



## **GENERAL TERMS AND CONDITIONS**

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## **GENERAL TERMS AND CONDITIONS**

**1. DEFINITIONS.** For purposes hereof, the following terms shall have the following definitions:

**1.1. "Affiliates"** means, with respect to a party, any other party that directly or indirectly controls, is controlled by or is under common control with that party, including any level of parent, any level of affiliate or any level of subsidiary of such party. For purposes of the foregoing definition, "control" (including "controlled by" and "under common control") means ownership of, or the right to acquire, directly or indirectly: (a) not less than fifty percent (50%) of the voting stock of a corporation; (b) the right to vote not less than fifty percent (50%) of the voting stock of a corporation; or (c) not less than fifty percent (50%) ownership interest in a corporation, partnership, limited liability company or other entity.

**1.2.** "Buyer" means Nippon Seiki North America, on behalf of itself and for the benefit of its Affiliates.

**1.3.** "Seller" means the entity listed on the applicable Purchase Order.

**1.4.** "Products" means any deliverables, work product, materials, products, software, equipment and/or hardware provided by Seller to Buyer, as further described in the applicable Purchase Order.

**1.5.** "Services" means the services, functions and responsibilities performed by Seller for Buyer, as further described in the applicable Purchase Order.

## **2. PURCHASE ORDER CONTRACT**

### **2.1. PURCHASE ORDER AND ACCEPTANCE**

Each purchase order Buyer issues ("**Purchase Order**") is Buyer's offer to purchase the Products and Services identified in that Purchase Order. The terms and conditions ("**Terms and Conditions**") set forth herein and on the face side of the Purchase Order constitute the parties' entire contractual agreement and supersede any previous oral or written representations, including but not limited to provisions in Seller's quotations, proposals, acknowledgements or other documents. Any clerical errors contained on the face side are subject to correction by Buyer. Seller will be deemed to have accepted a Purchase Order as issued: (i) if Seller fails to object to it in writing within ten (10) business days after receipt, (ii) if Seller has begun performance under the Purchase Order, or (iii) if Seller acknowledges in writing its acceptance of the Purchase Order. Acceptance is expressly limited to these Terms and Conditions and the other terms and conditions set forth on the Purchase Order, notwithstanding any terms and conditions that may be contained in any acknowledgment, invoice or other form of Seller and notwithstanding Buyer's act of accepting or paying for any shipment or any similar act of Seller. If the Purchase Order is sent to Seller in response to a quotation or an offer of Seller submitted to Buyer, the terms of the Purchase Order including these Terms and Conditions, will supersede and control all provisions in the quotation or offer of Seller and be a rejection of such quotation or offer and an offer to Seller. If a written agreement signed by Buyer and Seller covering the Products or Services addressed by the Purchase Order already exists, then such written agreement is hereby incorporated into the Purchase Order, becomes part of the Agreement, and prevails over any conflict or inconsistency with these Terms and Conditions. Upon acceptance, the Purchase Order together with these Terms and Conditions and any other documents specifically incorporated in the Purchase Order or separately agreed to in writing, such as specifications, drawings, requirements of Buyer's customer, or quality requirements will become a binding contract between Buyer and Seller (collectively, the "Contract"). Only these Terms and Conditions and any other terms set out in a Purchase Order or document referenced in these Terms and Conditions shall be binding upon the parties. No objection to these Terms and Conditions or reservation of rights by Seller shall be effective. **TERMS AND CONDITIONS IN AN ACKNOWLEDGEMENT OF A PURCHASE ORDER, OFFER OR OTHER SELLER DOCUMENT INCONSISTENT WITH OR IN ADDITION TO THE TERMS AND CONDITIONS OF A PURCHASE ORDER ARE NOT BINDING UPON BUYER (UNLESS SPECIFICALLY ACCEPTED BY BUYER IN WRITING), AND BUYER HEREBY OBJECTS THERETO.** No course of performance or dealing by the parties shall be construed to waive, modify or otherwise adversely affect Buyer's rights or Seller's obligations. Specific terms and conditions on the Purchase Order and the other documents comprising the Contract will take priority over any inconsistent provision in these Terms and Conditions.

## **2.2. AMENDMENT TO TERMS**

No exception to, deviation from, or waiver of these Terms and Conditions shall be valid or binding on Buyer unless specified on the face of a Purchase Order or Purchase Order amendment or made in a signed writing by Buyer's authorized representative. Any such exceptions, deviations or waivers shall apply only to the specific Purchase Order for which they are granted and shall not constitute a course of dealing.

## **2.3. PURCHASE ORDER CHANGES**

Buyer may from time to time by notice to Seller make changes, within the scope of the Contract, to the drawings, specifications, materials, packaging, testing, quantity, time, or method of delivery or shipment, or similar requirements prescribed in the Contract. Within ninety (90) days of such notice, at Seller's request with appropriate supporting documentation, the parties will negotiate an equitable adjustment based on a fair cost assessment to the Contract prices and times for performance as a result of Buyer's changes. Time is of the essence for a request for an equitable adjustment. Contract changes must be in writing and signed by Buyer's and Seller's authorized representative.

## **3. PRODUCTS AND SERVICES**

### **3.1 QUANTITY**

If quantities or delivery schedules are not specified in the Contract, they will be as reasonably determined by the Buyer and stated in the Buyer's releases issued to Seller from time to time. Buyer will not be required to make payment for Products delivered or Services performed by Seller that are in excess of the quantities specified in the Purchase Order. Buyer may return over-shipments to Seller at Seller's expense. Unless otherwise specifically stated in the Contract, the Contract is not exclusive and Buyer may purchase similar products and services from third parties.

### **3.2 CURRENT-MODEL SERVICE REQUIREMENTS**

During the term of a Contract, Seller will make Products covered by the Contract available to Buyer for Buyer's current-model service requirements at the then-current production prices under the Contract, plus any additional costs for special packaging, shipping and handling, and other related Services that have been approved by the Buyer.

### **3.3 PAST-MODEL SERVICE REQUIREMENTS**

If a Contract remains in effect at the end of the vehicle production program in which Products covered by the Contract are incorporated, Seller will also make those Products available to Buyer for Buyer's past-model service requirements during the longer of: (i) for a period of at least ten (10) years after the end of the vehicle production program; or (ii) such time period granted to Buyer's customers for service and replacement parts. Current-model production pricing will hold for past-model service products for a minimum of three (3) years after end of vehicle production program. After the three (3) year window has passed and additional negotiations become necessary, the parties will negotiate in good faith the prices, quantities, and delivery terms for past-model service Products based on the availability and cost of needed materials, supplies, skilled workers, plus additional costs for equipment setup, packaging, shipping and handling, related services, and other relevant factors. During the tenth (10<sup>th</sup>) year of such period, Buyer and Seller will negotiate in good faith with regard to Seller's continued manufacture of past-model service products.

## **4. DELIVERY**

### **4.1 PACKAGING AND SHIPMENT**

Buyer may specify the method of transportation and the type of and number of packing slips and other documents to be provided with each shipment. Seller will pack and ship Products in accordance with Buyers General Packaging Specification instructions, including labeling and hazardous materials instructions. If Buyer has not provided packing or shipping instructions, Seller will pack and ship Products in accordance with industry standard practices. If Seller is required to use Buyer's returnable

packaging, Seller will be responsible for cleaning and returning the returnable packaging.

## **4.2 DELIVERY SCHEDULES**

Seller will deliver Products and Services in strict accordance with the Contract terms. Time is of the essence with respect to the delivery of Products and Services. Unless otherwise stated in the Purchase Order, Products will be delivered FCA Seller's dock (Incoterms 2020) and title will transfer upon receipt of the products by the freight carrier. If Products are not ready for delivery in time to meet Buyer's delivery schedules, the party causing the delay will be responsible for any and all additional costs of any resulting expedited or other special transportation. Buyer will be responsible for additional costs of expedited or other special transportation that Buyer may require as a result of changes the Buyer makes to its releases or delivery schedules or for other reasons caused by the Buyer. Seller shall be responsible for additional costs of expedited or other special transportation that are necessitated by the Seller and all other causes.

## **5. INSPECTION**

Buyer may, upon reasonable advance notice to Seller, inspect production processes and property and, subject to Seller's prior written approval which shall not be unreasonably withheld, conduct testing at Seller's premises for the sole purpose of verifying Seller's performance under the Contract. Buyer is not required to inspect Products delivered or Services performed, and no inspection or failure to inspect will reduce or alter Seller's obligations under the Contract.

## **6. FEES AND PAYMENT**

### **6.1 FEES**

All compensation payable to Seller for providing Products and Services, and all expenses for which Buyer will be required to reimburse Seller, will be specified in the Purchase Order. Buyer will not be obligated to pay Seller any other or additional amounts for the Products and Services, or reimburse Seller for any other expenses, other than those expressly described in the Purchase Order. That certain Nippon Seiki Sourcing Agreement between Buyer and Seller will determine price increase as a result of any increase in Seller's cost of raw materials, labor, or any other price increase of any kind. Buyer will be responsible for the payment of any sales or use taxes levied as a result of Products and Services provided under the Purchase Order, provided that such taxes must be listed separately on the invoice. Each party will be responsible for any personal property taxes on property it owns or leases, for franchise and privilege taxes on its business, and for taxes based on its net income or gross receipts. Seller will be solely responsible for the remuneration of and the payment of any and all taxes with respect to its employees and subcontractors and any claims with respect thereto and will be solely responsible for the withholding and payment of all federal, state, and local income taxes as well as all other taxes applicable to it, its employees and its subcontractors.

### **6.2 INVOICING, PAYMENT AND SETOFF**

All invoices issued pursuant to the Purchase Order will reference the Purchase Order number provided by Buyer. All undisputed amounts on each such invoice will be due and payable by Buyer within sixty (60) days of receipt thereof from Seller. Seller will invoice Buyer no later than 30 days after the end of the calendar month in which any amounts become due and payable by Buyer to Seller under the Purchase Order. If Buyer disputes any amount in an invoice in good faith, Buyer will pay the undisputed portion of such invoice when due and payable and may, at its option, withhold the disputed portion pending the resolution of such dispute. In addition to any right of setoff or recoupment provided by law, Buyer may set off against or recoup from any amounts due or to become due to Seller or its Affiliates any indebtedness or obligation of, or amount owing by, Seller or its Affiliates to Buyer or its Affiliates, however and whenever arising.

## **7. PRODUCT WARRANTIES**

### **7.1 SELLER'S WARRANTIES**

In addition to Seller's customary warranties, any express warranties set forth in a Contract, any statutory warranties or any express warranties implied by law, Seller expressly warrants that all Products or Services rendered under a Contract and all other orders: (i) do not, and are not claimed to, infringe or misappropriate any patent, trademark, trade secret, copyright or other intellectual property right, and may be properly imported into the United States or any other country; (ii) shall strictly conform with all the Contract requirements, along with specifications, drawings, statements on containers or labels, descriptions and samples furnished or specified by the Buyer or Seller; (iii) shall be free from all defects in design, material, and workmanship and shall be new and of the highest quality; (iv) Buyer shall receive title to the goods which is free and clear of any liens, encumbrances, or rights of third parties (except those created by Buyer); (v) the goods shall be merchantable, sale and fit for Buyer's intended purposes, which purposes Seller acknowledges are known to it; (vi) shall be adequately contained, packaged, marked and labeled; (vii) shall be performed in a competent, workmanlike manner; (viii) shall be in compliance with all applicable federal, state, and local laws, regulations, industry standards or other standards, labeling, transporting, licensing, approval or certification requirements in the United States or any other country where the Products or Services will be sold or used. These warranties shall survive inspection, test, delivery, acceptance, use and payment by the Buyer and shall inure to the benefit of the Buyer, its successors, assigns, customers, and the users of the Buyer's goods and services. These warranties may not be limited or disclaimed.

## **7.2 NON-CONFORMING PRODUCTS**

In the event any Products or Services do not conform to the warranties in **Section 7.1**, Buyer may: (i) reject the non-conforming Products or Services; (ii) require Seller, at Seller's option and expense (including applicable shipping, transportation, and installation costs), to either repair or replace the non-conforming Products or Services; (iii) correct or replace the defective items with similar items and recover the total cost relating thereto from Seller, including the cost of product recalls, costs imposed by an upstream customer, and costs and attorney fees incurred in the enforcement of Buyer's rights under Section 7; and/or (iv) 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 a substantial quantity of incoming Products does not conform to the warranties in **Section 7.1**.

## **7.3 PRODUCT RECALLS**

This **Section 7.3** applies to any voluntary or government-mandated offer by the Buyer (or the vehicle or product manufacturer) to vehicle purchasers to remedy an alleged defect that affects motor vehicle safety or to address an alleged failure of a vehicle to comply with an applicable motor vehicle safety standard or guideline (a "**Recall**"). Except as otherwise stated in the Contract, Seller will be liable for costs and damages, along with costs and attorney fees incurred in connection with a Recall to the extent such Recall is caused by Seller. Buyer and Seller shall negotiate in good faith the Seller's liability on a case-by-case basis based on (i) a good faith allocation of responsibility for the Recall; (ii) the reasonableness of the costs and damages incurred; (iii) the quantity purchased and Contract price of the affected Products; and (iv) other relevant factors. As circumstances should allow, in the Buyer's sole discretion, the Buyer shall notify the Seller, as soon as practicable after Buyer learns that a Recall is being considered implicates the Products. Upon Buyer's request, the Seller shall provide available performance evaluations, accident reports, engineering investigations, and other data relating to the potential Recall, and information regarding the most cost-effective method of modifying or replacing vehicle systems or component parts, including the Products, in order to remedy the alleged defect or non-compliance.

## **8. PRODUCT LIABILITY**

### **8.1 INDEMINIFICATION**

To the full extent permitted by applicable law and independent of any insurance, Seller agrees to indemnify, hold harmless and defend Buyer and its Affiliates, and its and their directors, officers, employees, successors, assigns, agents, and customers ("**Indemnities**") from and against any and all

damages, losses, claims, liabilities, expenses (including but not limited to court damages, economic loss and loss of profits, warranty sharing and fines and penalties) arising out of or resulting in any way from: (i) Seller's breach of its representations, warranty, or obligations under the Contract (ii) any defect in the Product delivered or Services rendered under this Contract, (iii) that a Product, or Buyer's use thereof, misappropriates or infringes a third party's copyright, patent, trade secret, trademark or other intellectual property right, (iv) any injury to any person (including death) or damage to property caused by the Seller, its employees, agents, or subcontractors ("**Seller and its representatives**"); or (v) any other act or omission of Seller and its representatives pursuant to this Contract or in connection with their provision of any Products or performance of any Services for, and/or on the premises of the Buyer, except that the Seller shall not be responsible for or relieve Buyer from liability for claims arising from the willful misconduct or the sole negligence of the Buyer. This indemnification obligation shall be in addition to the Seller's warranty obligations. If a claim under this **Section 8.2** results, or is likely to result, in an injunction or other order that would prevent the Seller from supplying or Buyer from using Products for their intended purpose, Seller will at Buyer's option and Seller's expense, (a) secure a license of the Intellectual Property Right that permits Seller to continue supplying the Products to the Buyer, (b) modify the Products so that they become non-infringing, so long as the modification does not materially alter the operation or performance of the Products, (c) replace the Products with non-infringing but practically equivalent products; or (iv) if (a)-(c) are not possible despite Seller's commercially reasonable efforts, Buyer may terminate this Contract upon written notice to Seller and Seller shall promptly refund any prepaid fees for applicable Products or Services.

## **8.2 PROCEDURE**

Buyer will notify Seller promptly after Buyer becomes aware of the basis for a claim under this **Section 8**, provided that any delay in providing such notice will not relieve Seller of its indemnification obligations unless it is materially prejudiced thereby. The parties will cooperate with each other to attempt to determine the root cause of a defect in or failure of the Products (and related systems and components) and to attempt to reach an equitable allocation of responsibility among all responsible parties. Buyer, in its sole discretion, may allow Seller the opportunity to examine and test all available Products and related systems and components that are subject to a claim under this Section 8. Buyer may endeavor to include the Seller in settlement discussions where indemnity has been or will be sought from the Seller, and Buyer may not settle or compromise any third-party claim that gives rise to an indemnification claim without the Seller's prior written consent, which will not be unreasonably withheld or delayed.

## **9. COMPLIANCE WITH LAWS**

Seller will comply with applicable laws, rules, and regulations of the country where the Products are manufactured, delivered or utilized or the Services are performed, delivered or utilized. Seller will provide the Buyer with material safety data sheets regarding the Products and, upon Buyer's request, will provide the Buyer with other information reasonably required in order to comply with applicable laws.

## **10. INTELLECTUAL PROPERTY RIGHTS**

### **10.1 BUYER'S INTELLECTUAL PROPERTY**

Buyer does not transfer to Seller any patent, trade secret, trademark, service mark, copyright, mask work, or other intellectual property right ("**Intellectual Property Right**") of Buyer in Buyer Data, Buyer Confidential Information, or other information documents, or property that the Buyer makes available to Seller under the Contract, other than the right to use Buyer's Intellectual Property Rights to produce and supply Products and Services to the Buyer.

### **10.2 SELLER'S INTELLECTUAL PROPERTY**

Except as stated in this **Section 10.2**, Seller does not transfer to the Buyer any Intellectual Property Right of Seller related to the Products or Services or incorporated in Buyer's Property, other than the right to incorporate Products purchased from Seller in vehicles and component parts, to sell those vehicles and component parts to the public and for Buyer's other business purposes. Seller grants to



Buyer a non-exclusive, perpetual, worldwide, fully paid-up right and license to use the Seller's Intellectual Property Rights for the foregoing purposes and to obtain from alternate sources products and services similar to the Products and Services for use in vehicles or component parts as permitted by this Contract.

## **11. PROPERTY**

### **11.1 BUYER'S PROPERTY**

(a) Buyer will own the tooling, jigs, dies, gauges, fixtures, molds, patterns, supplies, materials, and other equipment and property used by Seller to manufacture, store, and transport Products or provide Services ("**Property**") if (i) the property is so designated in the Purchase Order, or (ii) Buyer or its customer has provided or paid for the Property ("**Buyer's Property**"). Seller will assign to Buyer contract rights or claims in which Seller has an interest with respect to Buyer's Property and execute bills of sale, financing statements, or other documents reasonably requested by the Buyer to evidence its or its customer's ownership of Buyer's Property. Seller will indemnify, defend and hold Buyer harmless against claims or liens adverse to Buyer's or its customers' ownership of Buyer's Property, except those that result from the acts or omissions of Buyer. 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 law, Seller waives any lien or similar right it may have with respect to Buyer's Property. Buyer will be responsible for personal property taxes assessed against Buyer's Property.

(b) Seller will (i) at its expense maintain Buyer's Property in good condition and repair, normal wear and tear excepted, throughout the useful life of Buyer's Property, (ii) use Buyer's Property only for the manufacture, storage, and transport of Products for Buyer unless Buyer otherwise approves in writing, (iii) at Buyer's request and expense, mark Buyer's Property as belonging to Buyer or its customer, and (iv) not remove Buyer's Property (other than shipping containers and the like) from Seller's premises without Buyer's written approval. All replacement parts, additions, improvements, and accessories to Buyer's Property will become part of Buyer's Property unless they can be removed without damaging the Buyer's Property.

(c) Buyer will pay for the Buyer's Property that it is required to purchase at the amount specified in the Contract or, if no amount is specified in the Contract, at (i) Seller's actual cost of the Buyer's Property, if manufactured by a third party, or (ii) Seller's actual cost of purchased materials, components, and services plus Seller's actual cost of labor and overhead allocable to the Buyer's Property, if manufactured by the Seller. Unless otherwise stated in the Contract, final payment for the Buyer's Property is due (a) on the vehicle manufacturer's PPAP (Production Part Approval Process) approval date, or (b) within 90 days after the Property is tendered for PPAP approval if no action has then been taken on the request for PPAP approval.

(d) Seller will immediately release to Buyer upon request, and Buyer may retake immediate possession of, Buyer's Property and other property of Buyer or its customers at any time, with or without cause and without payment of any kind unless otherwise provided in the Contract. Seller will release the requested Property and other property to Buyer F.C.A Seller's plant (Incoterms 2020), properly packed and marked in accordance with the requirements of the Buyer's carrier. If the release or recovery of Buyer's Property or other property renders Seller unable to produce a Product, the release or recovery will be deemed a termination of the Contract with respect to that Product pursuant to **Sections 12 or 13**, as applicable.

(e) If Seller does not release or deliver the Buyer's Property or other property of Buyer or its customers in accordance with **Section 11.1 (d)**, Buyer may at Seller's cost (i) obtain an immediate court order for possession without notice and without posting a bond, and (ii) enter Seller's premises, with or without legal process, and take immediate possession of Buyer's Property and the other property. Buyer shall be entitled to recover from Seller any and all costs and attorney fees of such enforcement. To the extent permitted by law, Seller waives any right to object to Buyer's repossession of Buyer's Property and the other property in a bankruptcy or other proceeding.

## 11.2 SELLER'S PROPERTY

Seller will own all Property that is not Buyer's Property ("**Seller's Property**"). Seller will at its expense furnish, maintain in good condition, and replace when necessary Seller's Property needed to perform the Contract. Buyer may purchase Seller's Property used exclusively to produce those Products and not needed by the Seller to produce Products or products for other customers, for a purchase price equal to the greater of fair market value or Seller's unamortized acquisition cost.

## 12. TERM AND TERMINATION

(a) The term of the Contract shall be co-terminous with the applicable Purchase Order or that certain Sourcing Agreement between the parties.

(b) Buyer may terminate this Contract, or any terms or condition under this Contract for cause in the event of any Default by providing written notice to Seller. In addition to the foregoing, Buyer may terminate this Contract by providing written notice to Seller for the following reasons: (i) late deliveries; (ii) deliveries of Product or Services that are defective or that do not conform to this Contract; (iii) failure upon request to provide the Buyer with reasonable assurances of future performance; (iv) insolvency of the Seller; (v) the execution by Seller of an assignment for the benefits of creditors; (vii) if the Seller is a party to a merger, consolidation, or other extraordinary corporate transaction in which it is not the surviving entity. In the event of termination of the Contract by the Buyer under this Section 12(b), Buyer shall not be liable to Seller for any amount, and the Seller shall be liable to Buyer for all damages, direct or indirect, consequential and incidental, sustained by reason of the default which gave rise to the termination, including, but not limited to, excess costs incurred by the Buyer as a result of obtaining the goods and services from another source.

(c) Buyer reserves the right to terminate this Contract or any term or condition under this Contract, in whole or in part, at any time or from time to time, for its sole convenience. In the event of such termination, Seller shall immediately stop all work and cause all of its subcontractors to cease and work on the portion of the Contract so terminated. Upon approval by the Buyer, as Seller's sole compensation for the Buyer's termination of the Contract or portions thereof, Seller shall be paid the price set forth in the applicable Purchase Order for any Products and Services completed prior to the date of termination and accepted by the Buyer. Within 30 days after receipt of a termination notice, Seller shall submit its final invoice to Buyer for such completed Products and Services. Buyer reserves the right to verify the invoice by auditing all relevant records. Seller shall not be paid for any Services performed or Products manufactured after receipt of the notice of termination, nor for any costs incurred by Seller's subcontractors. In no event shall the Buyer be liable for loss of profits, overhead, general and administrative charges, product development and engineering costs, interest, finance or hedging costs, unamortized depreciation costs, or any other direct or indirect cancellation charges or damages of any kind. Seller covenants not to bring any claims of any kind for any such losses, costs, charges or damage. Seller shall transfer title and deliver to Buyer, if so requested by Buyer, all undelivered Products, tools, work in process or raw materials paid for by Buyer.

## 13. DEFAULT

Either party will be in "**Default**" under the Contract if it (i) materially fails to perform any obligation under the Contract and, if the non-performance can be cured, fails to cure the non-performance within 15 business days after notice from the other party specifying the non-performance, (ii) admits in writing its inability to pay its debts as they become due, commences a bankruptcy, insolvency, receivership, or similar proceeding, or makes a general assignment for the benefit of creditors, or (iii) becomes a debtor in a bankruptcy, insolvency, receivership, or similar proceeding commenced by a third party that is not dismissed within thirty (30) days after commencement.

(a) If the Seller is in Default, Buyer's damages will include the reasonable costs actually incurred to relocate the work to an alternate source, and Buyer may purchase completed Products at the Contract price and work-in-process and raw materials at Seller's actual cost.

## **14. CONFIDENTIAL INFORMATION**

### **14.1 CONFIDENTIAL INFORMATION**

Seller and Buyer (as applicable, the “**Receiving Party**”) each acknowledge that they may be furnished with, receive, or otherwise have access to confidential or proprietary information of or concerning the other party or its Affiliates (“**Disclosing Party**”) which such party considers to be confidential, a trade secret, or otherwise restricted (“**Confidential Information**”). As used herein, “**Confidential Information**” includes without limitation: (i) the Purchase Order; (ii) any personally identifiable information or financial information of any customer of Disclosing Party or its Affiliates; (iii) all information concerning the operations, affairs, finances, technologies, strategies, intellectual property and business of Disclosing Party or its Affiliates, and the customers, employees, dealers and service providers of Disclosing Party or its Affiliates, (iv) Buyer Data; and (v) NPPI, each as defined herein. Confidential Information does not include information that: (a) is or becomes known to the public through no fault of the Receiving Party; (b) is already known to the Receiving Party prior to its receipt or becomes known to the Receiving Party by disclosure from a third party who has a lawful right to disclose the information; (c) is known to the Receiving Party from its own independent development without reference to the Confidential Information of the Disclosing Party, as reasonably established by the Receiving Party; or (d) is authorized to be disclosed by prior written consent of the Disclosing Party; provided, however, that the foregoing exclusions will not in any event apply to NPPI, which information will always be deemed Buyer’s Confidential Information.

### **14.2 NONDISCLOSURE**

Except as expressly set forth herein, the Receiving Party agrees that it will have no proprietary interest in the Confidential Information of the Disclosing Party and the Receiving Party acknowledges and agrees that it will not use the Disclosing Party’s Confidential Information for any purpose other than to perform its obligations under the Contract and that it will not disclose any such Confidential Information to any third party, except to its and its Affiliates employees, agents, subcontractors, independent contractors and other representatives (“**Representatives**”) who have a need to know such Confidential Information to perform their duties under the Contract, provided that such individuals are bound by confidentiality obligations no less restrictive than those set forth herein. The Receiving Party will be liable for any breach of this Agreement by its Representatives. In the event the Receiving Party becomes legally compelled to disclose any Confidential Information, to the extent legally permitted, it will provide the Disclosing Party with prompt notice thereof to give the Disclosing Party the opportunity to seek a protective order or other appropriate remedy to curtail the disclosure. If protective actions by the Disclosing Party are unsuccessful, or the Disclosing Party otherwise waives its right to seek those remedies, the Receiving Party will disclose only that portion of the Confidential Information which it is legally required to disclose.

### **14.3 OWNERSHIP, RETURN AND LOSS OF CONFIDENTIAL INFORMATION**

All Confidential Information will remain the property of the Disclosing Party. The Receiving Party will return or permanently destroy all of Disclosing Party’s Confidential Information promptly upon receipt of the Disclosing Party’s request, provided that Receiving Party may retain Confidential Information of the Disclosing Party to ensure compliance with the Contract and/or to comply with its document retention policies, provided that any retained Confidential Information shall remain subject to the confidentiality obligations herein. The means of media or data destruction must ensure that Confidential Information is permanently destroyed and cannot be subsequently accessed or read based on commercially reasonable standards. In the event Disclosing Party becomes aware of any disclosure, loss of, or unauthorized access to any Confidential Information of the Disclosing Party, the Receiving Party will immediately notify the Disclosing Party and take any actions reasonably requested by, and provide all reasonable cooperation with, the Disclosing Party to minimize the disclosure or loss and mitigate any associated damage.

### **14.4 PRIVACY ACT AND REGULATIONS**

Seller expressly understands and acknowledges that Buyer's Confidential Information may include "non-public personal information" about the customers of Buyer or its Affiliates ("**NPPI**"), as that term is defined in Title V of the federal Gramm-Leach-Bliley Act ("**GLBA**") and the regulations promulgated thereunder (including 16 CFR § 313, 16 CFR § 314, 12 CFR § 332 and 12CFR § 364), any state statutes and regulations adopted to mirror, supplement or exceed GLBA or the regulations promulgated thereunder, and any successor statutes and regulations to the foregoing (collectively, the "**Privacy Act and Regulations**"). Without exception, Seller will not use or disclose any NPPI it receives in violation of the Privacy Act and Regulations or for purposes other than those necessary to carry out its obligations under the Purchase Order. Seller will maintain the confidentiality of the NPPI to the same extent as would be required for Buyer to satisfy requirements of the Privacy Act and Regulations. In addition, Seller will implement and maintain safeguards for the NPPI it receives consistent with the requirements of the Privacy Act and Regulations, including safeguards to (i) ensure the security and confidentiality of such information, (ii) protect against anticipated threats or hazards to the security or integrity of such information, and (iii) protect against unauthorized access to or use of such information.

#### **14.5 BUYER DATA**

All data and related information, including documentation, analytics and other materials, produced by Buyer, obtained by Seller from Buyer, collected by Seller on Buyer's behalf, or otherwise derived therefrom ("**Buyer Data**") is and will remain the exclusive property of Buyer. Buyer Data shall constitute Buyer's Confidential Information. Seller will not possess or assert any lien or other rights against Buyer Data. No Buyer Data will be sold, assigned, leased, or otherwise disposed of to third parties by Seller or commercially exploited by or on behalf of Seller, its employees or agents. Upon Buyer's request at any time, Buyer Data (including all copies thereof) will be promptly returned to Buyer by Seller in a form reasonably requested by Buyer or, if Buyer requests, will be destroyed.

#### **14.6 AUDIT RIGHTS**

Seller will maintain a complete audit trail of all transactions resulting from the Purchase Order. Seller will provide to Buyer and its auditors, inspectors, regulators, and other representatives of Buyer and its Affiliates access at all reasonable times to Seller's facilities, personnel, data and Records for the purpose of performing audits and inspections of Buyer and its business, and to examine Seller's performance of its obligations under the Purchase Order, including without limitation: (i) to permit evaluation and verification of any invoices, payments, or claims submitted by Seller; (ii) to secure tax, expense, depreciation, and similar information; and (iii) to examine any matters necessary to enable Buyer to meet regulatory requirements.

#### **14.7 RECORDS RETENTION**

Until the later of (i) all pending matters relating to the Purchase Order (e.g., disputes) are closed, or (ii) seven years after the termination or expiration of the Purchase Order (as such period may be extended due to adjustments in regulatory requirements or Buyer's records retention policy), Seller will maintain, and, upon Buyer's request, provide electronic and/or physical access to all of Seller's records and documentation related to the Purchase Order to Buyer, including memoranda, work logs, usage reports, project reports, accounting records, policies, and procedures ("**Records**").

### **15. RELATIONSHIP OF THE PARTIES**

The relationship of Seller to Buyer will be that of an independent contractor. Neither Seller nor any of Seller's personnel will have any authority to execute contracts or make commitments on behalf of Buyer. Nothing contained in the Purchase Order will be deemed to create the relationship of employer and employee, principal and agent, joint venture or partner between Seller and Buyer. Seller acknowledges that, as an independent contractor, neither it nor any of its employees or subcontractors will be eligible for any Buyer employee benefits. Seller agrees that it will be solely responsible for, and will indemnify and hold harmless Buyer and its Affiliates against, all expenses in connection with Seller's employment of Seller personnel in connection with the Services or Products, including without limitation: (i) payment of wages and benefits; (ii) withholding of all payroll taxes; (iii) compliance with the Immigration Reform Control Act; and (iv) compliance with any law or regulation relating to employment of any employee of

Seller. If any Seller personnel performing Services under the Purchase Order is unacceptable to Buyer, Buyer will have the right to notify Seller, in writing, and Seller will promptly remove such personnel from performing Services under the Purchase Order. Seller will not subcontract its obligations under the Purchase Order, unless (and to the extent that) Buyer agrees in writing. Seller will be responsible for obligations of, and Services and functions performed and Products provided by, Seller's subcontractors to the same extent as if Seller performed or provided such obligations, services, functions and Products itself, and for purposes of the Purchase Order such work will be deemed work performed by Seller and such Products will be deemed Products provided by Seller.

## **16. ASSIGNMENT AND SUBCONTRACTING**

Neither party may assign or subcontract its duties or responsibilities under the Contract without the prior written consent of the other party, which will not be unreasonably withheld or delayed. Unless otherwise stated in the consent, any assignment or subcontracting by Seller, with or without the required consent, will not relieve Seller of its duties or obligations under the Contract or its responsibility for non-performance or Default by its assignee or subcontractor.

## **17. FORCE MAJEURE**

Neither party shall be liable for defaults due to acts of God or the public enemy, acts or demands of any government or any government agency, strikes, fires, floods, or other unforeseeable causes beyond its control and not due to its fault or negligence (each, a "Force Majeure Event"; provided, however, Force Majeure Event shall not include any labor problems or strikes relating to the workforce of Seller or its subcontractors or any commercial circumstances affecting pricing or availability of any goods or raw materials furnished by the Seller or its subcontractors. Each party shall promptly notify the other in writing of the cause of such Force Majeure Event after the beginning thereof. During the period of such delay or failure to perform by Seller, Buyer, at its option may purchase goods and services from other sources and reduce its schedules to Seller by such quantities, without liability to the Seller or have the Seller provide the goods and services from other sources in quantities and at times requested by the Buyer. Seller shall within 10 days of Buyer's request for adequate assurances provide Seller's assurances that the Force Majeure Event shall not exceed 30 days. If the Force Majeure Event lasts more than 30 days or the Seller does not provide adequate assurance that the Force Majeure Event will cease within 30 days, the Buyer may immediately cancel the Contract without liability as set forth in **Section 12.**

## **18. LABOR CONTRACTS**

Whenever the Seller has knowledge of any actual or potential cause or event which delays or threatens to delay the timely performance of any Contract order or delivery, Seller shall immediately give Buyer written notice thereof, including all relevant information related to such delay. Seller shall promptly notify Buyer in writing of any actual or potential labor dispute delaying or threatening to delay timely performance of this Contract. Seller shall notify Buyer in writing six (6) months in advance of the expiration of any current labor contracts. Seller shall deliver a supply of finished Products at least thirty (30) days prior to the expiration of any such labor contract, in quantities and for storage at sites designated by the Buyer. Seller will use commercially reasonable efforts to comply with Buyer's written directions prior to expiration of the current labor contract and until the current labor contract has been extended or a new contract completed. By authorizing the additional inventory, Buyer commits to buy the entire quantity of conforming Products requested and produced. Seller is responsible for carrying costs and any additional costs of manufacture.

## **19. CUSTOMS**

Transferable credits or benefits associated with Products purchased, including trade credits, export credits, or rights to the refund of duties, taxes, or fees, belong to the Buyer unless otherwise prohibited by applicable law. Seller will provide Buyer with all information and records relating to the Products necessary for Buyer to (i) receive those benefits, credits, and rights (ii) fulfill any customs obligations, origin marking or labeling requirements, and certification or local content reporting requirements, (iii) claim preferential duty treatment under applicable trade preference regimes, and (iv) participate in any

duty deferral or free trade zone programs of the country of import. Seller will obtain all export licenses and authorizations and pay all export taxes, duties, and fees unless otherwise stated in the Contract, in which case the Seller will provide all information and records necessary to enable Buyer to obtain those export licenses or authorizations.

## **20. CONFLICT MINERALS**

Seller will disclose whether Products contain any conflict minerals as defined under Section 1502 of the U.S. Dodd-Frank Act (“**Conflict Minerals Law**”) and its implementing regulations that are necessary to the production or functionality of the Product. If Products contain any conflict minerals Seller must: (i) assure that those conflict minerals are “DRC conflict-free” as defined in the Conflict Minerals Law; (ii) provide on request information on conflict mineral smelters in the relevant supply chains including whether those smelters are DRC conflict-free; (iii) provide on request such other information as Buyer may reasonably require to determine the DRC conflict-free status of conflict minerals used in Products.

## **21. INSURANCE**

Prior to commencing work on Buyer’s premises or utilizing Buyer’s property (including Buyer’s Property), Seller will maintain and furnish to Buyer a certificate evidencing (i) general liability insurance with coverage for tooling, warranty cost, inventory, non-conforming cost, fire and natural disaster reasonably acceptable to the Buyer and naming Buyer as an additional insured, (ii) all risk property perils insurance covering the full replacement value of Buyer’s Property while in Seller’s care, custody, or control and naming Buyer as loss payee, and (iii) worker’s compensation insurance as required by applicable law. Seller shall provide Buyer with thirty (30) days advance written notice in the event of any termination or reduction in amount of scope of coverage. If Seller provides Services to Buyer on Buyer’s premises, Seller will examine the premises to determine whether they are safe or such Services and will advise Buyer promptly of any situation it deems to be unsafe. Seller’s employees, contractors and agents will not possess, use, sell or transfer illegal drugs, medically unauthorized drugs or controlled substances, or unauthorized alcohol, and will not be under the influence of alcohol or drugs on Buyer’s premises. Seller shall be exclusively responsible for, and shall indemnify, defend and hold Buyer harmless from liability for all loss, expense, damage, or claims resulting from bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any person or persons, or on account of damage to or destruction of property, including that of the Buyer, arising out of, or in connection with the performance of Services on Buyer’s premises except that the Seller shall not be responsible for or relieve Buyer from liability for claims arising from the willful misconduct or the sole negligence of the Buyer.

## **22. DISPUTE RESOLUTION**

### **22.1 NEGOTIATION AND MEDIATION**

Buyer and Seller will first endeavor to resolve through good faith negotiations any dispute arising under the Contract. If a dispute cannot be resolved through good faith negotiations within a reasonable time, either party may request non-binding mediation by a mediator approved by both parties.

### **22.2 ARBITRATION**

If mediation fails to resolve the dispute within 30 days after the first mediation request by any party, either party may submit the dispute to binding arbitration by notice to the other party. The arbitration proceedings will be conducted in Michigan, and a single arbitrator will be selected, in accordance with the rules of the National Center for Dispute Resolution or other rules approved by the parties and will be governed by the United States Arbitration Act, 9 U.S.C. 1-16 and this Section. The arbitration will be conducted at an agreed location or at a location selected by the arbitrator if the parties are unable to agree. The arbitrator will issue a written opinion setting forth the basis for the arbitrator’s decision, which may include an award of legal fees and costs. The arbitrator’s award will be final and non-appealable absent fraud or manifest error, and judgment on the arbitrator’s award may be entered in any court having jurisdiction. While arbitration proceedings are pending, Seller will continue to perform its obligations under the Contract without setoff for any matters being contested in the arbitration

proceedings.

### **22.3 LITIGATION**

The parties have selected binding arbitration as the sole means to resolve a dispute between them over claims that cannot be resolved through mediation. Either party may pursue through litigation claims for injunctive or other monetary relief.

## **23. MISCELLANEOUS**

### **23.1 ADVERTISING**

During and after the term of the Contract, the Seller will not advertise or otherwise disclose its relationship with the Buyer or Buyer's customers without Buyer's prior written consent.

### **23.2 AUDIT RIGHTS**

Buyer and its customers shall have the right at any reasonable time to examine all relevant documents, records, materials, equipment, tooling and goods in the possession or under the control of the Seller relating to any of Seller's obligations under this Contract. Seller agrees to cooperate in any such audit request by the Buyer. Any audit will be conducted at Buyer's expense (but will be reimbursed by Seller if the audit uncovers material errors in the amounts charged), at reasonable times, and at Seller's usual place of business.

### **23.3 ELECTRONIC COMMUNICATION**

Seller will comply with the method of electronic communication specified by the Buyer in Buyer's request for quotation and confirmed in the Contract, including requirements for electronic funds transfer, Purchase Order transmission, electronic signature, and communication. Seller will also make commercially reasonable efforts to comply with any modification to Buyer's specified method of electronic communication after the date of the Contract, subject to **Section 2.3**.

### **23.4 WAIVER**

The failure of either party to enforce any right or remedy provided in the Contract or by law on a particular occasion will not be deemed a waiver unless such waiver is in writing and such written waiver shall not waive that right or remedy on a subsequent occasion and shall not constitute a waiver of any other right or remedy.

### **23.5 ENTIRE AGREEMENT**

The Contract constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior oral or written representations or agreements by the parties with respect to the subject matter of the Contract, including Buyer's request for quotation and Seller's quotation unless specifically incorporated in the Contract. Except as authorized in **Section 2.3**, no subsequent terms, conditions, understandings, or agreements purporting to modify the terms of the Contract will be binding unless in writing and signed by both parties.

### **23.6 SEVERABILITY**

A finding that any provision of the Contract is invalid or unenforceable in any jurisdiction will not affect the validity or enforceability of any other provision of the Contract or the validity or enforceability of that provision in any jurisdiction.

### **23.7 INTERPRETATION**

When used in these General Terms and Conditions, "including" means "including without limitation" and terms defined in this singular include the plural and vice versa.

### **23.8 NOTICES**

Any notice or other communication required or permitted in the Contract must be in writing and will become effective on the date of actual receipt if the date of actual receipt is a business day or in the

next business day if the date of the actual receipt is not a business day.

**23.9 LIMITATION ON BUYER'S LIABILITY**

IN NO EVENT SHALL BUYER BE LIABLE TO SELLER FOR ANTICIPATED PROFITS OR FOR INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES. BUYER'S LIABILITY FOR A CLAIM OF ANY KIND FOR ANY LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH OR RESULTING FROM THE CONTRACT, OR FROM ANY PERFORMANCE OR BREACH, SHALL IN NO CASE EXCEED THE PRICE ALLOCABLE TO THE PRODUCTS OR SERVICES, WHICH DIRECTLY GIVES RISE TO THE CLAIM.

**23.10 GOVERNING LAW**

Unless otherwise agreed in writing, the Contract will be governed by and interpreted according to the laws of Michigan, excluding its conflict of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the Contract. Any legal or equitable actions arising out of or relating to the Contract shall be brought only in federal or state court in Michigan. Seller and Buyer agree that such court shall have personal jurisdiction over the parties.