

## **BrightonNC Machine Terms and Conditions of Purchase**

1. **Offer: Acceptance** Each purchase order or purchase order revision issued by Buyer ("Order") is an offer to the seller identified on the Order ("Seller") for the purchase of goods and/or services ("Supplies") and includes and is governed by these Terms and Conditions of Purchase, as they may be amended from time to time, together with any applicable Country Supplement (collectively, "Terms"). The Order does not constitute an acceptance of any offer or proposal made by Seller, and the Order, when accepted, supersedes all prior agreements, purchase orders, quotations, proposals and other communications regarding the Supplies covered by the Order, except that a prior agreement signed by authorized representatives of both parties (such as an award letter, statement of work or non-disclosure agreement – but not prior purchase orders for the same parts and vehicle program) will continue to apply to the extent not directly in conflict with the Order including these Terms. Any reference in an Order to any offer or proposal made by Seller is solely to incorporate the description or specifications of Supplies in the prior offer or proposal, but only to the extent that the description or specifications do not conflict with the description and specifications in the Order. Seller's written acceptance of an Order, Seller's commencement of any work under an Order or any other conduct by Seller that recognizes the existence of a contract constitutes Seller's acceptance of the Order including these Terms only. **Each Order is limited to and conditional upon Seller's acceptance of the Order, including the Terms, exclusively.** Any additional or different terms and conditions proposed by Seller, whether in Seller's quotation/proposal, acknowledgement, invoice or otherwise, are unacceptable to Buyer, are expressly rejected by Buyer, shall not become part of an Order, but shall not operate as a rejection of the Order if Seller accepts Buyer's offer by commencement of work, shipment of the Supplies, or by other means acceptable to Buyer, in which case the Order shall be deemed accepted by Seller without any additional or different terms or variations whatsoever. THE TERMS OF THIS AGREEMENT ARE EXCLUSIVE. An Order can be modified only in the manner described in Section 38.

2. **Term of Order.** Subject to Buyer's termination rights, the Order is binding on the parties for one year from the date the Order is transmitted to Seller or, if an expiration date or time period is stated in the Order or in an agreement signed by Buyer, until that expiration date or the expiration of that time period ("Initial Term" or "Term"). Subject to Buyer's termination rights, if an expiration date or time period is stated in the Order or in an agreement signed by Buyer which is less than the length of the associated Original Equipment manufacturer ("OEM") vehicle program life (including model refreshings and any associated part number changes as determined by the applicable OEM customer) ("Vehicle Program Life"), the Order will automatically renew for successive one-year periods throughout the length of the applicable OEM Vehicle Program Life, unless Seller provides written notice at least 180 days prior to the end of the current Term of Seller's desire that the Order not be renewed, provided that, Buyer may extend the term of the Order for such period of time beyond the Initial Term or then-current Term as Buyer determines is necessary, acting reasonably and in good faith, to procure an alternate source for the Supplies that is acceptable to Buyer and to ensure an orderly transition of supply.

### **3. Invoicing: Pricing: Taxes: Competitiveness.**

(a) The stated price of Supplies set forth in the Order includes storage, handling, packaging, freight, insurance, transportation, and all other expenses, costs and charges of Seller, and no surcharges, premiums or other additional charges of any type shall be added without Buyer's express written consent. Prices are not subject to increase, unless specifically stated in the Order, and Seller assumes the risk of any event or cause affecting prices, including without limitation, foreign exchange rate changes, increases in raw material costs, inflation, increases in labor and other production and supply costs, and any other event which impacts the price or availability of materials or supplies.

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

invoices must be accompanied by lien waivers, in form satisfactory to Buyer, executed by Seller and Seller's subcontractors and suppliers. No invoice may reference any term separate from or different than the Order including these Terms. Buyer reserves the right to return incorrect invoices or related documents.

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

(d) The stated price set forth in an Order also includes all applicable taxes, excises, duties and other governmental impositions, except for any value added tax (VAT) imposed by a non-USA jurisdiction, which must be shown separately on Seller's invoice for each shipment, and Buyer is not liable for any business activity taxes, payroll taxes or taxes on Seller's income or assets.

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

(f) Seller represents and warrants that the commercial terms of Supplies are, and will remain, no less favorable to Buyer than the commercial terms which Seller presently, or in the future, offers to any other customer for the same or similar goods and/or services for similar quantities. If Seller offers a lower price (or other commercial terms more favorable to Seller's customer) for the same or similar goods and/or services to any other customer during the term of an Order, then Seller will immediately offer Buyer the same price (and related commercial terms and conditions) as offered to the other customer. Seller also represents and warrants that the Supplies will remain competitive in terms of price and related commercial terms and conditions, as well as in terms of technology, quality and delivery, with substantially similar goods and services available to Buyer from other suppliers.

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

#### **4. Quantities: Delivery**

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

(b) If the face of the Order does not specify the quantities, is left blank, or specifies the quantities as zero, "blanket order", "as released", "as scheduled", "as directed", "subject to Buyer's production releases", or stated in a similar fashion, then, in consideration for [one hundred US dollars (US\$100.00)], the payment of which shall be made by Buyer upon the termination or non-renewal (as opposed to an amendment) of the Order, and for the opportunity provided by the Order in the circumstances and under the terms of the Order, Seller grants to Buyer an irrevocable option during the term of the Order to purchase Supplies in such quantities as determined by Buyer and identified as firm orders in material authorization releases, manifests, broadcasts or similar releases ("Material Authorization Releases") that are transmitted to Seller during the term of the Order, and Seller shall deliver such quantities on such dates and times at the price and on the other terms specified in the Order; provided that Buyer shall purchase no less than one piece or unit of each of the Supplies and no more than one hundred percent (100%) of Buyer's requirements for the Supplies. All references herein to an

"Order" shall include any related Material Authorization Releases. If the Order covers services, Buyer is required to purchase such services to the extent expressly stated in a Statement of Work (or similar document) signed by Buyer. Unless expressly stated in the Order, Buyer is not required to purchase Supplies exclusively from Seller. Buyer may require Seller to participate in electronic data interchange or similar inventory management program, at Seller's expense, for notification of Material Authorization Releases, shipping confirmations and other information. Material Authorization Releases are part of the Order and are not independent contracts. Seller acknowledges and agrees to accept the risk associated with lead times of various raw materials and/or components if they are beyond those provided in authorized Material Authorization Releases.

(c) Delivery of Supplies shall be F.O.B. Buyer's designated facility. The risk of loss passes from Seller to Buyer upon delivery to Buyer's designated facility, unless otherwise agreed to in writing by Buyer. Time and quantities are of the essence under an Order. Seller agrees to 100% on-time delivery of the quantities and at the times specified by Buyer, as set forth in an Order and related Material Authorization Releases. Failure to meet agreed delivery and quantities shall be considered a breach of the Order, and Seller shall pay to Buyer any damages or expenses imposed upon or incurred by Buyer. Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which entitles Seller to modify the price for Supplies covered by the Order. Buyer is not obligated to accept early deliveries, late deliveries, partial deliveries or excess deliveries. Incoterms 2000 will apply to all shipments except those entirely within the USA, except as otherwise stated in an Order including these Terms.

(d) In order to assure the timely delivery of Supplies, Seller will, upon written request by Buyer's authorized purchasing representative, manufacture goods in excess of Buyer's current Orders to serve as a reserve for shipment, at such inventory reserve level as may be set by Buyer from time to time, to meet Buyer's requirements and to meet any unforeseen delays due to any reason whatsoever. Until such Supplies are purchased by Buyer from Seller, the same shall remain the property of Seller, and shall be held by Seller at its sole risk and expense.

(e) Seller must assure overall equipment (shared and specific) and plant capacity are adequate to meet Buyer's needs. Ongoing capacity analysis must account for scrap variation, downtime, maintenance, and other Customer requirements.

## **5. Premium Freight: Related Costs**

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

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

## **6. Packaging: Marking: Shipping: Disclosure: Special Warnings or Instructions**

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

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

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

(d) Seller will reimburse Buyer for any liabilities, expenses and costs incurred as a result of improper packing, marking, routing, shipping or any other noncompliance with the requirements of this Section 6.

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

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

#### **7. Inspection: Non-Conforming Supplies: Audit**

(a) Buyer may enter Seller's facility to inspect the facility, Supplies, materials, and any of Buyer's property relating to an Order. Buyer's inspection of Supplies, whether during manufacture, prior to delivery or within a reasonable time after delivery, does not constitute acceptance of any work-in-process or finished goods. Buyer's acceptance, inspection or failure to inspect does not relieve Seller of any of its responsibilities or warranties. Nothing in an Order releases Seller from the obligation of testing, inspection and quality control. If defective Supplies are shipped to and rejected by Buyer, the quantities under the Order will be reduced unless Buyer otherwise notifies Seller. Seller will not replace reduced quantities without a new order or Material Authorization Release from Buyer. In addition to other remedies available to Buyer, (i) Seller agrees to authorize return of defective supplies, at Seller's risk and expense at full invoice price, plus transportation charges, within one (1) working day of Buyer's notification and to replace defective Supplies as Buyer deems necessary, and/or (ii) Buyer may have corrected at any time prior to shipment from Buyer's plant Supplies that fail to meet the requirements of an Order, and (iii) Seller will reimburse Buyer for all reasonable expenses that result from any rejection or correction of defective Supplies. Seller will develop and document corrective actions within a commercially reasonable period after receipt of a defective sample and will take whatever measures necessary to correct the defect. Payment for nonconforming Supplies is not an acceptance, does not limit or impair Buyer's right to assert any legal or equitable remedy, and does not relieve Seller's responsibility for latent defects. Upon reasonable notice to Seller, either Buyer or Buyer's Customer may conduct a routine audit at Seller's production facility for the purpose of quality, cost or delivery verification.

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

by its noncompliance, together with interest at an annual rate of 12% (or, if less, the maximum rate permitted by law) plus the cost of the review/audit.

**8. Payment** Payments shall be made as set forth in the Order. If not otherwise specified, Buyer's payment will be made **[Net 60]** days following the later of receipt by Buyer of the applicable invoice or the Supplies (which, in the case of services, means the completion of the services) to which the invoice relates. Buyer may withhold payment pending receipt of evidence, in the form and detail requested by Buyer, of the absence of any liens, encumbrances or claims on Supplies provided under the Order. Payment will be made in the currency expressly stated in the Order; if no such currency is noted, payment will be made in U.S. Dollars. Payment will be made by mailing on or before the due date unless otherwise expressly agreed by Buyer.

**9. Changes**

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

(b) Seller will not make any change in the Supplies, including, without limitation, design, drawings, specifications, materials, processing, packing, marking, shipping, or date or place of delivery except at Buyer's written instruction or with Buyer's prior written approval. The foregoing restriction applies, among other matters, to any proposed change in the sourcing or place or manner of manufacture or processing of raw materials or components used in the Supplies, or of any Supplies themselves. Any changes by Seller to any Order or to the Supplies covered by the Order without the prior approval of Buyer's authorized representative shall constitute a breach of the Order.

**10. Warranties**

(a) Seller expressly warrants and guarantees to Buyer, to Buyer's successors, assigns and Customers, and to users of Buyer's products, that all Supplies delivered or provided to Buyer and any special tools, dies, jigs, fixtures, patterns, machinery and equipment, that are obtained at Buyer's expense for the performance of an Order and/or are or become the property of Buyer (including the Buyer's Property as defined in Section 25) will: (i) be world-class, competitive Supplies in terms of price, quality, delivery and technology, and conform to the specifications, standards, drawings, samples, descriptions and revisions as furnished, specified or approved by Buyer, (ii) conform to all applicable laws, orders, regulations or standards in countries where Supplies or vehicles or other products incorporating Supplies are to be sold, including without limitation the National Traffic and Motor Vehicle Safety Act, the federal motor vehicle safety standards and the European Union Directive 2000/53/EC, (iii) be merchantable and free of defects in design (to the extent the design is furnished by Seller or any of its subcontractors or suppliers), materials and workmanship, (iv) be selected, designed (to the extent the design is furnished by Seller or any of its subcontractors or suppliers), manufactured or assembled by Seller based upon Buyer's intended use and be fit and sufficient for the purposes intended by Buyer, and (v) be free of all liens, claims and encumbrances whatsoever. Seller further expressly warrants that, unless otherwise expressly stated in the Order, the Supplies are manufactured entirely with new materials and none of the Supplies is, in whole or any part, governmental or commercial surplus or used, remanufactured, reconditioned or of such age or condition so as to impair its fitness, usefulness or safety. The foregoing warranties are in addition to those available to Buyer by law. For all Supplies, Seller further warrants that

its work will be performed in a professional and workmanlike manner, consistent with all standards and specifications agreed on with Buyer and otherwise consistent with industry standards, and that the Supplies are free from latent defects or conditions that would give rise to a defect regardless of whether the defect or condition was known or discoverable during the warranty period. Buyer's approval of any design, drawing, material, process or specifications will not relieve Seller of these warranties. These warranties are intended to provide Buyer with protection from any and all warranty claims brought against Buyer by its Customer, including Customer-required warranties relating to the Supplies or any products into which such Supplies are incorporated. All such Customer-required warranties are incorporated herein by reference.

(b) The warranty period provided by applicable law applies, except that if Buyer or Buyer's Customer offers a longer warranty to Customers for Supplies installed on or as part of vehicles, the longer period will apply to Supplies covered by the Order, and provided further that in the event that Buyer or any direct or indirect Customer(s) voluntarily or pursuant to a government mandate, makes an offer to owners of vehicles (or other finished products) on which the Supplies, or any parts, components, or systems incorporating the Supplies, are installed to provide remedial action or to address a defect or condition that relates to motor vehicle safety or the failure of a vehicle 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 ("Remedial Action"), the warranty shall continue for such period of time as may be dictated by Buyer's direct or indirect Customer or the federal, state, local or foreign government where the Supplies are used or provided, and Seller shall fully comply (among other matters) with the requirements under Section 13(a). The Buyer may change a new vehicle warranty or any warranty offered by it covering the Supplies. If the change is made after a production Order has been issued, the Buyer will promptly notify the Seller of the change.

(c) For all services, Seller further warrants that its work will be performed in a professional and workmanlike manner, consistent with all standards and specifications agreed on with Buyer and otherwise consistent with industry standards.

(d) Seller will immediately notify Buyer in writing when it becomes aware of any ingredient, component, design or defect in Supplies that is or may become harmful to persons or property.

(e) Buyer's approval of any design, drawing, material, process or specifications will not relieve Seller of these warranties.

(f) The following communications shall each constitute notice of a breach of warranty under the Order: (i) any communication specifying a defect, default, claim of defect or other problem or quality issue of the Supplies provided under the Order; (ii) any communication to Seller claiming that the Supplies are in breach of any warranty or that Seller is in default under the Order; and (iii) a termination notice from Buyer under Section 19. Any such claim by Buyer of breach may only be rescinded in writing by Buyer.

(g) To mitigate its damages, Buyer may fully defend any claim from any Customer that any Supplies supplied by Seller are defective, in breach of warranty, or otherwise did not meet applicable legal or contractual requirements because such Customer may attempt to hold Buyer responsible for problems caused in whole or in part by Seller. Seller and Purchaser agree that this defense is in the interest of both Seller and Buyer. Seller hereby waives the right to argue that the fact that Buyer took any such position in any way limits Buyer's right to assert a claim against Seller by Buyer for breach of warranty, contribution, indemnification or other claim that may arise from or be related to the subject matter of any of the foregoing.

**11. Supplier Quality and Development: PPAP: Parts Identification** (a) Seller will conform to the quality control and other standards and inspection systems as established by Buyer and Buyer's direct or indirect Customer(s), including without limitation in relation to quality control, quality certification, health and safety certification and environmental certification including registration. (b) Seller will also participate in supplier quality and development programs of and/or as directed by Buyer. (c) Seller

agrees to meet the full requirements of industry Production Part Approval Processes (PPAP) as specified by Buyer and (as applicable) Buyer's Customer(s) and agrees to present this information to Buyer upon request, at the level requested. (d) All Supplies that are a completed part shall permanently bear Buyer's part number and name or code name, Seller's part number and Seller's date of manufacture unless otherwise agreed by Buyer in writing.

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

**13. Indemnification**

(a) To the fullest extent permitted by law: (i) Seller hereby assumes the entire, sole responsibility for any injury to person, including death, or damage to property of any kind or nature caused by, resulting from or in connection with the furnishing of Supplies or services by Seller, its subcontractors, officers, agents, or employees; (ii) Buyer shall not be responsible for any injury to person or damage to property resulting from possession, use, misuse or failure of any apparatus furnished to Seller by Buyer, and the use of any such apparatus by Seller shall constitute acceptance by Seller of all responsibility for any claims for such injury or damage; and (iii) Seller will defend, indemnify and hold harmless Buyer, Buyer's Customers (both direct and indirect, including manufacturers of vehicles in which Supplies are incorporated), and dealers and users of the products sold by Buyer (or the vehicles in which they are incorporated), including their respective agents, customers, invitees, subsidiaries, affiliates, successors and assigns, against any and all claims, damages, losses, liabilities, and expenses (including actual attorneys' fees and other professional fees, settlements and judgments) arising out of or resulting in any way from any defective Supplies, or from any negligent or wrongful act or omission of Seller, or Seller's agents, employees or subcontractors, or any breach or failure by Seller to comply with any of Seller's representations or other terms and conditions of an Order (including any part of these Terms) – including without limitation the cost of recall campaigns, customer field service actions or other corrective service actions that, in Buyer's reasonable judgment, are required because of nonconformities in some or all of the Supplies provided by Seller hereunder. Seller's obligation to defend and indemnify under this Section will apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise except for claims that arise as a result of the sole negligence of Buyer. Buyer has the right to be represented by and actively participate through its own counsel in the defense and resolution of any indemnification matters, at Seller's expense. The indemnification obligations of Seller set forth in this Agreement, including this Section, are independent of and in addition to any insurance and warranty obligations of Seller.

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

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

**15. Compliance with Laws** Seller, and any Supplies supplied by Seller, shall comply with all applicable laws, including rules, regulations, orders, conventions, ordinances and standards, that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval or certification of the Supplies, including laws relating to environmental matters, hiring, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health or safety, and motor vehicle safety. Each Order incorporates by reference all clauses required by these laws. All materials used by Seller in the Supplies or in their manufacture shall satisfy current governmental and safety constraints on restricted, toxic and hazardous materials as well as environmental, electrical and electromagnetic considerations that apply to the country of manufacture, sale or destination.

**16. Customer Requirements**

(a) As directed by Buyer in writing, Seller agrees to comply with the applicable terms and conditions of any agreements ("Customer Purchase Orders") received by Buyer from a third party ("Customer"), or directly or indirectly applicable to Buyer, pursuant to which or in respect to which Buyer agrees to supply to Customer, or incorporate into goods supplied to Customer, Supplies purchased by Buyer from Seller. The term "Customer" and "Customer Purchase Orders" shall also include the final equipment manufacturer of goods or services into which the Supplies are or will be incorporated, as well as any intermediate entities in the supply chain between Buyer's direct Customer and such final equipment manufacturer, and related terms and conditions of such Customers. Buyer may in its discretion supply Seller with information regarding the Customer Purchase Orders, but Seller shall be responsible for ascertaining any terms and conditions contained in Customer Purchase Orders that may affect Seller's obligations under an Order. Seller will do everything within its control to meet, and to enable Buyer to meet, the terms and conditions of the Customer Purchase Orders. If this Section conflicts with any other paragraph or Section in an Order, Buyer by written notice to Seller has the right to have the provisions of this Section prevail.

(b) In the event that a Customer files or has filed against it a petition in bankruptcy or insolvency and, in the course of such proceeding and in connection with actual or threatened termination (by rejection or otherwise) by the Customer of its contract(s) with Buyer or contracts relating to Supplies



purchased by Buyer from Seller, Buyer permits a reduction in the price(s) paid to Buyer for products incorporating the Supplies, the price paid to Seller for the Supplies from and after the date of such reduction will be automatically adjusted proportionally by the same percentage as the price paid to Buyer by its direct Customer and the Order will otherwise remain in effect without modification.

**17. Insolvency: Review of Financial Condition: Related Matters**

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

(b) An Order may be terminated immediately by Buyer without liability to Seller for any of the following events, or any other comparable events, and Seller shall reimburse Buyer for all costs incurred by Buyer in connection with any of the following, including but not limited to all attorney's and other professional fees: (1) Seller becomes insolvent (including if Seller is unable to pay its debts as they come due in the ordinary course of business, or if Seller's liabilities exceed its assets as fairly valued), (2) Seller files a voluntary petition in bankruptcy, (3) an involuntary petition in bankruptcy is filed against Seller, (4) a receiver or trustee is appointed for Seller, (5) Seller needs accommodations from Buyer, financial or otherwise, in order to meet its obligations under the Order, (6) Seller executes an assignment for the benefit of creditors or (7) Seller is unable promptly to provide Buyer with adequate assurance of Seller's financial capability to perform any of Seller's obligations under the Order on a timely basis. In the event that the Order is not terminated in accordance with the immediately preceding sentence, upon the occurrence of an event described in the immediately preceding sentence, Buyer may make equitable adjustments in the price and/or delivery requirements under the Order as Buyer deems appropriate to address the change in Seller's circumstances, including Seller's continuing ability to perform its obligations regarding warranty, nonconforming Supplies or other requirements under the Order.

(c) Seller agrees that if Seller experiences any delivery or operational problems, Buyer may, but is not required to, designate a representative to be present in Seller's applicable facility to observe Seller's operations. Seller agrees that if Buyer provides to Seller any accommodations (financial or other) that are necessary for Seller to fulfill its obligations under an Order, Seller will reimburse Buyer for all costs, including attorneys' and other professionals' fees, incurred by Buyer in connection with such accommodation and will grant access to Buyer to use Seller's premises and machinery, equipment, and other property necessary for the production of the Supplies covered by the Order. Notwithstanding anything contained in this Section 17 to the contrary, financial information provided by Seller to Buyer hereunder pursuant to a Directed Supply Relationship may be provided to the Customer if Seller fails to provide Buyer with adequate reasonable assurance of Seller's financial capability to perform any of Seller's obligations under the Order on a timely basis.

**18. Termination for Breach or Nonperformance** Buyer reserves the right to terminate all or any part of an Order, or any other Order or agreement between Buyer or Buyer's affiliate(s) and Seller or Seller's affiliate(s), without liability to Seller and Seller's affiliates, (1) if Seller: (a) repudiates, breaches or threatens to breach any of the terms of the Order, including without limitation Seller's warranties, (b) fails to perform or threatens not to perform services or deliver Supplies as specified by Buyer, (c) fails to make progress or to meet reasonable quality requirements so as to endanger timely and proper completion or delivery of Supplies and does not correct the failure or breach within ten (10) days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from Buyer specifying the failure or breach, (d) sells or offers to sell a substantial portion of its assets used for the production of Supplies for Buyer, or sells or exchanges or offers to sell or exchange an amount of its stock or other equity interests that would result in a change in control of Seller, or (e) fails to remain competitive with respect to quality, technology, delivery and pricing of the Supplies, or (2) if Seller or Seller's affiliate repudiates, breaches or threatens to breach any of the terms of any other Order or agreement between Buyer or Buyer's affiliate(s) and Seller or Seller's affiliate(s). Seller shall notify Buyer

within ten (10) days after entering into any negotiations that could lead to the situation specified in subsection (d) above; upon Seller's request, Buyer will enter into an appropriate nondisclosure agreement related to information disclosed to Buyer in relation to such transaction.

## **19. Termination**

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

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

(c) Upon termination by Buyer under this Section 19, Buyer will be obligated to pay Seller only the following: (i) the Order price for all finished Supplies in the quantities ordered by Buyer that conform to the requirements of the Order and for which Seller has not been paid, (ii) Seller's reasonable actual cost of work-in-process and the parts and materials transferred to Buyer in accordance with subsection (b)(ii) above, (iii) Seller's reasonable actual costs of settling claims regarding its obligations to subcontractors required under the Order, to the extent directly caused by the termination, but limited to the amount of any firm quantities of Supplies and raw materials/components specified in related Material Releases issued by Buyer and then outstanding; (iv) Seller's reasonable actual cost of carrying out its obligation under subsection (b)(iv), (v), if applicable, amounts due in connection with Transition Support under Section 21(b), and (vi) the option fee under Section 4(b) above. Notwithstanding any provision to the contrary, Buyer shall have no obligation for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, tooling, facilities and equipment rearrangement costs or rental, unamortized capital or depreciation costs, finished goods, work-in-process or raw materials that Seller fabricates or procures in amounts that exceed those authorized in the Material Authorization Releases, or general administrative burden charges from termination of the Order, unless otherwise expressly agreed to in writing by Buyer in a separate Order issued by Buyer.

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

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

(f) Except for Section 19(c)(vi), Buyer will not have any obligation under subsections 19(a), (c), (d) or (e) above if Buyer terminates Buyer's obligations under the Order because of a default or breach by Seller, and any termination shall be without prejudice to any claims which Buyer may have against Seller.

(g) In the event of a termination of the Order by Buyer as a result of Buyer ceasing to be a supplier to a Customer for the vehicle program in respect of which Buyer issued the Order, Buyer shall only be obligated to compensate Seller for any costs under this Section if, when and to the extent, that the Customer reimburses Buyer for such costs.

**20. Transition of Supply.** (a) In connection with the expiration of an Order, or the termination of an Order by either party, in whole or in part, or Buyer's other decision to change to an alternate source of Supplies (including but not limited to a Buyer-owned or -operated facility) ("alternative supplier"), Seller will cooperate in the transition of supply, including the following (collectively, "Transition Support"): (i) Seller will continue production and delivery of all Supplies as ordered by Buyer, at the prices and other terms stated in the Order, without premium or other condition, during the entire period reasonably needed by Buyer to complete the transition to the alternative supplier(s), such that Seller's action or inaction causes no interruption in Buyer's ability to obtain Supplies as needed; (ii) at no cost to Buyer, Seller (A) will promptly provide all requested information and documentation regarding and access to Seller's manufacturing process, including on-site inspections, bill-of-material data, tooling and process detail and samples of Supplies and components, (B) will provide all notices necessary or desirable for Buyer to resource the Order to an alternative supplier, (C) when requested by Buyer, will return to Buyer all Buyer's Property in as good conditions as when received by Seller (reasonable wear and tear excepted; and (D) will comply with Seller's obligations relating to Seller's Property in Section 26 and in relation to subcontracts (see Section 42 below), and (iii) subject to Seller's reasonable capacity constraints, Seller will provide special overtime production, storage and/or management of extra inventory of Supplies, extraordinary packaging and transportation and other special services (collectively, "Transition Support") as expressly requested by Buyer in writing.

(b) If the transition occurs for reasons other than Seller's termination or breach, Buyer will, at the end of the transition period, pay the reasonable, actual cost of Transition Support as requested and incurred, provided that Seller has advised Buyer prior to incurring such amounts of its estimate of such costs. If the parties disagree on the cost of Transition Support, Buyer will pay the agreed portion to Seller and any dispute regarding the remaining claimed amount may be resolved in accordance with the dispute resolution provisions of Section 34.

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

Buyer for costs associated with the termination and without prejudice to Buyer's other rights and remedies under the Order or applicable law.

**22. Information Disclosed to Buyer by Seller** Unless otherwise agreed to in writing by the Buyer: (a) no information disclosed in any manner at any time by Seller, or Seller's contractors, to Buyer, or Buyer's Customers, will be treated as confidential, and (b) Seller agrees not to assert any claim against Buyer, Buyer's Customers or their respective suppliers, with respect to any information that Seller, or Seller's contractors, have disclosed or may disclose to Buyer, or Buyer's Customers, in connection with the Supplies. Unless otherwise expressly agreed to in the Order or otherwise agreed to in writing by Buyer, Seller's rights regarding information disclosed to Buyer and with respect to products or services related to an Order shall be limited to any valid copyright thereon or patent Seller may hold covering the manufacture, use and sale of such products or services.

**23. Technology**

(a) All information, materials, inventions, and intellectual property (including without limitation Tooling) created, developed or acquired by or on behalf of Seller, along with all intellectual property rights relating thereto, paid for or to be paid for by Buyer, are the sole and exclusive property of Buyer. Seller will promptly disclose in an acceptable form and assign to Buyer all such information, materials, inventions, and intellectual property. Seller will cause its employees to perform any act, including without limitation, executing and delivering any papers necessary to enable Buyer to confirm Buyer's title to and to seek intellectual property protection throughout the world. To the extent that any works of authorship (including, without limitation, software) are created by or on behalf of Seller and are paid for or to be paid for by Buyer under the Order, such works shall be considered "work made for hire". To the extent that such works do not qualify as "work made for hire," Seller hereby assigns to Buyer all right, title, and interest in all copyrights and moral rights therein.

(b) Seller acknowledges and agrees that Buyer, or Buyer's designee(s) (including their affiliates and subcontractors) have the worldwide, irrevocable right to repair, reconstruct, rebuild and relocate, and to have repaired, reconstructed, rebuilt or relocated, Supplies delivered under an Order without payment of any royalty or other compensation to Seller.

(c) Seller hereby grants Buyer, and Buyer's present and future affiliates, an irrevocable, non-exclusive, worldwide, royalty-free, paid-up, license, including the right to sublicense, under any and all proprietary rights controlled by Seller or its affiliates, including, without limitation, any patent, copyright, moral, industrial design right, trademark, technical information, know-how or other proprietary right) ("Seller Proprietary Rights"): (i) in the event that this Agreement is terminated by Buyer under Sections 17 or 18, and/or (ii) in the event that Seller for any reason is unable to satisfy the quality, quantity, delivery or related requirements of Buyer for Supplies under the Order and/or additional orders (A) to make, have made, use, sell, offer to sell, and import the Supplies, (B) to copy, modify, use, distribute, publicly display/perform, prepare derivative works of, reproduce in the case of a mask work, and import or distribute in the case of a semiconductor chip product in which a mask work is embodied, any copyrighted or copyrightable portions of such Seller Proprietary Rights relating in any way to Supplies, and (C) to do all other things and exercise all other rights in the Seller Proprietary Rights necessary or useful to avoid, remedy and mitigate, as Buyer reasonably determines to be appropriate, all or any portion of any consequences to Buyer, and to any direct and indirect customers of Buyer, arising from any situation under subparagraphs (i) or (ii) above. Seller shall also cooperate with Buyer in the exercise of such license including providing, without restriction on use, reproduction or disclosure, all information and data deemed necessary by Buyer. At no additional cost, Seller hereby grants Buyer an irrevocable, nonexclusive, worldwide license under Seller Proprietary Rights that is necessary or incident to the reasonably intended use or application of the Supplies. Rights under this Section 23(c) are intended to be subject to 11 USC Section 365(n), and are supplementary to any other rights of Buyer under existing Orders and other agreements with Seller.

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

#### **24. Service and Replacement Parts**

Seller will provide Buyer or Buyer's designee(s) with all service and replacement parts for the Supplies, which are required by Buyer or Buyer's designee for a period of fifteen (15) years, or such lesser period as Buyer or Buyer's designee agrees in writing, after Buyer terminates production of the Supplies. Unless otherwise agreed in writing, the stated price of Supplies set forth in the Order shall apply and be effected to the service and replacement parts. If the Supplies are systems or modules, Seller agrees to sell each component or part at a price that does not, in the aggregate, exceed the system or module price specified in the Order, less assembly costs, plus any actual cost differential for packaging. At Buyer's request, Seller will make service literature and other materials available at no additional charge to support Buyer's service part sales activities.

#### **25. Buyer's Property: Warranty Disclaimer: Confidentiality**

(a) All information and materials (including, for example, Tooling, packaging, documents, standards, specifications, jigs, dies, returnable containers, and samples, and including whether or not such materials are in any way modified, altered or processed) furnished by Buyer, either directly or indirectly, to Seller to perform an Order, along with any and all Supplies, Tooling, deliverables, data, inventions and intellectual property rights under Section 23(a), shall be and remain the sole and exclusive property of Buyer (collectively "Buyer's Property"). Any and all goods manufactured by Seller with the use of Buyer's Property may not be used for Seller's own use or manufactured or provided (or offered to be manufactured or provided) to third parties without Buyer's express written authorization. Seller acknowledges and agrees that Buyer's Property may be covered by one or more patents, patent applications or copyrights owned by Buyer.

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

(c) The provisions of Section 41(f) below, relating to Tooling, also apply to Buyer's Property which is not Tooling and are incorporated here by reference.

(d) Seller acknowledges that Buyer's Property includes proprietary information, regardless of whether such information is marked or identified as confidential, and is delivered to Seller on a confidential basis for the purpose of performing the Order only. All terms of the Order are deemed proprietary information of Buyer. Seller shall disclose Buyer's Property within Seller's organization only to those employees who have a need to know in order to fulfill Seller's obligations hereunder and who have agreed to keep the Buyer's Property confidential, and shall prevent any such Buyer's Property from being divulged to third persons not employed by Seller without the prior written consent of Buyer, including having recipients acknowledge the proprietary status of such Buyer's Property and agree to similar restrictions. These obligations shall survive termination of this Agreement and will continue for a period of three (3) years thereafter, or for as long as the Buyer's Property remains a trade secret, whichever is longer. Notwithstanding anything to the contrary in an Order, any confidentiality or non-disclosure agreement between the parties that predates the Order will remain in effect except as expressly modified by the Order, and to the extent of a conflict between the express terms of such an agreement relating to Buyer's proprietary information and this Section 25, the terms of that agreement will control with respect to Buyer's proprietary information.

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

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

anti-dumping laws of the countries to which the Supplies are exported. To the extent any Supplies covered by the Order are to be imported into the United States of America, Seller shall comply with all applicable recommendations or requirements of the Bureau of Customs and Border Protection's Customs-Trade Partnership Against Terrorism ("C-TPAT") initiative. Upon request, Seller shall certify in writing its compliance with the C-TPAT initiative.

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

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

**30. Relationship of Parties** Seller and Buyer are independent contracting parties and nothing in an Order shall make either party the agent or legal representative of the other for any purpose. An Order does not grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Seller will be solely responsible for all employment and income taxes, insurance premiums, charges and other expenses it incurs in connection with its performance of an Order, except as expressly provided in a written agreement signed by Buyer. All employees and agents of Seller or its respective contractors are employees or agents solely of Seller or such contractors, and not of Buyer, and are not entitled to employee benefits or other rights accorded to Buyer's employees. Buyer is not responsible for any obligation with respect to employees or agents of Seller or its contractors.

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

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

**33. Basic Working Conditions** Seller represents that neither it nor any of its subcontractors or suppliers will (a) utilize forced labor, regardless of its form; (b) employ any person below the age of 15, unless it is part of a government approved job training, apprenticeship or other program that would be clearly beneficial to its participants; or (c) engage in physically abusive disciplinary practices. Seller further represents when it delivers the Supplies that it has complied with the requirements of this Section. Buyer may retain an independent third party, or request Seller to retain one reasonably acceptable to Buyer, to: (a) audit the Seller's compliance with this Section 33 and (b) provide Seller and Buyer with written certification of Seller's compliance, including areas for potential improvement. Seller will bear the

cost of any third-party audit and certification under this Section 33, regardless of which party retained the auditor. Buyer, at its option, may accept an audit or certification by Seller in lieu of a third-party certification. For purposes of this Section 33, the temporary assignment of employees of one party to the facilities operated by the other party will not affect the status or change the employment relationship of the assigned employees.

**34. Governing Law: Jurisdiction**

(a) Each Order is to be construed according to the laws of the State of Michigan, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any conflict of laws provisions that would require application of another choice of law.

(b) Any litigation on contractual claims arising from an Order may be brought by Buyer in any court(s) having jurisdiction over Seller or, at Buyer's option, in court(s) having jurisdiction over Buyer's headquarters or the Buyer location from which the Order issued, in which event Seller consents to jurisdiction and service of process in accordance with applicable procedures, and (ii) any actions or proceedings by Seller against Buyer may be brought by Seller only in the court(s) having jurisdiction over Buyer's headquarters or the buyer location of Buyer from which the Order issued.

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

**36. Survival** The obligations of Seller to Buyer survive termination of an Order, except as otherwise provided in the Order. Among other matters, unless specifically waived in writing by an authorized representative of Buyer, Seller's obligations with respect to service and replacement parts will survive the termination or expiration of the Order.

**37. Waiver of Jury Trial** Buyer and Seller acknowledge that the right to trial by Jury is a constitutional one, but that it may be waived. Each of Buyer and Seller, after consulting (or having the opportunity to consult) with counsel of its choice, knowingly, voluntarily and intentionally waives any right to trial by jury in any action or other legal proceeding arising out of or relating to any Order or other document pertaining to any Order.

**38. Entire Agreement: Modifications: No Implied Waiver**

(a) Except as described in Section 1, an Order including these Terms, together with any attachments, exhibits, supplements, or other terms of Buyer specifically referenced in the Order, constitutes the entire agreement between Seller and Buyer with respect to the matters contained in the Order and supersedes all prior oral or written representations and agreements. An Order may only be modified by a written amendment executed by authorized representatives of each party, or by an amendment to the Order issued by Buyer on Buyer's purchase order form through Buyer's standard purchasing protocol and accepted by Seller as provided in Section 1, or, in the case of changes within the scope of Section 9, by a purchase order amendment issued by Buyer. In the event of any conflict between the terms specified in an Order and these Terms, the terms specified in the Order shall govern. Any clerical errors contained in the Order are subject to correction by Buyer.

(b) Buyer may modify these Terms with respect to future Orders at any time by posting revised Terms to its internet web site at [www.brightonnc.com](http://www.brightonnc.com) or at such other internet web site as is specified in writing by Buyer to Seller, and such revised Terms will apply to all Orders and Order amendments issued thereafter. It is the responsibility of Seller to review and obtain a copy of the current version of the Terms. The Terms that are applicable to the Order or Order amendment shall be the version of the Terms that is in effect on the date of the Order or the Order amendment applicable to the Order, whichever date is later.



(c) 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 performance at any later time, nor shall the waiver of either party of a breach of any provision of an Order constitute a waiver of any later breach of the same or any other provision of the Order.

**39. Conflict of Interest** Seller represents and warrants that its performance of the Order will not in any way conflict with any continuing interests or obligations of Seller or its employees or contractors. Seller further warrants that while the Order is in effect, Seller and those of its employees and contractors participating in the performance of the Order will refrain from any activities which could reasonably be expected to present a conflict of interest with respect to Seller's relationship with Buyer or its performance of the Order, including without limitation, the provision of (or attempts to provide) Supplies directly to Customers without Buyer's express written consent.

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

**41. Tooling**

(a) Tooling includes all prototype and production tools, equipment, dies, fixtures, jigs, gauges, castings, molds, patterns, returnable containers, specifications and all intellectual property embodied therein, paid for or to be paid for by Buyer (with all accessions, appurtenances, modifications, repairs, refurbishments, and replacements to the Tooling) and is included in Buyer's Property. Tooling also includes, as applicable, Seller's Property of any of the foregoing types for which Buyer has an option to purchase under Section 26 above, unless the context of this Section 41 requires otherwise.

(b) Unless an Order is issued on a fixed-price basis, the price of the Tooling will not exceed the lowest of: (a) the maximum amount reimbursable specified on the Order; (b) the Seller's actual verified costs of acquiring the Tooling from a toolmaker without markup; or (c) the Seller's actual verified costs of fabrication of the Tooling (subject to applicable Buyer's guidelines). Buyer shall have access to Seller's premises, prior or subsequent to any payment, to inspect work performed and to verify charges submitted by Seller against an Order or amendment. Seller further agrees to retain all cost records for a period of two (2) years after receiving final payment of the charges.

(c) Notwithstanding any other provision of these Terms, and except as otherwise expressly agreed in writing, where Buyer is entitled to receive reimbursement or other payment from a Customer for Supplies to be provided by Seller to Buyer under an Order that constitute tooling or capital equipment, Seller shall be entitled to receive payment under the Order for such tooling or capital equipment only after and to the extent of, and in proportion to, Buyer's actual receipt of such reimbursement or other payment from the Customer.

(d) The Buyer becomes the sole owner of all Tooling as soon as it is fabricated or acquired by the Seller. Seller acknowledges and agrees that the Buyer takes title to the Tooling even if the Seller has not yet been paid for the Tooling. The Seller has no property or other rights in the Tooling. The Seller has no power to transfer any rights or grant a security interest in the Tooling to a third party. The Seller waives any objection to the Buyer's repossession and removal of the Tooling for any or no reason, including bankruptcy or insolvency proceedings. Seller waives, to the extent permitted by law, any lien or other rights that Seller might otherwise have on any Tooling, including, without limitation, molder's and builder's liens.

(e) To the extent permitted by applicable law, any payments made by Buyer for Tooling are expressly intended by Buyer to be held in trust for the benefit of any subcontractor(s) used by Seller to produce the Tooling that are covered by such payments and Seller agrees to hold such payments as trustee in express trust for such subcontractor(s) until Seller has paid the subcontractor(s) in full for the Tooling. Seller acknowledges and agrees that such subcontractor is an intended third party beneficiary of the terms of this Section 41(e) relating to the express trust and as such, such tooling subcontractor shall

have the right to enforce these terms of this Section 41(e) directly against Seller in subcontractor's own name. Seller agrees that Buyer has no obligation to Seller or Seller's tooling subcontractor under this Section other than making the payment to Seller in accordance with a Tooling order. In the event Seller's subcontractor brings an action against Seller under this Section, Seller agrees that it will not join Buyer in any such action.

(f) Tooling will be held by Seller or by a third party, to the extent that Seller has transferred possession of Tooling to a third party, on a bailment basis, as a bailee-at-will. Seller bears the risk of loss of and damage to Tooling. Tooling shall be housed, maintained, repaired and replaced by Seller at Seller's expense in good working condition capable of producing Supplies or other goods meeting all applicable specifications, shall not be used by Seller for any purpose other than the performance of an Order, shall be deemed to be personalty, shall be conspicuously marked by Seller as the property of Buyer, shall not be commingled with the property of Seller or with that of a third person, and shall not be moved from Seller's premises without Buyer's approval. Seller shall insure Tooling with full fire and extended coverage insurance for its replacement value. Buyer shall have the right at any time to enter Seller's premises to inspect Tooling and Seller's records regarding Tooling. Only Buyer has any right, title or interest in Tooling, except for Seller's limited right, subject to Buyer's unfettered discretion, to use Tooling in the manufacture of Supplies. Buyer and its affiliates shall have the right to take immediate possession of Tooling at any time without payment of any kind. Seller agrees to cooperate with Buyer if Buyer elects to take possession of Tooling. Likewise, effective immediately upon written notice to Seller, without further notice or court hearings, Buyer has the right to enter the premises of Seller and take possession of all of Tooling. Seller expressly waives any right to additional notice or process and agrees to provide Buyer or its nominee(s) with immediate access to Tooling. Seller grants to Buyer a limited and irrevocable power of attorney, coupled with an interest, to execute and record on Seller's behalf any notice or financing statements with respect to Tooling that Buyer determines are reasonably necessary to reflect Buyer's interest in Tooling. At Buyer's request, Tooling shall be immediately released to Buyer or delivered by Seller to Buyer either (i) FOB transport equipment at Seller's plant, properly packed and marked in accordance with the requirements of Buyer's selected carrier, or (ii) to any location designated by Buyer, in which case Buyer will pay Seller the reasonable costs of delivery. Seller waives, to the extent permitted by law, any lien or other rights that Seller might otherwise have on any of Tooling, including but not limited to molder's and builder's liens. Seller agrees that in the event of such failure or threatened failure for any reason, and in addition to any other remedy to which Buyer may be entitled, Buyer shall be entitled to institute and prosecute proceedings in a court to obtain temporary and/or permanent injunctive or other equitable relief to enforce any provision hereof without necessity of posting bond or proof of actual injury or damage.

(g) If the Buyer issues an Order for Tooling, the Seller will design and fabricate, rework, or acquire Tooling that fully conforms to the specifications and other requirements of the Buyer. The Tooling must be capable of producing the appropriate volume projections for the Supplies during the life of the parts as well as satisfying the requirements for Service and Replacement Parts under Section 24. The Tooling may not contain or be marked in any manner with the name of any person or entity other than the Buyer.

(h) The Buyer, at any time, including prior to payment, may ask the Seller to provide status reports on the construction or acquisition of the Tooling. Each status report will identify the Tooling, identify any subcontractors working on the Tooling, state the percentage of completion of the Tooling, and state the percentage of sunk costs already expended. The Tooling is subject to inspection by Buyer at any time during normal business hours.

(i) If, at anytime, the Seller believes that the Tooling might not be completed by the completion date specified in the Order (or at the time required consistent with any other order, for example relating to Supplies to be produced using the Tooling), the Seller will notify the Buyer as soon as practicable. Sending this notice will not relieve the Seller of either its obligation to complete the Tooling on the completion date or its liability for any additional costs incurred by the Seller or the Buyer as a result of any delay.

(j) The Seller, at its own expense, will manufacture the requisite number of sample Supplies or other goods using the Tooling in order to successfully complete the Buyer's approval process, and this shall be done in sufficient time to permit subsequent correction by Seller of any faults or defects before the completion date specified in the Order. Prior to shipment, Seller, at Seller's expense, shall inspect samples manufactured from the Tooling to be supplied hereunder and shall certify results in the manner requested by Buyer. Unless otherwise stated in the Order, the Seller has no claim for payment for Tooling until the Buyer has approved the Tooling.

(k) The Seller's warranties for Tooling are the warranties for Supplies under this Agreement, including Section 10. Buyer expressly disclaims liability for damage to persons or property, resulting from the use of the Tooling, and Buyer's warranty disclaimers and the limitation of liability under Section 25(b) for Buyer's Property are applicable to Tooling.

(l) If all or part of the fabrication, modification, repair or refurbishment of the Tooling will be subcontracted to a third-party toolmaker, the Seller will: (a) inform and obtain the approval of the Buyer in advance; (b) inform the toolmaker in writing that it is a bailee-at-will, through the Seller, of Tooling owned by the Buyer; (c) obtain a written agreement from the subcontractor to be bound by these Terms and make Buyer a third party beneficiary to such agreement and (d) be solely responsible for payments to the toolmaker. The Seller will defend and indemnify the Buyer for all costs incurred (including actual fees for attorneys, consultants and experts) in connection with any claim that challenges the Buyer's sole right, title and interest in the Tooling, or right to possession of the Tooling, brought by any third party, including toolmakers, subcontractors, and lending institutions.

(m) The Seller will at its expense: (i) use the Tooling in compliance with all applicable laws, regulations, orders, and standards; and (ii) maintain the Tooling, including its repair or replacement, in the condition necessary to produce the Supplies in accordance with any and all standards, specifications or instructions furnished by Buyer and be responsible for all wear and tear.

(n) In the event the Seller fails to comply with any of the requirements of an Order, and the Buyer determines that it is necessary to either take possession of the Tooling or have it relocated, the Seller will provide the Buyer or its designees with any technical information for the Tooling requested by the Buyer or its designees that is required for the relocation, installation, assembly, maintenance, certification, or use of the Tooling.

(n) Nothing herein contained or capable of being inferred from any possession of Tooling by Seller shall obligate Buyer in any way to purchase Supplies or goods from Seller or to create any defense in favor of Seller, whether by setoff, contract, or otherwise, to any demand by Buyer for possession of the Tooling.

(o) The term "Supplies" as defined in Section 1 of these Terms includes, without limitation, any Tooling ordered by Buyer under an Order. These Terms in their entirety apply to the purchase of Tooling subject to an Order – provided that in the event of a conflict between this Section 41 (which relates solely to Tooling) and any other portion of these Terms, the conflict in relation to Tooling shall be resolved by giving effect to this Section 41, and by giving effect to the other provisions of these terms to the fullest extent possible consistent with giving effect to this Section 41.

**42. Subcontracts.** Seller will inform Buyer in writing of any third parties to whom Seller subcontracts any of the work required under an Order, specifying in detail the work which has been subcontracted to such third party. Seller will ensure that the terms of its contracts with its subcontractors provide Buyer and its Customers with all of the rights and licenses specified in the Order, including but not limited to those set forth in Sections 7, 10, 11, 15, 16, 17, 20, 22, 23, 24, 25, 26, 27, 33 and 41.

**43. Claims by Seller.** Any legal action by Seller under any Order must be commenced no later than (1) year after the breach or other event giving rise to Seller's claim occurs, or Seller becomes aware of the existence (or facts and circumstances giving rise to the existence) of such claim whichever occurs first.

44. **Battle of the Forms Not Applicable.** The parties have agreed and it is their intent that the battle of the forms Section 2-207 of the Uniform Commercial Code shall not apply to these Terms or to any invoice or acceptance form of Seller relating to these Terms. It is the parties' intent that these Terms shall exclusively control the relationship of the parties, and in the event of any inconsistency between any invoice or acceptance form sent by Seller to Buyer and these Terms, these Terms shall control.