

**Dee Zee, Inc.**

**North American Terms and Conditions of Purchase**

**Last revised August 30, 2017**

**1. General.**

1.1 These North American Terms and Conditions of Purchase and any applicable Country Supplement (collectively, "POTCs") are incorporated into and form a part of the purchase order and/or scheduling agreement issued by Dee Zee, Inc. and/or its North American affiliate(s) as specified in the purchase order and/or scheduling agreement, or revision thereto (the "**Order**"). The Order shall also include any provisions incorporated by reference therein pursuant to Section 2.2 below. The terms "**Buyer**" and "**Seller**" refer to the entities designated as such on the attached purchase order and/or scheduling agreement. The term "**Supplies**" refers to the supplies and/or services to be provided to Buyer by Seller as specified on the purchase order and/or scheduling agreement.

1.2 Seller acknowledges that Buyer is purchasing Supplies for use in a tiered supply chain, or under other circumstances in which timely manufacture and delivery is required, and that Buyer is relying upon Seller's agreement to timely manufacture and deliver to Buyer the Supplies at the price, in the quantities and on the other terms and conditions stated in the Order to allow Buyer to fulfill its contract to sell goods which incorporate the Supplies to Buyer's Customer. Accordingly, Seller may not terminate the Order before expiration. In the event Seller requests that Buyer resource the Supplies from Seller to a new supplier, Buyer may in its sole and absolute discretion refuse such request for any reason, including a refusal of such request at the direction of Buyer's Customer, in which case Seller must fully and faithfully perform its obligations under the Order for the remaining term of the Order. In the event Buyer elects to resource the Supplies to a new supplier in accordance with Seller's request, Seller shall (i) cooperate in all respects with the transition to the new supplier including, allowing Buyer, the new supplier and/or their respective agents to inspect the then current production processes being utilized at Seller's facility, granting to the new supplier a nonexclusive, royalty-free license to use any technology reasonably necessary (in Buyer's sole determination) for the new supplier to manufacture and sell Supplies to Buyer, and the removal from Seller's facilities of all Buyer-owned tooling (including manuals, logs and the like); (ii) reimburse Buyer for any PPAP (as defined in Section 6.1) costs that it may incur as a result of the resourcing; (iii) pay to Buyer the present value of any increased price for the Supplies over the expected life of the program prior to the time of resource; and (iv) fully comply with the provisions of the Order relating to the transition of supply, including as set forth in Section 16 below.

**2. Terms of the Order; Offer/Acceptance.**

2.1 The Order is an offer by Buyer to purchase the Supplies from Seller on the terms of the Order. The Order is effective, and a binding contract is formed, when Seller accepts the offer prior to the expiration of two (2) weeks following Buyer's delivery of the Order to Seller. Buyer shall have the right to rescind the Order at any time prior to Seller's acceptance. Seller shall be deemed to have accepted the Order upon the earliest of: (a) Seller commencing work or performance with respect to any part of the Order;

(b) Seller delivering written acceptance of the Order to Buyer; or (c) any conduct by Seller that fairly recognizes the existence of a contract for the purchase and sale of the Supplies. **The Order is limited to and conditional upon Seller's acceptance of the terms of the Order.** The Order does not constitute an acceptance of any offer, quote or proposal made by Seller, and Seller acknowledges and agrees that: (i) a request for quotation or similar document issued by Buyer is not an offer by Buyer; and (ii) any response by Seller to a request for quotation or similar document issued by Buyer is not an offer by Seller. In the event Seller accepts Buyer's Order other than by written acceptance pursuant to subsection (b) above, Buyer may cancel the Order in its sole and absolute discretion, without payment of any kind to Seller, if Seller refuses to provide written acceptance of the Order within two (2) business days following Buyer's written or oral request for such confirmation. Any additional or different terms proposed by Seller, whether in Seller's quotation, acknowledgement, invoice or otherwise, are unacceptable to and expressly rejected by Buyer, and are hereby waived by Seller and are not part of the Order. However, any proposed modification of the terms of the Order by Seller shall not operate as a rejection of the Order if Seller commences work or is otherwise deemed to have accepted Buyer's offer as provided above, in which case the Order shall be deemed accepted by Seller without any such proposed modifications. Any reference in the Order to Seller's quote or other prior communication shall not imply acceptance of any term, condition or instruction but is solely to incorporate the description or specifications of the Supplies, but only to the extent that such description or specifications are not in conflict with the description and specifications in the Order. If the Order is found to be an acceptance of any prior offer or proposal by Seller, such acceptance shall be limited to and conditional upon Seller's acceptance of the terms of the Order.

2.2 The following documents are incorporated into and shall be part of the Order: (i) any executed supply agreement between Buyer and Seller; (ii) Material Releases (as defined in Section 4.1 below) issued by Buyer to Seller under the Order; (iii) prints and specifications for the Supplies; (iv) Buyer's policies, as revised by Buyer from time to time; and (v) any written agreement between Buyer and Seller which provides therein that it shall be part of the Order. As used herein, the term "Buyer's policies" includes any statement of work applicable to the Supplies, quality assurance documents, logistics guidelines, packaging specifications, Seller's Manuals, Buyer's Quality Assurance Guideline for Sellers, Buyer's Logistics Manual, and Buyer's Delivery and Packaging Specifications, including but not limited to amendments or modifications to Buyer's policies as may be implemented by Buyer during the term of the Order. Buyer's policies may be obtained by contacting Buyer's assigned purchasing representative or by accessing Buyer's internet website ("**Buyer's Website**") at [www.deezee.com](http://www.deezee.com), or its successor website. The purchasing terms and conditions of Buyer's Customer (as defined below) will also be incorporated into and shall be part of the Order. "**Buyer's Customer**" means any entity to which Buyer, directly or indirectly, sells the Supplies, or sells any goods or services into which the Supplies are incorporated, including any original equipment manufacturer and any upper tier supplier to an original equipment manufacturer. Although Buyer may, from time to time and in its sole discretion, provide Seller with certain information regarding the applicable Buyer's Customer's terms and conditions, it is Seller's responsibility to determine if, and how, the Buyer's Customer's terms and conditions may affect Seller's obligations to Buyer and Buyer's Customer.

2.3 In the event of any ambiguities, express conflicts or discrepancies in the specification, drawings or other documents which are part of the Order, Seller shall immediately submit the matter to Buyer for its determination and the parties shall resolve the matter in mutual agreement.

2.4 This POTC applies to all Orders, including those with Sellers that Buyer's Customer has directed, recommended, requested, suggested or otherwise identified to Buyer as a source of the Supplies. Such "Sellers" and "Buyer's Customer", as provided under this Section 2.4, are hereinafter referred to as "Directed Sellers" and "Directing Customers", respectively.

2.5 The terms of each Order may include and where indicated are superseded by the Country Supplement for the country from which the Order is issued, or as specifically indicated in the Order, the country in which Seller is located.

2.6 The parties acknowledge that the Order, the POTCs and all documents related to them that are prepared in the English language will be interpreted and enforced in the English language.

### **3. Quantity.**

3.1 Unless otherwise stated in the Order, the Order is a requirements contract under which Buyer shall purchase all or a specified percentage of Buyer's requirements (as determined solely by Buyer) of Supplies from Seller for the time period specified in the Order or, in the case of Supplies used in motor vehicle manufacturing, unless otherwise specified in the Order, for the length of the applicable vehicle manufacturer's program production life (including model refreshes as determined by the vehicle manufacturer). If the Order states that it is a blanket order, Buyer commits to purchasing from Seller each of the Supplies and no more than 100% of Buyer's requirements of the Supplies. These orders are further subject to the Buyer issuing a release for specific quantities. Under no circumstances shall Buyer be required to purchase from Seller more than 100% of Buyer's requirements for the Supplies or, except as otherwise stated herein, any specific volume or percentage of Buyer's requirements for the Supplies.

3.2 From time to time Buyer may provide Seller with volume and/or quantity forecasts or projections for Buyer's Supplies needs or the anticipated duration of the program, if any, for which the Supplies are being produced. Seller acknowledges that the volume/duration projections, unlike a Material Release, are not binding on Buyer. Seller acknowledges and agrees that (i) the volume/duration projections may be based upon information supplied to Buyer by Buyer's Customer, contain variables and assumptions, some or all of which may change over time, may not have been accurate at the time that they were made, and/or are beyond the control of Buyer, (ii) Buyer makes no representation, warranty or guaranty of any kind or nature whatsoever as to the accuracy of the volume/duration projections, (iii) Buyer shall not have any obligation to correct or update any volume/duration projection (iv) the actual volumes/duration of Buyer's Supplies needs could be materially more or less than what was projected, and (v) Seller's reliance upon a volume/duration projection is at its own risk.

3.3 Buyer may require Seller, at Seller's expense, to participate in electronic data interchange or similar inventory management program for notification of Material Releases, shipping confirmation and/or other information relating to the Order.

#### **4. Delivery; Material Releases.**

4.1 Seller shall manufacture and ship Buyer's requirements for the Supplies in such quantities and at such time as identified by Buyer as firm orders in scheduling agreements, manifests or other similar releases ("Material Releases") that are transmitted to Seller from time to time during the term of the Order, and after consideration by Buyer of agreed upon lead times. Material Releases are incorporated into, and are an integral part of, the Order and are not independent contracts. No charge shall be allowed for packing, shipment or handling unless otherwise stated in the Order. All Supplies received in excess of the quantities in a Material Release shall be subject to return for credit at Seller's expense.

4.2 Time and quantities are of the essence under the Order. Seller agrees to 100% on-time delivery of the quantities and at the times specified by Buyer as contained on the Material Releases. Buyer is not obligated to accept early deliveries, late deliveries, partial deliveries, excess deliveries or any other delivery that is not a 100% on-time delivery ("Nonconforming Deliveries"). If Buyer elects in its sole and absolute discretion to accept one or more Nonconforming Deliveries, such acceptance shall not constitute a waiver of Buyer's right to reject any other shipment which does not conform to the Material Release.

4.3 Buyer may change the delivery rate of previously scheduled shipments or direct temporary suspension of scheduled shipments from time to time in its sole and absolute discretion, neither of which actions shall entitle Seller to modify Seller compensation, price or other terms or conditions set forth in the Order. If, as the result of any of Seller's acts or omissions, Seller shall fail to timely meet Buyer's delivery requirements and more expeditious methods of transportation for the Supplies are available, Seller shall ship the Supplies by a transportation method that will meet Buyer's requirement or, if that is not possible, by the most expeditious transportation method possible. In either such case, Seller shall be solely responsible for any incremental costs due to the more expeditious transportation method.

4.4 Unless otherwise agreed upon, all pricing and shipments are to be made DDP (as defined in Incoterms 2010 published by the International Chamber of Commerce) to Buyer's designated destination.

4.5 Seller warrants full and unrestricted title to Buyer for the Supplies delivered by Seller, free and clear of any and all liens, restrictions, reservations, security interests or encumbrances.

4.6 Upon written request by Buyer, Seller shall manufacture Supplies in excess of Buyer's current requirements as a reserve for shipment at such levels as may be set by Buyer from time to time in its sole and absolute discretion, for such reasons including an anticipated or actual inadequacy of supply, or other uncertainty relating to the supply or delay in the performance of Seller's obligations. Until such reserve Supplies are purchased by Buyer, they shall remain the property of Seller and shall be held by Seller at its sole risk and expense.

4.7 If Seller is responsible for set-up or installation under the Order, Seller shall bear all of the necessary and incidental costs, including, without limitation travel and living expenses and provision of tools and the like to accomplish Seller's obligations under the Order.

4.8 Seller shall comply with the Buyer's policy as it may be changed or updated from time to time by the Buyer in its sole discretion. Seller shall promptly provide Buyer with the following information in the form requested by Buyer: (i) a list of all substances or materials in Supplies; (ii) the amount of all substances or materials, and (iii) information concerning any changes in or additions to the substances or materials. Before Supplies are shipped, Seller shall give Buyer sufficient warning in writing (including appropriate labels on all Supplies, containers, and packing, including, without limitation disposal and recycling instructions, material safety data sheets and certificates of analysis) of any hazardous or restricted material that is a substance or material or is otherwise part of the Supplies, together with any special handling instructions that are needed to advise carriers, Buyer, and their respective employees or others handling the Supplies how to take appropriate measures while handling, transporting, processing, using or disposing of the Supplies, containers, and packing to best prevent bodily injury or property damage. Seller shall comply with all national, state, provincial, and local laws and regulations pertaining to product content and warning labels, including but not limited to the U.S. Toxic Substances Control Act and European Union Directive 2000/53/EC or any successor law.

## **5. Price; Payment Terms.**

5.1 The purchase price for the Supplies is set forth in the Order and is in U.S. Dollars unless otherwise stated. Unless otherwise stated in the Order, the purchase price: (i) is a firm fixed price for the duration of the Order and not subject to increase for any reason, including but not limited to increased raw material costs, increased labor or other manufacturing costs, increased development costs, currency fluctuations or changes in volumes or program length from those estimated or expected; (ii) is inclusive of all federal, state, provincial, value added and local taxes and any duties applicable to provision of the Supplies; and (iii) is inclusive of all storage, handling, packaging and all other expenses and charges of Seller. Seller shall separately invoice Buyer for any sales, value added, or similar turnover taxes or charges that Seller is required by law to pay or collect from Buyer.

5.2 Invoices shall be issued by Seller to Buyer no earlier than delivery of the Supplies to Buyer. Seller shall, at its sole expense, comply with Buyer's instructions and then current policies with respect to the form, content and method for submission of invoices. Seller shall promptly submit correct and complete invoices or other agreed upon billing communications with appropriate supporting documentation and other information reasonably required by Buyer after delivery of Supplies.

5.3 Unless otherwise stated in the Order, Buyer shall pay invoices for Supplies which are properly presented and not subject to dispute according to the terms stated in the Order. If no terms are stated in the Order or otherwise agreed to, Buyer shall pay net (60) days or 2% discount in (15) days after the later of (i) the Supplies being received and accepted at Buyer's facility, or (ii) Buyer's receipt of Seller's invoice. Buyer may withhold payment until a correct and complete invoice or other required information is received and verified. If the payment date is not a business day, payment shall be due the next

business day thereafter. Payment shall be deemed to occur upon transmittal by Buyer of any paper draft or Buyer's wire transfer of payment into the account of Seller.

5.4 Seller acknowledges and agrees that Seller's financial condition, insolvency and/or failure to timely pay its suppliers or other creditors may create a disruption in the supply chain. In the event Buyer elects in its sole and absolute discretion to pay any of Seller's obligations in order to avoid or cure a disruption in the flow of Supplies to Buyer, Buyer shall have the right to withhold from and setoff against any funds due to Seller from Buyer the aggregate amount paid in respect of Seller's obligations and, if such right of setoff is insufficient for Buyer to immediately recover all such amounts, Seller shall pay to Buyer the remaining balance within ten (10) days of Buyer's payment. If Seller becomes a debtor in bankruptcy or surrenders its assets to a lender or state court receiver and, Buyer, to obtain and/or continue the continuous flow of Supplies, participates in a post petition (or post surrender) loan to Seller, Seller acknowledges and agrees that the funds advanced to participate in the loan (including attorneys fees) shall be deemed "cover" damages within the meaning of section 2-712 of the Uniform Commercial Code.

5.5 The Supplies purchased under the Order, which are not services, are identified as industrial processing and may be exempt from sales taxes. In such case, the tax identification number and/or other exemption information shall be stated in the Order or otherwise provided by Buyer.

5.6 Payment for Supplies shall not constitute acceptance of nonconforming Supplies, nor shall it limit or affect any rights or remedies of Buyer.

## **6. Quality.**

6.1 Seller shall comply with the Dee Zee, Inc. Supplier Quality Manual, as it may be changed or updated from time to time by Dee Zee, Inc. in its sole discretion. Seller shall conform to all quality control and other standards and inspection systems as established or directed by Buyer and its customer for Supplies and services similar to the Supplies. These include without limitation quality control policies, ISO 9001:2015 or IATF quality certification, OHSAS 18001 health and safety certification and ISO 14001 environmental certification including registration. Seller shall also participate in Buyer's and/or Buyer's Customer's supplier quality and development programs as directed by Buyer. For Supplies used in motor vehicle manufacturing, Seller agrees to meet the full requirements of industry Production Part Approval Processes ("**PPAP**") as specified by Buyer and (as applicable) Buyer's Customer and agrees to present this information to Buyer upon request, at the level requested. If any of the standards, policies or systems cited above are amended, supplemented or replaced, Seller shall comply with such changes.

6.2 Seller is responsible for the performance and quality of all of its suppliers from which Seller obtains supplies or services it uses to produce Supplies, including suppliers that Buyer and/or Buyer's Customer has directed, recommended, requested, suggested or otherwise identified to Seller as a supplier from which Seller should obtain supplies. Seller shall maintain adequate development, validation, testing, launch and on-going supervision to assure that all Supplies sold to Buyer conform to all specifications, standards, prints, samples and descriptions set forth in the Order, including as to performance, fit, form, function, PPAP processes and materials, if applicable, and appearance. In the event that Seller ships any

Supplies which are nonconforming or breach the warranties of Section 7 below, Buyer may require Seller, at Seller's sole cost and expense, to inspect the Supplies in such a manner (including the use of a third party inspector or sorter) as Buyer determines will insure that all future Supplies will conform to the Order. Any inspection or testing, the lack thereof, or lack of response shall in no way release Seller from any quality or warranty obligations under the Order.

6.3 Buyer reserves the right at any reasonable time to inspect, witness, review or otherwise audit Seller's quality assurance and quality control procedures. Buyer shall have access to all parts of Seller's plant(s) and/or Seller's supplier's plant(s) engaged in the manufacturing or processing of Supplies in order to inspect, witness, review or otherwise audit the quality control processes being utilized at such plant(s). Seller shall furnish to Buyer the status of engineering, material procurement, production and shipping information upon request.

6.4 If defective or nonconforming Supplies are rejected by Buyer, the quantities under the Order shall be correspondingly reduced unless Buyer otherwise notifies Seller, and Seller shall not replace reduced quantities without a new Material Release from Buyer directing it to do so. Following rejection of nonconforming Supplies, Seller shall in Buyer's sole and absolute discretion, without prejudice to any other right or remedy of Buyer: (a) accept the return, at Seller's sole expense, of the Supplies and refund to Buyer the full invoice price plus all transportation and other charges associated with the nonconforming Supplies; (b) replace the non-conforming Supplies with conforming Supplies, with all associated costs and expenses, other than the original invoice and shipping prices, being borne by Seller; or (c) at Seller's sole expense, correct at any time prior to shipment from Buyer's plant Supplies that fail to meet the requirements of the Order.

6.5 Promptly upon learning of defective or nonconforming Supplies, Seller shall develop, document and implement corrective actions designed to ensure that all Supplies are produced in accordance with all applicable quality control policies and standards of Buyer and Buyer's Customer. Seller shall immediately notify Buyer in writing when it becomes aware of any raw material, component, design or defect in the Supplies that is nonconforming or may be or become harmful to persons or property.

## **7. Warranty.**

7.1 In addition to any other express or implied warranties provided by law or otherwise, Seller warrants to Buyer, Buyer's Customer and their respective customers, successors and assigns that the Supplies when delivered to Buyer shall: (i) be new and conform in all respects to the Order and to all specifications, drawings, samples and other descriptions furnished by Buyer or otherwise obtained by Seller; (ii) be free from all defects in design, workmanship and/or materials and be of highest quality and workmanship; (iii) be selected, designed, manufactured, assembled and packaged by Seller based upon Buyer's stated use and be fit and sufficient for the purposes intended by Buyer as evidenced in the Order and in the drawings and specifications referred to herein; (iv) conform to all applicable laws in countries where the Supplies (or Buyer's goods into which the Supplies are incorporated) are to be sold, including in the case of Supplies used in connection with the manufacture of motor vehicles, the National Traffic and Motor Vehicle Safety Act, all United States and European Union motor vehicle

safety and end-of-life standards; (v) for all Supplies which consist of services, Seller further warrants that its work shall be performed in a professional and workmanlike manner, consistent with all standards and specifications agreed to with Buyer and otherwise consistent with the highest industry standards.

7.2 All warranties of Seller extend to future performance of the Supplies and are not modified, waived or discharged by delivery, inspection, tests, acceptance and/or payment. Buyer's approval of any design, drawing, material, process or specifications shall not relieve Seller of these warranties. Seller waives any right to notice of breach. The warranties in this Section 7 are intended to and shall provide Buyer with protection from any and all warranty claims brought against Buyer by Buyer's Customer and their respective customers, successors and assigns, relating in any manner to the Supplies.

7.3 The warranty period shall run to the latest of the following: (i) four (4) years from the date Buyer accepts the Supplies; (ii) the warranty period provided by applicable law; (iii) the warranty period offered by Buyer to Buyer's Customer; or (iv) the warranty period Buyer's Customer offers to end-users of the products or for the products into which the Supplies are incorporated.

7.4 At Buyer's request, Seller shall fully participate in any root cause investigation or analysis conducted by Buyer and/or Buyer's Customer relating in any manner to the failure of the Supplies and provide all information requested by Buyer concerning the Supplies. In the event that the root cause analysis of a warranty failure is inconclusive but implicates the Supplies, the extent of Seller's liability shall be based upon a good faith allocation by Buyer of the responsibility for the warranty failure.

7.5 In the event that Buyer or Buyer's Customer voluntarily or pursuant to a government mandate, makes an offer to end-users to provide remedial action to address a defect or nonconforming condition of the Supplies or any of Buyer's goods incorporating the Supplies, in connection with a recall campaign, service action or other corrective action ("**Remedial Action**"), the warranty shall continue for such time period as may be dictated by Buyer's Customer or the government unit.

## **8. Remedies; Indemnification Obligation.**

8.1 The rights and remedies reserved to Buyer in each Order shall be cumulative with and in addition to all other or legal or equitable remedies available to Buyer. Seller is liable for all damages incurred by Buyer, including but not limited to compensatory, indirect, special, punitive, exemplary or consequential (as opposed to compensatory) damages, including damages for lost profits or other damages directly or indirectly related to profits, fines, penalties, charges, assessments or other costs, incurred by Buyer as a result of Seller's (i) breach of any representation or warranty set forth in the Order; (ii) failure to timely deliver conforming or otherwise non-defective Supplies; (iii) failure to comply with the shipping and/or delivery or other requirements of Buyer; and/or (iv) failure to otherwise comply with the Order, even if Seller has cured the breach. Such damages shall include but not be limited to costs, expenses and losses incurred directly or indirectly by Buyer: (a) in connection with inspecting, sorting, storing, reworking, repairing or replacing the nonconforming Supplies; (b) resulting from production interruptions; (c) conducting or participating in Remedial Action(s) or other corrective service actions; or (d) resulting from personal injury (including death) or property damage caused by the nonconforming Supplies. Buyer's damages include reasonable attorneys' fees and other professional fees, settlements and



judgments incurred by Buyer and other costs associated with Buyer's administrative time, labor and materials.

8.2 In any action brought by Buyer to enforce Seller's obligations in connection with the production or delivery of Supplies or Transition Support (as defined in Section 16.1), for any deviation from an applicable PPAP (in the case of Supplies for use in motor vehicle manufacturing) and/or for possession of property, Seller acknowledges and agrees that monetary damages are not a sufficient remedy for any actual, anticipated or threatened breach of the Order and that, in addition to all other rights and remedies that Buyer may have, Buyer shall be entitled to specific performance including injunctive or other equitable relief as a remedy for any such breach, in addition to recovery of Buyer's reasonable attorneys' fees and expenses.

8.3 If requested by Buyer, Seller shall enter into a separate agreement for the administration or processing of warranty charge-backs for nonconforming Supplies, and shall fully participate in and comply with warranty reduction or related programs of Buyer or Buyer's Customer that relate to the Supplies.

8.4 If the Supplies or goods sold by Buyer which incorporate the Supplies are subject to a Remedial Action (as defined in Section 7.5), the extent of Seller's liability shall be based upon a good faith allocation by Buyer of responsibility for the Remedial Action. Buyer shall notify Seller as soon as practicable after Buyer learns in writing that a Remedial Action being considered implicates the Supplies, and thereafter provide Seller with the data provided to it by Buyer's Customer relating to the potential Remedial Action. In the event Buyer's Customer sets-off the cost of a Remedial Action against sums due to Buyer and Buyer and/or Buyer's Customer determines, in good faith, that the Remedial Action was caused by the failure of the Supplies to conform to the quality standards and/or warranties in Sections 7 and 8 hereof, in whole or in part, Buyer may set-off the costs to Buyer of the Remedial Action against sums due to Seller prior to the allocation of responsibility set forth above.

8.5 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 by Seller or anyone acting on its behalf; (ii) Buyer shall not be responsible for any injury to person (including death) or damage to any property resulting from Seller's possession, use, misuse or failure of any equipment, tooling or other property of Buyer furnished to Seller, and the use of any such property by Seller shall constitute acceptance by Seller of all responsibility for any claims for such injury or damage, and (iii) Seller shall defend, indemnify and hold harmless Buyer, Buyer's Customer and the end-users of the products sold by Buyer or the end users of the products which incorporate the Supplies (or, if applicable, the vehicles in which such products are incorporated) and all of their respective agents, customers, invitees, subsidiaries, affiliates, successors and assigns, against all damages, losses, claims, liabilities and expenses (including reasonable attorneys' and other professional fees, settlements and judgments) arising out of or resulting 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 the Order (including any part of this POTC) including the cost of Remedial Actions.

8.6 If Seller performs any work on Buyer's premises or utilizes the property of Buyer, whether on or off Buyer's premises: (i) Seller shall examine the premises to determine whether they are safe for the requested work and shall advise Buyer promptly of any situation it believes to be unsafe; (ii) Seller's employees, contractors, and agents shall comply with all laws and regulations that apply to the premises and if so requested, must leave Buyer's premises at Buyer's sole and absolute discretion; (iii) Seller's employees, contractors, and agents shall 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 shall indemnify and hold Buyer and its agents, successors and assigns, harmless from and against any liability, claims, demands or expenses (including reasonable attorneys' and other professional fees, settlements and judgments) for damages to the property of or personal injuries (including death) to Buyer, its employees or agents, or any other person or entity to the extent arising from or in connection with Seller's work on Buyer's premises or Seller's use of Buyer's property.

8.7 Seller's obligations under this Section 8 to defend and indemnify shall apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise and, to the maximum extent permitted by applicable law, Seller's indemnification obligations shall apply even as to losses caused in whole or in part by an indemnified party's negligence, except to the extent that losses resulted solely and directly from the gross negligence or willful misconduct of such indemnified party. 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. The indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the benefit of Seller under Workers' Compensation Acts, or laws governing occupational diseases, disability benefits or other employee benefits.

## **9. Changes.**

9.1 Buyer reserves the right at any time, by written notice to Seller, to make changes, or to require 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 the Order, including work with respect to such matters as inspection, testing or quality control. Buyer may also require Seller to source the supply of raw materials either from itself or from specified third parties. Seller shall promptly make any such requested change.

9.2 In order for Seller to request a reasonable difference in price or time for performance as a result of a change described in Section 9.1, Seller must notify Buyer of its request in writing within ten (10) days after receiving notice of the change. Buyer can request additional documentation from Seller relating to any change in specifications, price or time for performance. After receiving all requested documentation, Buyer, in consultation with Seller, may 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, Buyer's requested change shall not affect the price or time for performance.

9.3 Seller shall not make any change relating to Supplies, including without limitation, in the Supplies' contents, design, specifications, processing, packing, marking, shipping, price or date or place of delivery, except at Buyer's written instruction or with Buyer's prior written approval.

9.4 For Supplies used in motor vehicle manufacturing, upon PPAP approval for the Supplies, Seller must continue to manufacture the Supplies in strict compliance with the PPAP approval and may not change or alter in any manner (i) any third party supplier to Seller of the services, raw materials or Supplies used by Seller in connection with its performance under the Order, (ii) any facility from which Seller and/or any such third party supplier operates and that relates in any way to the Supplies, or to services, raw materials or Supplies used by Seller in connection with performance under the Order, (iii) the price of any Supplies covered by the Order, (iv) the nature, type or quality of any services, raw materials or Supplies used by Seller or its suppliers in connection with the Order, (v) the fit, form, function, appearance or performance of any Supplies covered by the Order, or (vi) the facility at which the Supplies are produced, production method, or any process or software, or any production equipment used in the production or provision of, or as part of, any Supplies under the Order. Seller acknowledges that any change in the Supplies from the approved PPAP level may materially and detrimentally affect the functionality of Buyer's products which incorporate the Supplies and may also affect the safe or required operation of the vehicle in which the assembly is installed. Accordingly, in addition to a breach of the Order, Seller agrees that the potential harm of using non-PPAPed Supplies constitutes irreparable injury and that Buyer is entitled to a preliminary injunction prohibiting any deviation from PPAP.

9.5 For Supplies used in motor vehicle manufacturing, Seller may seek approval from Buyer for changes in the materials, process or manufacture of the Supplies after PPAP. Buyer may deny its approval for any change for any reason. As a condition precedent to seeking any change or PPAP deviation from Buyer, Seller must: (i) agree to pay all of the costs involved in re-PPAPing the Supplies including any testing which may reasonably be requested by Buyer and/or Buyer's Customer; (ii) agree not to change the price charged to Buyer for the Supplies and that all future price decreases previously agreed to by Seller shall be implemented; (iii) manufacture a bank of PPAPed Supplies in such quantities as Buyer may require for a successful transition; (iii) support Buyer in PPAPing the Supplies; (iv) abide by the decision of the vehicle manufacturer whether to allow deviation from PPAP as final and binding; and (v) fulfill all of the requirements imposed by the vehicle manufacturer and/or Buyer's Customer on Buyer including payment and/or reimbursement to Buyer for any costs reductions.

## **10. Service Parts.**

10.1 For Supplies used in the manufacture of motor vehicles, for a period of fifteen (15) years after Buyer completes current model purchases for its Customer or such longer time as may be required of Buyer by Buyer's Customer, and for Supplies not used in the manufacture of motor vehicles, for a period of twelve (12) years after Buyer purchases the Supplies, Seller shall sell to Buyer the quantity of Supplies

needed to fulfill Buyer's Customer's past model service and replacement requirements ("**Service Parts**"). All such parts shall be sold at the last price specified in the latest revision to the Order plus the actual cost differentials for packaging, materials and manufacturing as a result of service volume levels but in no case to exceed twenty (20%) percent of the price for the last production year. During the fifteenth (15th) year of such period, Buyer and Seller shall negotiate in good faith with regard to Seller's continued manufacture of Service Parts.

10.2 At Buyer's request, Seller shall make service literature and other materials available at no additional charge to support Buyer's Service Parts sales activities. Unless otherwise expressly agreed in writing by an authorized representative of Buyer, or unless Buyer removes Tooling (as defined in Section 19.1) from Seller necessary for the production of Service Parts, Seller's obligations under this Section shall survive termination or expiration of the Order for any reason.

## **11. Directed Sellers.**

11.1 If Seller is a Directed Seller: (a) Buyer shall pay Seller for the Supplies only following and to the extent of Buyer's actual receipt of payment from the Directing Customer for Buyer's products in which the Supplies are incorporated; (b) any lengthening of any payment terms by the Directing Customer shall automatically lengthen the payment terms to Seller by like amount; (c) within three (3) business days of any change in price, specifications or other terms negotiated or proposed between Seller and the Directing Customer, Seller shall notify Buyer in writing and shall immediately adjust its invoices to reflect any price reduction, provided however that no increase in price shall be binding on Buyer without Buyer's written consent and a commitment by the Directing Customer to pay Buyer a proportionately increased price for Buyer's products sold to the Directing Customer which incorporate Supplies.

## **12. Customs Regulations.**

12.1 For Supplies imported into the United States, Seller shall comply with all applicable recommendations or requirements of the United States Bureau of Customs and Border Protection's ("**U.S. Customs**"), including but not limited to the Customs-Trade Partnership Against Terrorism ("**CTPAT**") initiative (for information go to <http://www.cbp.gov/> and find the link to the CTPAT section). At Buyer's or U.S. Customs' request, Seller shall certify in writing its compliance with C-TPAT and with all other applicable U.S. Customs laws and regulations. Seller shall provide both Buyer and U.S. Customs access to Seller's facilities for the purpose of auditing Seller's compliance with the foregoing. If the Supplies are transported via ocean carrier into the United States, Seller must also comply with U.S. Customs' Importer Security Filing ("**ISF**") and provide the necessary data to the freight forwarder selected by Buyer who will act as Buyer's agent for filing of the ISF. Seller shall cause all data required for the ISF to be in the freight forwarder's possession not later than twenty four (24) hours before the Supplies are loaded onto the ocean carrier or such earlier time as the freight forwarder may require. Neither Buyer nor its agents shall be responsible for modifying ISFs after the Supplies are loaded onto the ship. On and after January 1, 2010, any Supplies which receive any U.S. Customs response other than "accepted" shall be deemed to be rejected by Buyer.

12.2 Seller shall obtain all export licenses or authorizations necessary for the export of Supplies, unless otherwise set forth in the Order, in which case Seller shall promptly provide to Buyer all information necessary to enable Buyer to obtain the licenses or authorizations. Seller shall promptly notify Buyer in writing of any material or components incorporated in the Supplies that Seller purchases in a country other than the country in which the Supplies are delivered. Seller shall furnish any and all documentation and information necessary to establish the country of origin or to comply with the applicable country's rules of origin requirements. Seller shall 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 shall mark Supplies "Made in [country of origin]." Seller shall 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 shall be made at not less than fair value under the anti-dumping laws of the countries to which the Supplies are exported.

12.3 Supplies and the containers into which they are placed for shipment shall be marked in accordance with all U.S. laws including but not limited to 19 CFR §134 (as amended from time to time). Scientific and laboratory instruments shall be legibly and conspicuously marked by die-stamping, case-in-the-mold lettering, acid or electrolytic etching, engraving, or by means of metal plates securely attached to the Supplies in a conspicuous place by welding, screws, or rivets. If the Supplies cannot be marked as specified above, any method of legible and conspicuous marking is acceptable provided it is calculated to, and does, require a deliberate and persistent effort to remove such marks of origin. Seller shall also be responsible for compliance with additional regulations and guidelines regarding supply chain security published by US Customs, and any other government or agency, including the Security and Accountability for Every Port Act of 2006.

12.4 All credits or benefits resulting from the Order, including trade credits, export credits or the refund of duties, taxes or fees, belong solely to Buyer. Seller shall promptly provide all information and certificates (including NAFTA Certificates of Origin) necessary to permit Buyer to receive the full amount of such benefits or credits. Seller agrees to fulfill all customs- or NAFTA-related obligations, origin marking or labeling requirements, and local content origin requirements.

12.5 Seller shall indemnify and hold Buyer harmless from and against any liability, claims demands or expenses (including attorney's fees or other professional fees) arising from or relating to Seller's noncompliance with this Section. Seller shall be responsible for the full costs of any delay in delivery of the Supplies caused by its failure to comply with the requirements of this Section 12, including but not limited to missing, incomplete, untimely or inaccurate data being furnished to Buyer, Buyer's agents or any governmental authority.

### **13. Excusable Delay.**

13.1 Any delay or failure of either party to perform its obligations shall be excused if and to the extent that the party is unable to perform due to events or occurrences beyond its reasonable control and without its fault or negligence, such as: acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority; embargoes; fires; explosions; natural disasters; riots; wars; sabotage; or court injunction or order (collectively "**Excusable Delay**"). However, in no event shall Seller's performance be excused by: (i) the change in cost or availability of raw materials, components or services based on market conditions, supplier actions or contract disputes; (ii) Seller's financial distress; (iii) Seller's bankruptcy or insolvency of one or more of Seller's suppliers; or (iv) any labor strike or other labor disruption applicable to Seller or to any of its subcontractors or suppliers. Seller, at its expense, shall use its best efforts to mitigate any adverse effects or costs to Buyer due to any actual or potential Excusable Delay, including: (i) the implementation of a production contingency plan; and (ii) upon Buyer's express written authorization, increasing Seller's inventory of Supplies to a level sufficient to sustain deliveries during such Excusable delay.

13.2 Seller shall immediately give written notice to Buyer of any event or occurrence that threatens to delay or actually delays Seller's performance under the Order. Such notice shall include all relevant information with respect to such threat, including the possible duration and impact of a delay. In addition, Seller shall notify Buyer in writing: (i) of the expiration of any labor contract or collective agreement at least sixty (60) days prior thereto; and (ii) of any actual or threatened labor strike or other labor disruption as soon as Seller becomes aware of such; in each case as may be applicable to Seller or to any of its subcontractors or suppliers that are engaged in manufacturing or providing Supplies or services to Seller in connection with Seller's obligations under the Order. Notwithstanding notice and Seller's provision of a safety stock for a strike, labor disputes shall not constitute an event of Excusable Delay which shall excuse performance under the Order.

13.3 During any delay or failure to perform by Seller, Buyer may at its option and at Seller's expense: (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 Supplies, 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 sole expense, shall take all necessary actions to ensure the supply of Supplies to Buyer for a period of at least forty-five (45) days during any anticipated labor disruption or resulting from the expiration of Seller's labor contracts.

#### **14. Termination.**

14.1 Buyer may terminate the Order for Cause, without liability to Seller, which shall be effective upon delivery of written notice or upon such other date specified by Buyer in writing. "**Cause**" for termination includes the following actions: (i) Seller breaches any representation, warranty or other term of the Order; (ii) Seller repudiates, breaches or threatens to breach any of the terms of the Order; (iii) Seller fails to deliver, or threatens not to deliver, Supplies in accordance with a Material Release; (iv) Seller fails to meet applicable quality requirements so as to endanger timely and proper performance of the Order; (v) Seller makes an assignment for the benefit of creditors; (vi) proceedings in bankruptcy or

insolvency are instituted by or against Seller; (vii) Seller requests accommodations from Buyer, financial or otherwise, in order for Seller to meet its obligations under the Order; (viii) Seller enters or offers to enter into a transaction or series of transactions that would cause a sale of a material portion of the assets used by Seller for the production and/or provision of Supplies to Buyer; (ix) Seller enters or offers to enter into a merger, sale or exchange of stock or other equity interests that would result in a change in control of Seller within the meaning of Section 409A of the Internal Revenue Code and regulations issued there under, in which case Seller shall notify Buyer within ten (10) days after entering into any related negotiations (or the first period in which such negotiations can be made public consistent with applicable law) that could lead to such a transaction, provided that upon Seller's request, Buyer shall enter into an appropriate nondisclosure agreement related to information disclosed to Buyer in relation to such transaction; or (x) at any time in Buyer's sole judgment Seller's financial or other condition or progress on the Order shall be such as to endanger timely performance.

14.2 In the event Buyer elects not to terminate the Order in connection with an event that would constitute Cause for termination, Buyer may make such equitable adjustments in the price, payment terms, sole supply relationship and delivery requirements under the Order as Buyer deems appropriate to address changes in Seller's circumstances, including Seller's continuing ability to perform its obligations regarding warranty, nonconforming Supplies or other requirements under the Order, provided that Buyer must provide Seller with notice and details regarding the adjustments.

14.3 Buyer also may, at its option and in its sole discretion, immediately terminate all or any part of the Order at any time and for any reason upon seven (7) days written notice to Seller. Upon receipt of notice of termination, whether under Section 14.1 above or this Section 14.3, unless otherwise directed by Buyer, Seller shall: (i) promptly terminate all work under the Order on the effective date of termination; (ii) transfer title and deliver to Buyer or its designee the finished Supplies, the work in process, and the parts and materials that Seller reasonably produced or acquired according to quantities ordered by Buyer and that Seller cannot use in producing Supplies for itself or for others; (iii) verify and settle any claims by subcontractors for actual costs incurred directly as a result of the termination; (iv) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest; and (v) upon Buyer's request, fully cooperate with Buyer in transferring the production of Supplies to a different supplier.

14.4 Upon termination by Buyer under Section 14.3, Buyer shall pay only the following without duplication: (i) the Order price for all finished Supplies in the quantities ordered by Buyer in Material Releases that conform to the Order for which Seller has not been paid; (ii) Seller's reasonable actual cost of merchantable and useable work-in-process and the parts and materials transferred to Buyer under Section 14.3; (iii) Seller's reasonable actual costs of settling claims regarding its obligations to its subcontractors required under the Order, to the extent directly caused by the termination, but limited to the amount of the firm quantities of Supplies and raw materials/components specified in Material Releases issued by Buyer and then currently outstanding; (iv) Seller's reasonable actual cost of carrying out its obligations under Section 14.3(iv), and (v) if applicable, amounts due in connection with Transition Support under Section 16.

## **15. Limitation on Buyer's Obligations to Seller for Termination.**

15.1 Buyer's obligations under Section 14.3 are conditioned upon Seller furnishing to Buyer within one (1) month after the date of termination (or such shorter period as may be required by Buyer's Customer) a termination claim, which shall consist exclusively of the items of Buyer's obligation to Seller that are expressly permitted by this Section and Section 14. Buyer may audit Seller's records before or after payment to verify amounts requested in Seller's termination claim. Buyer shall not be obligated to make any payment for Supplies, work-in-process, parts or raw materials inventory: (i) in excess of those authorized or required under any Material Release; (ii) that are damaged or destroyed or that are not merchantable or useable; (iii) that are in Seller's standard stock or that are readily marketable; or (iv) that can be returned to Seller's suppliers or subcontractors for credit.

15.2 In the event of a termination of the Order by Buyer as a result of Buyer ceasing to be a supplier to Buyer's Customer for Buyer's goods which incorporate the Supplies, Buyer shall only be obligated to compensate Seller for any costs under Section 14.4 if, when and to the extent that Buyer's Customer reimburses Buyer for such costs.

15.3 BUYER SHALL HAVE NO LIABILITY OR OBLIGATION FOR, AND SHALL NOT BE REQUIRED TO PAY SELLER DIRECTLY OR INDIRECTLY IN RESPECT OF, CLAIMS BY SELLER OR SELLER'S SUBCONTRACTORS, FOR LOSS OF ANTICIPATED PROFIT, FAILURE TO REALIZE ANTICIPATED PRODUCTION VOLUMES, REVENUES OR SAVINGS, UNABSORBED OVERHEAD, INTEREST ON CLAIMS, PRODUCT DEVELOPMENT AND ENGINEERING COSTS, TOOLING, FACILITIES AND EQUIPMENT REARRANGEMENT COSTS OR RENTAL, UNAMORTIZED CAPITAL OR DEPRECIATION COSTS, OR GENERAL ADMINISTRATIVE BURDEN CHARGES RESULTING FROM OR RELATED TO THE TERMINATION OR EXPIRATION OF THE ORDER, EXCEPT AS OTHERWISE EXPRESSLY AGREED IN A SEPARATE ORDER ISSUED BY BUYER.

## **16. Transition of Supply.**

16.1 In connection with the expiration, cancellation or termination of the Order by Buyer, in whole or in part, for any or no Cause or Buyer's election to change to an alternate supplier of the Supplies (including a Buyer-owned or -operated facility) whether in response to Seller's request or otherwise, (i) Seller shall give Buyer its full and prompt cooperation as set forth herein in transitioning from Seller to Buyer's new supplier the responsibility for providing and delivering Supplies to Buyer. Seller shall continue production and delivery of all Supplies as ordered by Buyer, at the prices and in compliance with the terms of the Order, without premium or other condition, during the entire period reasonably needed by Buyer to complete the transition to the alternate supplier(s); (ii) subject to Seller's reasonable capacity constraints, Seller shall 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; (iii) at no additional cost to Buyer, Seller shall promptly provide all requested information and documentation regarding and access to Seller's manufacturing or service process, including on-site inspections, bill-of-material data, tooling and process detail and samples of Supplies and components; (iv) Seller shall promptly provide all notices deemed by Buyer in its sole and absolute discretion to be necessary or desirable for Buyer to



resource the Order to an alternative supplier; (v) if and when requested by Buyer, Seller shall return to Buyer all Buyer's Property in as good condition as when received by Seller (reasonable wear and tear excepted) and shall comply with Seller's obligations relating to Seller's Property in Section 21 and in relation to subcontracts.

16.2 If the resourcing of the Supplies occurs for reasons other than in connection with a termination for Cause or at the request of Seller, Buyer shall, at the end of the transition period, pay Seller's reasonable out of pocket cost of Transition Support as requested, provided that upon Buyer's request, Seller has advised Buyer prior to incurring such amounts of its good faith estimate of such costs. If the parties disagree on the cost of Transition Support, Buyer shall pay the undisputed portion to Seller and the remaining portion, if any, promptly following the binding determination by an arbitrator that such amount is due to Seller.

## **17. Insurance.**

Seller shall maintain and require its subcontractors to maintain, the following insurance coverages: i) comprehensive general liability insurance ii) comprehensive automobile liability insurance and iii) business interruption insurance, iv) workers compensation and employer's liability insurance covering all employees engaged in the performance of this Order for claims arising under any applicable workers' compensation, occupation disease or health and safety laws and or regulations and v) such other insurance coverage as may be requested from time to time by Buyer in its sole discretion. In each case Seller's insurance coverage will name Buyer and its affiliates (as applicable) as loss payee(s) and/or "additional insured(s)" and the coverage will be in such amounts sufficient to cover obligations set forth herein or in such amounts specifically set forth on Buyer's Insurance Addendum which when published, will form part of the Order. Such insurance coverage shall among other things provide full fire and extended coverage insurance for the full replacement value of all Seller's Property and all bailed Buyer's Property. Seller hereby waives all mechanics' liens and claims and agrees that none shall be filed or maintained against Buyer's premises on account of any Supplies and shall cause all its subcontractors, materialmen and suppliers (and subcontractors of such parties) to provide similar waivers and agreements in form satisfactory to Buyer. Seller shall furnish to Buyer a certificate showing full compliance with the requirements set forth in this Section 17 or certified copies of all insurance policies within ten (10) days of Buyer's written request. The certificate shall provide that Buyer shall 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 shall not release Seller of its obligations or liabilities under the Order.

## **18. Audit; Plant Inspections.**

18.1 Upon reasonable notice to Seller, either Buyer, Buyer's Customers or their respective third-party designees may audit Seller's production facility, Supplies and any other Buyer property (including all pertinent documents, data and other information) related to the Order for the purpose of verifying Seller's costs and its compliance with or its ability to perform its obligations under the Order. Seller shall provide, without additional charge, all reasonable facilities and assistance. No inspection under this

Section 18 shall constitute acceptance of any work-in-process or finished goods and shall not relieve Seller of any of its responsibilities or warranties under the Order.

18.2 Upon reasonable notice to Seller, Buyer or a third party designated by Buyer may review the financial condition of Seller and its affiliates relating to Seller's performance under the Order. Seller shall, and shall cause its affiliates to, fully cooperate in any such review and shall promptly provide copies of or access to requested documents, including without limitation financial records and statements, forecasts, business plans, banking contacts and loan documents, and shall make its financial managers available for discussions during reasonable business hours. Buyer and its third-party designee(s), if any, shall keep confidential any nonpublic information about Seller or its affiliates obtained in a financial review and use such information only for purposes of the review, except as needed to enforce the Order.

18.3 Buyer's right to conduct any inspection, audit or review under this Section 18 or otherwise is at its sole discretion. Buyer shall have no obligation to Seller to conduct any inspection, audit or review under this Section 18 or otherwise and Buyer's decisions as to whether, how and when to conduct any inspection, audit or review shall not modify or relieve Seller of any obligations under the Order, shall not give rise to any liability of Buyer to Seller and shall be without prejudice to any rights or remedies available to Buyer.

**19. Buyer's Property.** This Section 19 shall only apply if there is no current bailment agreement between the parties.

19.1 "**Buyer's Property**" shall mean and include: all information and materials, including tooling which has been furnished by Buyer to Seller or for which Seller has been reimbursed by Buyer (such as fixtures, gauges, jigs, patterns, castings, cavity dies, molds, with all related appurtenances, accessions, and accessories, collectively herein referred to as "**Tooling**"), packaging, documents, standards, specifications, samples, trade secrets, manufacturing processes, marketing and pricing data, proprietary information and other materials and items (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 the Order, along with any and all supplies, Tooling, deliverables, data, and Intellectual Property Rights (as defined in Section 22.1) which are property of Buyer under the terms of the Order. Buyer's Property shall be and remain the sole and exclusive property of Buyer.

19.2 With respect to Buyer's Property in the custody or control of Seller or Seller's suppliers, contractors or agents: (i) Seller shall use it or permit its use only for the production of Supplies for Buyer; (ii) Seller, at its own expense, shall keep Buyer's Property in good working condition and house, maintain, repair and replace it as necessary so that such Buyer's Property shall remain in the same condition as it was when it was received by Seller, except for normal wear and tear; (iii) Seller shall keep such Buyer's Property fully insured for the benefit of Buyer at all times while in Seller's possession; and (iv) Seller shall keep Buyer's Property, and cause any of its suppliers, contractors or agents in possession of such Buyer's Property to keep such Buyer's Property, segregated from all other assets and labeled as being the property of Buyer. Seller shall not release, relocate or dispose of Buyer's Property to any third party

without the prior, express, written permission of Buyer. Seller shall promptly notify Buyer of the location of Buyer's Property if located at any place other than Seller's facility.

19.3 Seller shall have only temporary possession of Buyer's Property as a bailee at will. Seller shall execute, deliver and perform Buyer's Tooling Agreement or other bailment agreement as Buyer may from time to time reasonably request.

19.4 Buyer shall have the right to enter Seller's premises, or the premises of any of Seller's suppliers, contractors or agents in possession of Buyer's Property, to inspect Buyer's Property and Seller's records regarding Buyer's Property. Seller agrees neither to create nor permit any liens on Buyer's Property and Seller agrees to immediately sign any UCC-1 forms or other documents reasonably required by Buyer to perfect Buyer's rights granted herein. Seller grants to Buyer a limited and irrevocable power of attorney, coupled with an interest, to execute and record on Seller's behalf any notice financing statements with respect to Buyer's Property that Buyer determines are reasonably necessary to reflect and protect Buyer's interest in Buyer's Property.

19.5 Seller shall assume all risk of death or injury to persons or damage to property arising from its use of Buyer's Property. **TO THE EXTENT PERMITTED BY LAW, BUYER SHALL HAVE NO LIABILITY TO SELLER OR ANYONE CLAIMING BY OR THROUGH SELLER FOR ANY INCIDENTAL OR CONSEQUENTIAL OR OTHER DAMAGES OF ANY KIND WHATSOEVER RELATING TO BUYER'S PROPERTY SUPPLIED BY BUYER. BUYER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO SUCH 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.**

19.6 Immediately upon Buyer's request, pursuant to any bailment agreement or upon any bankruptcy or insolvency filing, and without payment of any kind, Seller shall return Buyer's Property, and shall comply with Buyer's instructions relating to its return, including the method and location for its return. Seller shall be responsible for labor and other costs incidental to such Buyer's Property's return. Seller shall cooperate with Buyer and shall provide Buyer with access to all facilities at which Buyer's Property is located. Seller expressly waives any right to additional notice or process relating to Buyer's exercise of its rights under this Section. Seller waives, to the extent permitted by law: (i) any lien or other rights that Seller might otherwise have on any of Buyer's Property, including molder's and builder's liens; and (ii) any objection to Buyer's repossession and removal of Buyer's Property for any or no reason, including bankruptcy or insolvency proceedings.

## **20. Tooling.**

20.1 Seller shall not purchase any Tooling for the account of Buyer or charge Buyer for any tooling except as authorized in the Order or in a tooling purchase order delivered by Buyer to Seller ("**Tooling Purchase Order**"). Seller represents that the price in the Order or the Tooling Purchase Order for the Tooling is no greater than Seller's actual cost of such Tooling and that there is no mark-up for profit (unless as authorized in this Section 20).

20.2 If Seller is responsible for fabricating or acquiring Tooling, such Tooling shall: (i) comply with any specifications provided by Buyer (or, where directed by Buyer, those of Buyer's Customer); (ii) be capable of making their intended contribution to the manufacture of Supplies that satisfy the Order, including meeting any volume requirements or estimates provided to Seller during the life of the product as well as satisfying the requirements, if any, for Service Parts. Seller represents and warrants that the Tooling fabricated or acquired by Seller shall not infringe on the Intellectual Property (as defined in Section 22.1) of any third party and shall defend, hold harmless and indemnify Buyer, its successors and assigns against any suit, claim or action for actual or alleged direct or contributory infringement of or inducement to infringe any Intellectual Property and against any resulting damages, expenses (including attorney's and other professional fees and expenses), settlements and judgments arising out of or in any way connected to the Tooling, including any claim against Buyer that the infringement arose out of compliance with Buyer's specifications. If the use of the Tooling for manufacture of the Supplies is enjoined or, in Buyer's sole judgment, is likely to be enjoined, Seller shall, at Buyer's election in its sole discretion and at Seller's sole expense, procure for Buyer the right to continue using the Supplies or modify the Tooling so it becomes non-infringing. Time is of the essence for Seller's acquisition or fabrication of Tooling. Seller shall provide Tooling progress reports from time to time at Buyer's request and shall promptly notify Buyer in writing if it believes that the Tooling might not be completed by the completion date specified in the Order or Tooling Purchase Order.

20.3 If Seller subcontracts all or part of the fabrication, modification, repair or refurbishment of Tooling to a third-party toolmaker, Seller shall: (a) provide advance written notice to Buyer of the identity of the toolmaker and the location of the Tooling; (b) inform the toolmaker in writing that it is a bailee-at-will, through Seller, of Tooling owned by Buyer; and (c) be solely responsible for payments to the toolmaker. Buyer has no obligation to Seller or subcontractor other than payment to Seller of the Order price. If a subcontractor brings an action against Seller for payment of the Tooling, Seller shall not join Buyer in the action.

20.4 If Seller's primary business is to fabricate Tooling, Seller shall be permitted a reasonable profit percentage as specified in the Order. In the absence of a mutually-accepted profit percentage, Buyer shall determine a reasonable profit percentage following the completion of its audit. Seller shall invoice Buyer for (and Buyer shall only be obligated to pay) the lower of Seller's actual cost plus such profit percentage or the amount set forth in the Order.

20.5 Seller shall provide to Buyer, as requested, access to Seller's premises and all documentation relating to the Tooling, prior and subsequent to payment, to inspect work performed and to verify charges submitted by Seller against the Order or Tooling Purchase Order. For any Tooling or parts thereof that Seller obtains from any third party, Seller shall provide Buyer with access to the ultimate production source of the Tooling and documentation in accordance with the preceding sentence. Seller shall have ninety (90) days from the date Buyer notifies Seller of Buyer's intention to audit Seller to provide the requested access and copies of requested documentation for Buyer's exclusive use and records. Any information submitted following such ninety (90) day period may be disregarded by Buyer in its sole and absolute discretion. The price set forth in the Order or Tooling Purchase Order shall be adjusted to credit Buyer in the amount, if any, by which the price exceeds Seller's actual cost as verified.

Seller shall not disclose to any third party, except for its attorneys and professional advisors who are required to maintain confidentiality, the results of any such Tooling audits or any adjustments made by Buyer to the prices and amounts payable to Seller as a result of such audit. Seller shall retain (and cause its Tooling subsuppliers, if any, to retain) all cost records for a period of five years after receiving final payment of the charges.

20.6 To the extent permitted by applicable law, any payments made by Buyer for Tooling that is manufactured by a third party are expressly intended by Buyer to be held in trust for the benefit of any subcontractor(s) used by Seller to produce such Tooling and Seller agrees to hold such payments as trustee in trust for such subcontractor(s) until Seller has paid the subcontractor(s) in full for such Tooling. Seller acknowledges and agrees that such subcontractor is an intended third-party beneficiary of the terms of this Section 20.6 relating to the trust and as such, such Tooling subcontractor shall have the right to enforce the terms of this Section 20.6 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 the Order or Tooling Purchase Order, as applicable. In the event Seller's Tooling subcontractor brings an action against Seller under this section, Seller agrees that it shall not join Buyer in any such action.

## **21. Seller's Property.**

21.1 "***Seller's Property***" shall mean all capital equipment, buildings, materials, machinery, equipment, tools, jigs, dies, gauges, fixtures, molds, patterns, blueprints, designs, specifications, drawings, photographic negatives and positives, art work copy layout and all other records or items that are not Buyer's Property and that are necessary for the production of Supplies under the Order.

21.2 Seller, at its expense, shall furnish, keep in good working condition capable of producing Supplies meeting all applicable specifications, and replace when necessary, all Seller's Property. Seller shall insure Seller's Property with full fire and extended coverage insurance for its replacement value, and otherwise as required under Section 17 ("**Insurance**") hereof. 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 logos, trademarks, trade names or part numbers. Under no circumstances shall Seller disclose or imply in its marketing efforts that the goods it produces for others are equivalent to or better than those purchased by Buyer.

21.3 Seller hereby grants to Buyer an irrevocable option to purchase and/or temporarily take possession of Seller's Property that is special for production of Supplies under the Order (including, by way of example, Seller's Property specially designed or configured for the manufacture or assembly or other processing of Supplies), upon payment to Seller of its net book value less any amounts that Buyer has previously paid to Seller for the cost of such items, or (if applicable) any such other amount as may be required by applicable law. Such option shall not apply if Seller's Property is used to produce goods that are the standard stock of Seller or if substantial quantities of goods substantially similar to the Supplies are being sold by Seller to others. Buyer's option rights under this Section with respect to Seller's Property are intended to be subject to Buyer's rights and elections under 11 USC Section 365(n) (as

amended from time to time) as and to the extent that such Seller's Property represents embodiments of Intellectual Property, including Intellectual Property licensed by Seller to Buyer under Section 22 below.

21.4 In addition to any and all other remedies available to Buyer at equity or in law, in the event of termination or breach or anticipatory breach of this Agreement for any reason and, on account of the breach, the continuous manufacture and delivery of the Supplies is immediately threatened, Seller hereby grants Buyer the right to access Buyer's Property and Seller's Property in Seller's manufacturing facility at any and all times to do one of the following, at Buyer's option in its sole and absolute discretion: (i) enable Buyer's employees and/or designated representatives to use Buyer's Property and Seller's Property to manufacture and obtain sufficient quantity of the Supplies to meet Buyer's obligations to Buyer's Customer; and/or (ii) hire Seller's employees (at Buyer's cost and expense subject to Buyer's right to recover such expenses under the Order) to use Buyer's Property and Seller's Property to manufacture and obtain sufficient quantity of the Supplies to meet Buyer's obligations to Buyer's Customer.

## **22. Intellectual Property.**

22.1 "**Intellectual Property**" shall mean and include patents, copyrights, trademarks, trade names, trade dress, trade secrets, know-how, concepts, ideas, discoveries, inventions (whether or not patentable), processes, developments, designs, suggestions, materials, improvements, works of authorship, artwork, software, documentation, intellectual property/proprietary rights, rights in other tangible and intangible assets of a proprietary nature, domain names, company names, and the like. "**Intellectual Property Rights**" means all forms of Intellectual Property protection or proprietary rights available throughout the world, including, without limitation, utility patents, design patents, patent applications, design registrations, utility models, industrial designs, copyrights, trademarks, trade dress, trade secrets, and rights in domain names.

22.2 Seller warrants that the Supplies and the sale and/or use thereof (before or after incorporation into products during manufacture) are original to Seller and do not and shall not infringe any third-party's Intellectual Property Rights.

22.3 Seller agrees: (i) to defend, hold harmless and indemnify Buyer and its owners, shareholders, affiliates, officers, directors, members, managers, partners, employees, attorneys and agents and any of their respective successors and assigns (each a "**Buyer Indemnified Party**") against any suit, claim or action for actual or alleged direct or contributory infringement of or inducement to infringe or violate any third party's Intellectual Property or Intellectual Property Rights and against any resulting damages or expenses (including attorney's and other professional fees and expenses, settlements and judgments) arising out of or relating to the manufacture, sale or use of the Supplies, including cases in which Seller has provided only part of Supplies; (ii) to waive any claim against any Buyer Indemnified Party, including any hold-harmless or similar claim, in any way related to a third party claim asserted against such Buyer Indemnified Party for infringement of any Intellectual Property Right, including any claim against Buyer that the infringement arose out of compliance with Buyer's specifications; and (iii) that if the sale or use of the Supplies is enjoined or, in Buyer's sole and absolute judgment, is likely to be enjoined, Seller shall,

at Buyer's election in its sole discretion and at 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.

22.4 All Supplies, Tooling and all other deliverables which include Intellectual Property, for which Buyer has agreed to reimburse Seller, along with all Intellectual Property relating thereto and needed to manufacture, sell or use the Supplies are the sole and exclusive property of Buyer. Seller shall promptly disclose in an acceptable form and assign to Buyer all such Intellectual Property. Seller shall cause its employees to promptly sign any papers necessary to enable Buyer to file applications for patents throughout the world and to record rights in and to such Intellectual Property. To the extent that the Intellectual Property includes any works of authorship created by or on behalf of Seller, such works shall be considered "works made for hire", and to the extent that such works do not qualify as "works made for hire," Seller hereby assigns to Buyer all right, title, and interest in all copyrights and moral rights therein.

22.5 Seller hereby grants to Buyer, its subsidiaries and affiliates, and their respective successors and assigns, and Buyer hereby accepts, a non-exclusive, irrevocable, royalty-free, fully paid up worldwide license, including the right to sublicense to others in connection with providing the Supplies to Buyer or Buyer's Customer, under: (i) any Intellectual Property owned or controlled by Seller or its affiliates, and relating to the Supplies, to make, have made, repair, reconstruct, rebuild, relocate, use, sell and import the Supplies, and (ii) any works of authorship fixed in any tangible medium of expression (including drawings, prints, manuals and specifications) furnished by Seller in the course of Seller's activity under the Order, to reproduce, distribute and display such works and to prepare derivative works based thereon, subject to the other provisions of the Order (all items in clauses (i) and (ii) above, collectively, "***Seller's Intellectual Property***", and such license in respect thereof, the "***License***"). Seller acknowledges and agrees that the License shall be effective from the first date of delivery of Supplies under the Order and extend for so long as Buyer has contractual obligations to Buyer's Customer to sell goods incorporating the Supplies. The License is intended to be subject to 11 USC Section 365(n) (as amended from time to time) as an executory agreement under which Buyer has license rights to Seller's Intellectual Property, and is supplementary to any other rights of Buyer under the Order and any other agreement with Seller.

22.6 Seller shall ensure that the terms of its contracts with its subcontractors and employees are consistent with the terms of this Section.

### **23. Proprietary Information; Record Retention.**

23.1 Any information or knowledge which Buyer may have disclosed or may hereafter disclose to Seller in connection with the Order and any and all services to be rendered and/or work to be performed pursuant to the Order is and shall be deemed confidential and proprietary information of Buyer. Seller shall not, without authorization in writing from Buyer, use (except as necessary to the performance of the Order), communicate or disclose such confidential and proprietary information of Buyer or use such information for any purpose other than to perform its obligations under the Order. Seller agrees to

safeguard the confidential and proprietary information of Buyer by using reasonable efforts, consistent with those used in the protection of its own proprietary information of a similar nature, to prevent its disclosure to third parties. Seller agrees to cause its employees, "contractors", officers, directors, agents and representatives to be bound by and comply with the foregoing restrictions regarding the use or disclosure of such confidential and proprietary information. Seller further agrees not to assert any claims with respect to any technical information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the Supplies.

23.2 The restrictions and obligations of Section 23.1 shall not apply to information that: (a) is already publicly known at the time of its disclosure by Buyer; (b) after disclosure by Buyer becomes publicly known through no fault of Seller; or (c) Seller can establish by written documentation was properly in its possession prior to disclosure by Buyer or was independently developed by Seller without use of or reference to any of Buyer's information. Notwithstanding anything to the contrary in these POTC, any confidentiality or non-disclosure agreement between the parties that predates the Order shall 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 and this Section, the terms of that agreement shall control.

23.3 All documents containing proprietary information relating to the Supplies produced or acquired by Seller in connection with this Agreement shall belong to Buyer. All drawings, know-how, and confidential information supplied to Seller by Buyer and all rights therein shall remain the property of Buyer and shall be kept confidential by Seller in accordance with Section 23.1 above.

23.4 Seller agrees not to assert any claim against Buyer or its suppliers with respect to any technical information that Seller has disclosed or may disclose to Buyer in connection with the Supplies covered by the Order, except to the extent expressly covered by a separate written confidentiality and/or license agreement signed by Buyer or by a valid patent expressly disclosed to Buyer prior to or at the time of the Order.

23.5 In the event that Seller has reasonable cause to seek adequate assurance of performance from Buyer (within the meaning of Section 2-609 of the Uniform Commercial Code), Buyer, in its sole discretion, shall be deemed to have provided adequate assurance of performance, if, within thirty (30) days after Seller's request, Buyer either: (i) makes one of its financial officers available to respond to Seller's concerns and thereby provides information to assure Seller that Buyer shall perform its obligations under the Order; or (ii) provides such documents as Buyer reasonably determines provides sufficient information to assure Seller that Buyer will perform its obligations under the Order. All information provided shall be subject to the confidentiality protection of Section 23.1.

23.6 Seller shall, within five (5) business days of Buyer's request or the expiration or termination of the Order, return all confidential and proprietary information (including all copies, notes and/or extracts thereof). This Section 23 shall survive termination of the Order.

23.7 Seller shall keep all relevant documents, data and other written information relating in any manner to the Supplies for at least five (5) years following: (a) in the case of the Supplies, the later of the last delivery of the Supplies or the date of the final payment to Seller under the Purchase Order; and (b) in



the case of Tooling, the later of the date of completion of any applicable PPAP, the date of submission of any applicable part submission warrant, or the date of final payment. Buyer may make copies of these materials at any time prior to their destruction.

#### **24. Setoff.**

24.1 In addition to any right of setoff or recoupment permitted by law, all amounts due Seller shall be considered net of indebtedness or obligations of Seller to Buyer. Buyer may set off against or recoup from any amounts due or to become due to Seller, any amounts due to Buyer however and whenever arising. If an obligation of Seller to Buyer is disputed, contingent or unliquidated, Buyer may defer payment of all or a portion of the amount due to Seller until such obligation is resolved in accordance with Section 32. Further, in the event Buyer reasonably feels itself at risk, Buyer may in its sole and absolute discretion withhold and recoup a corresponding amount due Seller to protect against such risk. For purposes of this Section only, the terms "Buyer" and "Seller" shall include their parent companies, subsidiaries, brother/sister companies and affiliates.

#### **25. Social Responsibility and Protection of the**

##### **Environment.**

25.1 Seller shall comply with all laws and regulations regarding environmental protection and to work on reducing the adverse effects of its activities on human beings and the environment. In this respect Seller shall set up and further develop a management system in accordance with ISO 14001 wherever possible. In the event Buyer's Customer requires Buyer and its suppliers to participate in any energy saving (or green initiative) or other environmental protection program, Seller shall fully comply and assist Buyer with its participation in such program as Buyer directs.

25.2 Seller warrants that neither it nor any of its subcontractors shall utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in abusive employment or corrupt business practices, in the supply of Supplies or provision of services under this contract. At Buyer's request, Seller shall certify in writing its compliance with the foregoing.

25.3 Seller shall comply with the principles of the U.N. Global Compact Initiative relating to the protection of international human rights, the right to collective bargaining, the abolition of forced labor and child labor, the elimination of discrimination when personnel is engaged and employed, the responsibility for the environment and the prevention of corruption. Further information on the UN Global Compact Initiative is available at: [www.unglobalcompact.org](http://www.unglobalcompact.org).

#### **26. Compliance With Laws; Ethics.**

26.1 Seller warrants that Seller, and all Supplies furnished by Seller under the Order shall comply with all applicable local, state, Federal and all other applicable laws, ordinances and regulations, including those concerned with labor, environment and safety, as those laws, ordinances and regulations are amended from time to time. Seller shall provide all permits, certificates, licenses, insurance approvals and inspections which may be required for the performance of the Order.

26.2 Seller also warrants that all Supplies furnished by Seller in performance of the Order shall comply fully with the Occupational Safety and Health Act of 1970 (as amended from time to time) and State plans approved under this Act; the Toxic Substances Control Act (as amended from time to time); and the regulations promulgated under both Acts, to the extent applicable to such equipment and in addition to any other rights or remedies which Buyer may have. Seller also warrants all Supplies fully comply with all federal and state environmental regulations including, without limitation, state laws regulating the amount of mercury. Seller shall promptly notify Buyer in the event that any environmental factors associated with Seller's products, services and/or processes may adversely impact Buyer or its employees, either directly or indirectly. Such impacts may involve, but are not limited to, direct exposure to toxic substances in Seller's products and/or processes, and/or negative publicity or litigation arising from Seller's use of endangered species or other environmentally sensitive materials.

26.3 Buyer serves from time to time as a contractor and/or a subcontractor concerning contracts to supply to the United States government. In those cases, Seller shall comply with the federal laws, regulations, and rules applicable to subcontractors of government contractors, including those relating to equal employment opportunity and affirmative action in the employment of minorities, women, the handicapped, and certain veterans, and contracting with women-owned or small and disadvantaged business concerns. Where applicable, Seller certifies that it maintains no segregated employee facilities in compliance with applicable law, and that it is not debarred from being awarded federal or federally assisted contracts.

26.4 Seller and/or any agent or representative of Seller, may not offer or give any gratuities, in the form of entertainment, gifts, or otherwise to any officer or employee of Buyer with a view toward securing any Order or securing favorable treatment with respect to the awarding, amending or making of any determinations with respect to the performance of the Order or future Orders.

26.5 Seller shall promptly notify Buyer if Seller has provided information to any Government agency (including agencies of foreign governments) regarding the Supplies, including information provided to the U.S. Government in accordance with the reporting requirements of U.S. law (as amended from time to time), including, but not limited to, Defect and Noncompliance Reporting, and Reporting of Information and Communications About Potential Defects. This notification shall include the following information: the date the notification was provided to a Government, the affected Supplies (or components of the Supplies, as applicable), and the report type (e.g., for reporting to the U.S. Government, an Early Warning Report or Noncompliance Report). Seller shall also promptly notify Buyer if Seller has provided information to a governmental agency regarding goods of a comparable or derivative nature to the Supplies including information provided to the U.S. Government.

26.6 Seller shall notify Buyer of any change in laws applicable to the Supplies and must identify the impact of such changes on Seller's performance and Buyer's receipt of such Supplies. Seller shall promptly develop and, with Buyer's approval, implement with respect to the affected Supplies any modifications that are necessary as a result such change in law. Seller shall be responsible for any fines or penalties imposed on Seller or Buyer resulting from any failure by Seller or its agents, subcontractors

or third part suppliers to comply with applicable laws or respond in a timely manner to changes in such laws.

26.7 Seller shall indemnify and hold Buyer harmless from and against any liability claims, demands or expenses (including attorney's or other professional fees) arising from or relating to Seller's noncompliance with this Section 26.

**27. Buyer's Limited Liability to Seller.** Buyer's sole liability under the Order (including its termination, expiration or cancellation) is to pay for the Supplies in accordance with Section 5 and to pay the specific termination related amounts described in Section 14.4. **IN NO EVENT SHALL BUYER BE LIABLE TO SELLER FOR ANY DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO COMPENSATORY, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL (AS OPPOSED TO COMPENSATORY) DAMAGES, LOST PROFITS OR OTHER DAMAGES DIRECTLY OR INDIRECTLY RELATED TO PROFITS, OR LIABILITIES OF ANY KIND IN CONNECTION WITH THE ORDER, WHETHER FOR BREACH OF CONTRACT, TORT LIABILITY, LATE PAYMENT, PROPERTY DAMAGE, PERSONAL INJURY, ILLNESS, OR DEATH OR OTHERWISE.**

**28. Assignment.**

28.1 Seller may not, without Buyer's prior written consent: (i) assign or delegate (including without limitation by subcontract) its obligations under the Order, or (ii) enter or offer to enter into a transaction that includes a sale of a substantial portion of its assets used for the production of the Supplies for Buyer or a merger, sale or exchange of stock or other equity interests that would result in a change of control of Seller. In the event of any approved assignment (including without limitation subcontract), sale or delegation authorized by Buyer, Seller shall retain all responsibility for Supplies, including all related warranties and claims, unless otherwise expressly agreed in writing by Buyer.

28.2 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 (see Section 24 above) or other method of enforcing any claims that Buyer may have under the Order.

28.3 Buyer shall have the right to assign any benefit or duty under the Order to any third party upon notice to Seller with or without Seller's consent.

**29. No Publicity.** Seller shall not advertise, publish or disclose to any third party (other than to Seller's professional advisors on a confidential and need-to-know basis) in any manner the fact that Seller has contracted to furnish Buyer the Supplies covered by the Order or any terms of the Order (including prices), or use any trademarks or trade names of Buyer in any press release, advertising or promotional materials, without first obtaining Buyer's written consent.

**30. Relationship of the Parties.** Seller and Buyer are independent contracting parties and nothing in the Order shall make either party the employee, agent or legal representative of the other for any purpose. The Order shall not grant either party any authority to assume or to create any obligation on behalf of or

in the name of the other. Seller shall be solely responsible for all employment and income taxes, insurance premiums, charges and other expenses it incurs in connection with its performance of the Order, except as expressly provided in a written agreement signed by Buyer. All employees and agents of Seller or its respective contractors are employees or agents solely of Seller or such contractors, and not of Buyer, and are not entitled to employee benefits or other rights accorded to Buyer's employees. Buyer is not responsible for any obligation with respect to employees or agents of Seller or its contractors.

**31. Conflict of Interest.** Seller represents and warrants that its performance of the Order shall 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 shall 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. Except with respect to the Directing Customer in the event Seller is a Directed Seller, Seller may not directly solicit Buyer's Customer for sales of the Supplies, goods substantially similar to the Supplies or any goods substantially similar to the goods sold by Buyer to Buyer's Customer.

**32. Governing Law; Dispute Resolution.**

32.1 Buyer and Seller shall first endeavor to resolve through good faith negotiations any dispute arising under the Order. 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. If mediation fails to resolve the dispute within thirty (30) days after the first mediation session, all disputes arising out of or relating to the Order shall be resolved through binding arbitration. The arbitration proceedings shall be conducted before a panel of three arbitrators (one appointed by each party and the neutral appointed by the other two arbitrators) in accordance with the Commercial Rules of the American Arbitration Association including application of the Optional Rules for Emergency Measures of Protection and shall be governed by the *United States Arbitration Act* and this Section 32. The arbitration shall be conducted in the city and state, district or province of Buyer's primary place of business, and the language of the arbitration shall be English. The arbitrators shall issue a written opinion setting forth the basis for the arbitrator's decision, which may include an award of legal fees and costs. While arbitration proceedings are pending, the parties shall continue to perform their obligations under the Contract without setoff for any matters being contested in the arbitration proceedings.

32.2 Venue for confirmation of or any challenge to the Arbitration Award shall be, at Buyer's option, in either the Iowa Circuit Court for the County of Polk or the United States Court for the Central District of Iowa, or in the State Court or Provincial Court or Federal Court for the state or province in the country from which the Order was issued by Buyer.

32.3 The Order shall be construed and governed, at Buyer's option, in accordance with either the internal laws of the State of Iowa and the United States of America, or the laws of the state, province or district in the country in which the Order was issued by Buyer. 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, are excluded.

32.4 Neither course of performance, course of dealing or usage of trade may be used to vary the terms of the Order.

32.5 If either party brings an arbitration or other proceeding against the other as a result of any alleged breach or failure by the other party to fulfill or perform any covenants or obligations under the Order, the prevailing party obtaining final judgment in such proceeding shall be entitled to receive from the nonprevailing party the prevailing party's reasonable attorneys' fees incurred by reason of such action or proceeding and all costs associated with such action or proceeding incurred by the prevailing party, including the costs of preparation and investigation.

**33. No Waiver.** Buyer's failure to insist on the performance by Seller of any term or failure to exercise any right or remedy reserved in the Order, or Buyer's waiver of any breach or default hereunder by Seller shall not, thereafter, waive any other terms, conditions, rights, remedies, breaches or defaults, whether of the same or a similar type or not.

**34. Severability.** If any provision of the Order, or portion of any provision, is declared or found to be unenforceable, the balance of the Order or such provision shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof.

**35. Survival.** The obligations of Seller to Buyer survive termination of the Order, except as otherwise provided in the Order.

**36. Notices.**

36.1 A written notice is used by the parties to provide a required notice or instructions to each other, or to authorize an exception, deviation or waiver of a pre-existing obligation or requirement under the Order. A written notice is also used by either party to provide any notice to the other party that is required to be in writing. In the case of Buyer, any written notice is valid only if signed by a representative of Buyer's purchasing activity. A written notice may be signed manually or electronically.

36.2 A written notice may be provided by: (a) first class mail; (b) courier service; (c) fax; or (d) standard e-mail. A written notice using method (a) or (b) is effective as of the date of delivery, and using method (c) or (d) is effective as of the date of transmission.

**37. Interpretation.** No provision may be construed against Buyer as the drafting party. Section headings are for convenience or reference only, and do not affect the meaning of the Order.

**38. Entire Agreement; Modifications; Buyer's Website.**

38.1 The Order is the entire agreement between the parties respecting the Supplies and supersedes any prior agreements.