, 30 and 31, shall survive the expiration or termination of the Agreement or any Order for any reason.
31. **ACKNOWLEDGMENT:** The parties acknowledge and agree that the provisions of the Agreement that impose or limit liability or limit consequential damages or other damages or remedies are essential terms of and are fundamental to the parties' understanding regarding allocation of risk. Accordingly, such provisions shall be severable and independent of any other provisions of the Agreement and shall be enforced to the fullest extent permitted by applicable Laws. Without limiting the generality of the foregoing, THE PARTIES AGREE THAT ALL LIMITATIONS OF LIABILITY, CONSEQUENTIAL OR OTHER DAMAGES OR REMEDIES SHALL REMAIN FULLY VALID, EFFECTIVE AND ENFORCEABLE IN ACCORDANCE WITH THEIR RESPECTIVE TERMS, EVEN UNDER CIRCUMSTANCES THAT CAUSE ANY EXCLUSIVE REMEDY TO FAIL OF ITS ESSENTIAL PURPOSE, regardless of the form of action, including actions in contract, tort (including negligence), and strict liability.