



***SUMITOMO ELECTRIC WIRING SYSTEMS. INC.***

**SEWS Canada Ltd.**

# **Global Terms and Conditions**

**Document Release and Effective Date: July 1, 2011**

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**SUMITOMO ELECTRIC WIRING SYSTEMS, INC.**

**SEWS CANADA LTD.**

**Global Terms and Conditions for Suppliers**

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**1. General.**

- 1.1 **Integral Part of Purchase Order.** These Global Terms and Conditions (“Terms and Conditions”) are an integral part of any purchase order by Buyer (the “Buyer”) to Supplier (“Supplier”) providing for the purchase and sale, performance and/or installation of Items (the “Purchase Order”). The Purchase Order is subject to these Terms and Conditions and to the terms of any document referred to on the front side, the reverse side, or the additional attached pages of the Purchase Order. The parties to the Purchase Order may incorporate other documents by reference, which documents shall render full legal effect to and shall form part of the Purchase Order as though such other documents were transcribed verbatim.
- 1.2 **Offer by Buyer.** The Purchase Order is an offer to Supplier by Buyer for the purchase of the Items. The Purchase Order does not constitute an acceptance of any offer or proposal made by Supplier and supersedes all prior agreements, purchase orders, quotations, proposals and other communications regarding the Items covered by the Purchase Order, except that a signed prior agreement (such as an award letter, statement of work or non-disclosure agreement) will continue to apply to the extent not directly in conflict with the Purchase Order. Any reference in the Purchase Order to any offer or proposal made by Supplier is solely to incorporate the description or specifications of Items in the prior offer or proposal, but only to the extent that the description or specifications do not conflict with the description and specifications in the Purchase Order.
- 1.3 **Acceptance.** The Purchase Order may be accepted by the performance of Supplier for Buyer. Supplier’s commencement of work for Buyer and its continuing and ongoing performance under the Purchase Order shall constitute Supplier’s acceptance of the Purchase Order. Submission of an invoice by Supplier (or submission of any advance shipping notification, evidence of shipment of Items, other documentation indicating a Supplier claim or any other documentation which demonstrates that Supplier is performing its commercial relationship with Buyer, all of the foregoing as acceptable to Buyer in its sole discretion, and whether such notification, evidence or document is transmitted to Buyer electronically or otherwise but which can be reduced to writing) will constitute an independent written acknowledgement of the Purchase Order

between the parties regarding the sale of Items to Buyer. Under no circumstances shall the Purchase Order include any terms and conditions proposed by Supplier (“Supplier Terms and Conditions”), whether included on a Supplier invoice or written acceptance of a Purchase Order or otherwise, unless such Supplier Terms and Conditions are expressly accepted in writing executed by an authorized person on behalf of Buyer.

- 1.4 **No Requirements or Output Contract.** Buyer may buy Items from other sources or reduce quantities acquired from Supplier irrespective of the course of dealing between the parties. The Purchase Order shall not constitute a requirements or output contract unless specifically designated as such in the Purchase Order.
- 1.5 **Conflicts with Purchase Order.** In the event of a conflict between these Terms and Conditions and the provisions of a Purchase Order, the provisions of the Purchase Order shall control over these Terms and Conditions.
- 1.6 **Sale of Items.** Unless otherwise defined, the term “Items” shall, from time to time, include any and all of the following provided or performed by or on behalf of Supplier: (i) all raw materials, items, equipment, general stores, spare parts, goods, personal property, software and other intellectual property; (ii) all machinery, equipment and related items identified in or related to the Purchase Order; (iii) all specifications, plans, drawings, standards, project schedules, accessions and additions relating to any Items; (iv) any and all services rendered by Supplier in performing the Purchase Order (the “Supplier Performance”); (v) all price specifications and pricing data; (vi) all custom Items; and (viii) all labor, materials, equipment, software, spare parts and services provided by Supplier in connection with or reasonably related to the installation, testing, calibration, operating trials and repair of any of the foregoing. .
- 1.7 **Forecasts.** Buyer reserves the right to project or target volumes, provided, however, that such projections or targets are not intended to be nor shall they be deemed a firm commitment or guarantee that a certain quantity of Items be purchased by Buyer. Instead, such projections or targets will be effective only as non-binding forecasts and will be superseded in their entirety by the issuance of the applicable Purchase Order.
- 1.8 **Past Model Service Parts.** Supplier shall offer to provide to Buyer the Items for the greater of (i) any duration required by any customer of Buyer (a “Customer”); or (ii) 10 years, in either case at the original price.

## 2. **Delivery.**

- 2.1 **Packaging, Delivery, and Routing Requirements.** In conjunction with the delivery of Items and as designated from time to time by Buyer in the Purchase Order, Supplier agrees to (i) properly pack, mark and ship Items in strict conformity with the packaging and delivery requirements of Buyer, the Automotive Industry Action Group (AIAG), laws and regulations from the

country of manufacture and supply; and any applicable carrier; (ii) route deliveries of Items in strict conformity with the routing requirements of Buyer; (iii) deliver Items in quantities and at the time and the place specified in delivery schedules furnished by Buyer; and (iv) provide with each shipment of Items such packing slips, bills of lading and/or other shipping receipts or identifying documentation which taken together will allow Buyer to identify the Items shipped and determine that such Items have been delivered in strict conformity with all applicable packaging, delivery, and routing requirements of Buyer. The packaging must describe the supplied Item(s) and the respective quantity.

- 2.2 **Quantity, Terms and Times.** The obligation of Supplier to meet the delivery dates, specifications, and quantities set forth in the Purchase Order is of the essence. Deliveries are to be made in quantities, terms and at times specified pursuant to Buyer's written instructions. If Supplier's deliveries fail to meet schedule, Buyer, without limiting its other rights or remedies, may either direct expedited routing and charge excess cost incurred thereby to Supplier or cancel all or part of any Purchase Order. Items which are delivered in advance of schedule are delivered at the risk of Supplier and may, at Buyer's, be returned at Supplier's expense for proper delivery and/or have payment thereof withheld by Buyer until after the date that the Items are actually scheduled for delivery.
- 2.3 **Overshipments; Undershipments.** Buyer will have no liability for payment of Supplier claims arising from Items delivered to Buyer that exceed the quantities specified in the Purchase Order. At the sole option of Buyer, Buyer may keep any overshipments of Items and elect to have the quantities of Items under the Purchase Order increased by the same amount of Items as the quantity of overshipments. Alternatively, overshipments of any Items shall, if so requested by Buyer, be returned to Supplier at Supplier's expense. In case of undershipments of any Items, Supplier shall, if so requested by Buyer, immediately at its cost, ship the additional Items needed to fully complete the applicable Buyer's requirements to the destination and by the time designated by Buyer. Alternatively, Buyer may elect to have the quantities of Items under the Purchase Order reduced by the same amount of Items as the quantity of any undershipments.
- 2.4 **Inspection Period.** All Items shall be received subject to Buyer's acceptance or rejection on or before the end of the Inspection Period. Items so rejected may be returned to the Supplier at its expense. In addition to Buyer's other rights, it may charge the Supplier all expenses of unpacking, examining, repacking, and returning such Items. Buyer's right to inspect and test includes, without limitation, the right to inspect and test all Items and facilities of Supplier during the period of manufacture and at other times at any place where the Items may be located. The fact that Buyer may have inspected, tested, or failed to inspect or test any Items shall not affect any rights of Buyer. Buyer shall be under no obligation to do any inspection or testing of the Items. Payment by Buyer for Items and the Purchase Order prior to the end of the Inspection Period shall not constitute its acceptance thereof, nor shall such payment remove Supplier's responsibility for any nonconforming Items. "Inspection Period" shall mean (i) a reasonable period of

time after delivery to Buyer; or (ii) the time at which Buyer shall have completed its final inspection of the goods into which the Items are incorporated, and its written release of the part for delivery, whichever is applicable as determined by Buyer in its sole discretion.

### 3. **Price and Price Escalation.**

- 3.1 **Expenses, Costs, and Charges.** The price of Items includes storage, handling, packaging, crating, set-up fees, returnable containers, freight, insurance, transportation, and all other expenses, costs and charges of Supplier, unless Buyer agrees otherwise in writing in the Purchase Order.
- 3.2 **Prices.** If the price is not stated in the Purchase Order, the Items shall be billed at the price last quoted or paid or the prevailing market price, whichever is lower. Supplier warrants that the prices for anything sold to Buyer under the Purchase Order are not less favorable than those extended at the time of Supplier's acceptance of the Purchase Order to any other customers for substantially similar Items in equal or lesser quantities. In the event Supplier reduces its price for Items during the term of the Purchase Order, Supplier agrees to reduce the prices correspondingly. Supplier further warrants that the prices it charges are in compliance with all applicable government laws, rules and regulations.
- 3.3 **Invoices.** All invoices under the Purchase Order must reference the Purchase Order number, amendment or release number, Buyer's part number, Supplier's part number where applicable, quantity of pieces in the shipment, number of cartons or containers in the shipment, Supplier's name and number, bill of lading number and other information required by Buyer. Buyer may return incorrect invoices or related documents. Payment will be made against correct invoices and documentation pursuant to the payment terms specified in the Purchase Order.
- 3.4 **Duties and Taxes.** The total price includes all duties and taxes, except for any value added tax (VAT), which must be shown separately on Supplier's invoice for each shipment, and Buyer shall not be liable for any business activity taxes or taxes on or measured by net income. Supplier shall be responsible for all federal, state, and local taxes levied or assessed with respect to the manufacture, transportation, and sale of the Items. Supplier shall also be responsible for any state and local property taxes assessed on Tooling. Where applicable, Supplier certifies that a claim for refund has not been made nor has any credit been taken for any portion of any excise tax regarding any Items sold to and later exported by Buyer, and hereby waives any claim for refund of the foregoing tax in favor of Buyer.

### 4. **Compliance.**

#### 4.1 **Compliance with Manufacturing and Legal Requirements; Applicable Laws.**

- 4.1.1 In performing the Purchase Order and with respect to all Items provided to Buyer, Supplier and its employees, agents, subcontractors and

representatives shall comply with (i) all applicable Buyer policies, procedures, environmental and other guidelines, manuals and other requirements, as amended from time to time (“Manufacturing Requirements”); and (ii) all applicable state, federal, provincial and local laws, statutes, rules, regulations and ordinances, and all conventions and standards (collectively, “Laws”), as amended from time to time, of each and all countries (“Applicable Countries”) where the Items are to be manufactured or delivered, or Supplier Performance is to occur, or that relate in any way to the manufacture, labeling, transportation, importation, exportation, licensing, certification or approval of Items, including but not limited to Laws relating to environmental matters, import and export, duties and customs, wages, hours and conditions of employment, child labor, slave labor, occupational safety, discrimination, sexual harassment, immigration, health and safety, subcontractor selection and motor vehicle safety (“Legal Requirements”; collectively with Manufacturing Requirements the “Manufacturing and Legal Requirements”).

- 4.1.2 The Manufacturing and Legal Requirements set forth under Subsection 4.1.1 shall include the EU End-of Life Vehicles Directive 2000/53/EC, the Global Automotive Declarable Substance List (GADSL) and any similar or successor regulations and laws that apply to Items that will ultimately be part of a vehicle sold to the public and that may eventually end up in a junk yard or landfill. This applies to any process material in contact with or that remains on the Items (e.g., terminal oil, mold release agent, and markers). This Subsection 4.1.2 shall not apply to goods that do not end up included in a vehicle ultimately sold to the public such as Maintenance, Repair & Operations materials (e.g., office supplies and computers).
- 4.1.3 Upon request by Buyer, Supplier shall certify to Buyer in writing that all Manufacturing and Legal Requirements have been performed and completed and shall provide Buyer with copies of applicable certifications, permits, approvals, and any other documentation that evidences that the Items satisfy Manufacturing and Legal Requirements. In addition, Buyer shall have the right of access to Supplier’s premises to monitor both compliance with Manufacturing and Legal Requirements, and performance of the Purchase Order. Supplier shall indemnify and hold Buyer harmless from any liability, claims, demands or expenses (including attorneys’ fees) arising from or related to Supplier’s noncompliance with Manufacturing and Legal Requirements. Manufacturing and Legal Requirements shall include, but not be limited to, the North American Free Trade Agreement and the North American Free Trade Agreement Implementation Act (collectively, “NAFTA”). Supplier shall provide to Buyer originals or copies, as required, of any test reports used to obtain Manufacturing and Legal Requirements as soon as they are available or as otherwise required by law.

4.1.4 As part of the Manufacturing and Legal Requirements, Supplier will assist Buyer and assume joint responsibility for providing proper safety devices and notices, equipment and other means which may be necessary or desirable, to adequately safeguard the operator from harm for any particular use, operation, or set up of any Items and to adequately safeguard all Items to conform with all federal, state, and local government safety standards including, but not limited to the OSHA and all industry safety standards. Supplier hereby acknowledges that it has a duty to investigate and assist Buyer in implementing such devices and precautions and to obtain manufacturer instruction manuals and materials for such Manufacturing and Legal Requirements. Buyer agrees to provide Supplier with a list of Applicable Countries and to share with Supplier data and information pertaining to any Applicable Country that is in Buyer's possession and control; provided, however, Buyer shall have no affirmative obligation to obtain and deliver to Supplier any data or other information that may be required for Supplier to comply with this Section 4.

4.2 **Ingredients.** Prior to the shipment of any Item, Supplier will provide Buyer with any and all Material Safety Data Sheets ("MSDS"), Environmental Data Sheets ("EDS") and comparable documents that are related, directly or indirectly, to the Items and that are prepared pursuant to applicable Manufacturing and Legal Requirements. Supplier's obligation to provide the MSDS and EDS shall be a continuing obligation of Supplier, and Supplier agrees to promptly furnish to Buyer any modifications, amendments or supplements to the MSDS or EDS. For all Items to be delivered to or on behalf of Buyer in Mexico, Supplier will provide Buyer with any and all applicable MSDS and EDS translated to Spanish, or otherwise provide Buyer with such documents in English and Spanish, or in accordance with such other instructions as Buyer may designate from time to time. Further, Supplier agrees to promptly inform Buyer of any changes in materials or ingredients in Items, and to promptly furnish Buyer with updated or new MSDS and EDS relating, directly or indirectly, to the Items. Following Buyer's review of the MSDS and EDS and if requested by Buyer, Supplier shall provide Buyer with any other information it requests concerning the ingredients or materials in the Items. Supplier agrees to notify Buyer immediately upon obtaining any information or indications that Items supplied by or to be supplied by Supplier have hazardous characteristics, regardless of the information provided in the MSDS and EDS. Supplier also agrees to provide Buyer with any other ingredient information related, directly or indirectly, to the Items that is required to be provided by Supplier under any Manufacturing and Legal Requirements.

4.3 **Environmental Activity and Requirements.**

4.3.1 In connection with the manufacture, sale or delivery of Items, or any Supplier Performance, Supplier shall not under any circumstances cause or permit the use, storage, holding, generation, handling, transportation, discharge, emission or release of any Hazardous Substance, waste,

pollutant, contaminant or other substance in violation of any Environmental Requirement or in such manner as to necessitate environmental remediation. “Environmental Requirements” includes all applicable Laws (as the same may be amended from time to time) regulating, related to or imposing liability or a standard of conduct concerning the environment or any hazardous substance or environmental activity including, without limitation, the United States of America’s (“US”) Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq. (“CERCLA”). “Hazardous Substance” shall include any substance which is a “hazardous substance” (as defined in CERCLA), or any other substance or material defined, designated, classified or considered as hazardous or toxic waste, hazardous or toxic material or hazardous, toxic, radioactive or dangerous substance under any environmental law or regulation. In its manufacture, sale, delivery and other Supplier Performance, Supplier shall conform to the standards of ISO14001 and any successor ISO standards concerning the same matters addressed in ISO14001.

- 4.3.2 Supplier further agrees to fully comply with all aspects of the latest revision of Buyer’s Supply Quality manual, which is incorporated by reference as if copied in full. Supplier is encouraged to adopt environmental best practices policy and conform to ISO14001:2004.

#### 4.4 **Export and Import.**

- 4.4.1 Export licenses or authorizations necessary or advisable for the export of Items shall be the responsibility of Supplier unless otherwise provided in the Purchase Order, in which event Supplier will provide such information to Buyer in order to enable Buyer to obtain such licenses or authorizations. Supplier will further comply with all US Customs and Bureau of Industry and Security requirements. Supplier shall arrange for and perform such steps as are requested by Buyer for any Items to be covered by any duty deferral or free trade programs of the country of import for all applicable Items. Buyer reserves the right, at its sole option, to direct entry of all Items in bond to a foreign-trade zone or subzone instead of a consumption entry. In the absence of contrary instructions in the Purchase Order, Supplier should arrange for a consumption entry prior to sale to Buyer. Supplier warrants that any information that is supplied to Buyer about the import or export of Items is true and that all sales covered by the Purchase Order will be made at not less than fair value under the anti-dumping laws of the countries to which the Items are exported.
- 4.4.2 On or before delivery if requested by Buyer, Supplier will provide:
- (a) a valid Manufacturer Affidavit or/and a complete Certificate of Origin stating the country of manufacture of the Item to be

certified by Supplier, or Supplier's legal or tax advisors, as accurate; and

(b) all supporting documentation requested by Buyer or Customers in the course of a NAFTA or other investigation by US Customs and Border Protection (CBP) or other governmental entity.

4.4.3 Supplier agrees to provide Buyer with such documents as may be required to obtain any applicable benefits related to or arising from the Purchase Order, including trade credits, export credits, or the refund of duties, taxes, or fees available to Buyer. Supplier shall provide Buyer all information requested by Buyer (including written documentation and electronic transaction records) to allow Buyer to receive such benefits and credits, as well as fulfill any custom obligations, local content obligations or other Manufacturing and Legal Requirements.

4.4.4 To the extent that any Items will be imported into the US or will be shipped temporarily to a US destination for transfer elsewhere, Supplier shall comply and ensure compliance by its carriers and freight forwarders with (a) all applicable recommendations and requirements of U.S. Customs and Border Protection's ("CBP's") C-TPAT initiative; (b) CBP's Importer Security Filing and Additional Carrier Requirements (a.k.a. ISF/"10+2") and (c) such additional requirements as CBP or other agencies of the US Government establish for goods to be imported into the United States or for temporary destination to US ports, for the purpose of accomplishing timely delivery into the US and Customs clearance of the Items. Upon request by Buyer, Supplier will certify in writing its compliance with this section 4.4.4 and provide copies of supporting forms to Buyer's logistics personnel.

## 5. **Rejected or Nonconforming Items.**

5.1 **Remedial Work; Replacement Items.** If any Item or shipment of Items is rejected as nonconforming to the Purchase Order by Buyer before the end of the Inspection Period ("Rejected Items"), Buyer shall have the following options:

5.1.1 **No Repair or Replacement.** Buyer may elect to have the quantity of Items under the Purchase Order reduced by the same amount as the quantity of Rejected Items; and Buyer will have no obligation to pay Supplier for such Rejected Items. Supplier will not replace Rejected Items without a new Purchase Order from Buyer. Rejected Items will be held by Buyer in accordance with Supplier's instructions and at Supplier's risk. Supplier's failure to provide instructions to Buyer within ten days (or such shorter period of time as may be commercially reasonable under the circumstances) after notice to Supplier by Buyer, shall entitle Buyer to charge Supplier for storage and handling and to dispose of the applicable Rejected Items without liability to Buyer.

- 5.1.2 **Replacement Items.** Buyer may elect to have Supplier, at Supplier's cost and as directed by Buyer, replace the Rejected Items with replacement Items, such replacement Items to be delivered to Buyer in accordance with any and all instructions provided by Buyer.
- 5.1.3 **Buyer's Right to Remedial Work.** Notwithstanding the provisions of Subsections 5.1.1 and 5.1.2 above, if Buyer determines that it is necessary to repair any Rejected Items, which shall include, but not be limited to, performing such additional work (including the cost of any materials) as is necessary to make such Rejected Items fully conforming (the "Remedial Work"), then Buyer may elect to (i) perform the Remedial Work itself; (ii) have a third party perform the Remedial Work; or (iii) have Supplier perform the Remedial Work. In the case of (i) or (ii), the cost of such Remedial Work shall be offset against the amounts otherwise due to Supplier for such Rejected Items or charged separately to Supplier.
- 5.2 **No Limitation of Remedies.** It is the intention of Buyer to attempt to utilize repair or replacement as its principal remedies in the case of Rejected Items, but such intention shall not be deemed a limitation of its remedies. If Buyer required and accepts replacement Items or Remedial Work, such actions shall not be an election of remedies ("Election of Remedies"), nor shall it in any way limit the rights and remedies of Buyer under the Purchase Order for the breach by Supplier caused by its tender of Rejected Items.
6. **Delay.**
- 6.1 **Notification of Delay; Supplier Performance.** If at any time Supplier has reason to believe that the delivery of any Items may not be made in strict conformity with applicable delivery schedules, Supplier shall immediately notify Buyer setting forth the cause for the anticipated delay. Any oral communication shall be immediately confirmed in writing. During the period of any delay, Supplier shall use its best efforts to provide the Items called for in the Purchase Order from other sources and reduce its deliveries of Items to Buyer by such quantities of substituted Items, all without cost or liability to Buyer.
- 6.2 **Right to Acquire Substitute Items.** In the event of any delay, Buyer shall have the right to immediately acquire substitute or replacement Items from one or more alternate sources ("Alternative Items"). Buyer may elect to have the quantities of Items under the Purchase Order reduced by the same amount of Items as the quantity of Alternative Items, unless otherwise notified by Buyer. Supplier will not replace Alternative Items without new written approval from Buyer. Buyer will have no obligation to pay Supplier for Items replaced by Alternative Items.
- 6.3 **Force Majeure.** Except as otherwise provided in Section 6.4, any delay or failure of Supplier to perform its obligations hereunder shall be excused if and to the extent that it is caused by an event or occurrence beyond the reasonable control of Supplier and without its fault or negligence, such as, by way of example and not

by way of limitation, acts of God, actions by any government authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, embargoes, acts of terrorism, sabotage, or court injunction or order; provided that written notice of such delay (including the anticipated duration of the delay) shall be given by Supplier to Buyer within ten days of the occurrence of such event. During the period of such delay or failure to perform by Supplier, the provisions of Section 6.2 shall apply. If requested by Buyer, Supplier shall, within ten days of such request, provide adequate assurances that the delay shall not exceed 30 days. To the extent that the force majeure event is reasonably foreseeable, Supplier shall at its expense take such actions as are necessary to ensure the uninterrupted supply of Items to the applicable Buyer, in the quantities and at the delivery times required by such Buyer, for a period of at least 30 days (the “Projected Force Majeure Expenses”). In the event the Projected Force Majeure Expenses will cause a financial hardship to Supplier, Buyer agrees to negotiate in good faith a reasonable allocation of the Projected Force Majeure Expenses between Buyer and Supplier. If the delay lasts (or is reasonably believed by Buyer to last) more than 30 days or Supplier does not provide adequate assurances that the delay will cease within 30 days, Buyer may immediately (i) cancel or modify the Purchase Order; and/or (ii) adjust, suspend (in whole or in part) or modify the performance of Supplier under the terms of the Purchase Order, all in an effort to adjust the timing and quantity of Items being furnished by Supplier to Buyer to account for the force majeure event. The decision to resume Supplier performance under the Purchase Order, and the terms of such resumption shall be made by Buyer in its sole discretion.

6.4 **Labor and Supply Problems Not Force Majeure.** Notwithstanding anything in this Section 6 to the contrary, no delay or failure of Supplier to perform its obligations hereunder shall be excused if and to the extent that it is caused by (i) labor problems of Supplier, its subcontractors, and/or its suppliers such as, by way of example and not by way of limitation, lockouts, strikes, and slowdowns; (ii) the inability of Supplier, its subcontractors, and/or its suppliers to obtain power, material(s), labor, equipment, or transportation; or (iii) changes in prices of raw materials, energy or other elements of cost adverse to Supplier.

6.5 **No Limitation of Remedies.** It is the intention of Buyer to work with Supplier in the event of any delay, but such intention shall not be deemed a limitation of its remedies. If Buyer obtains Alternative Items, such actions shall not be an Election of Remedies, nor shall it in any way limit the rights and remedies of Buyer under the Purchase Order for the breach by Supplier caused by its delay.

7. **Changes.** Buyer shall have the right to make changes in drawings, specifications, instructions, methods of shipping, packaging, marking, and date or place of delivery as to any Items covered by the Purchase Order. Supplier agrees to comply with such change notices. Such change notices will be in writing and signed by a duly authorized representative of Buyer. If such changes result in a decrease or increase in the Supplier’s cost or in the time for performance, an equitable adjustment in the price and time for performance will be made by the parties in writing. Unless Supplier presents to Buyer an

itemized statement justifying such increase within 20 days after the receipt of notice of such change, the Supplier shall be conclusively deemed to have waived all claims against Buyer with respect thereto. Supplier will not make any change in the Supplier's design, processing, raw materials, packing, marking, shipping, or date or place of delivery except at Buyer's written instruction or with Buyer's written approval.

## 8. **Warranties.**

8.1 **Express Warranties.** Supplier expressly warrants (the "Supplier's Warranties") that

- 8.1.1 all Items will be manufactured, provided and transported to Buyer in full and complete conformity with the Purchase Order, including without limitation all specifications, drawings, and samples or other descriptions furnished or specified by Buyer ("Buyer Specifications", all specifications, drawings, and samples or other descriptions furnished or specified by Supplier ("Supplier Specifications") but only to the extent not superseded by Buyer Specifications, and all Manufacturing and Legal Requirements;
- 8.1.2 all Items will be merchantable, of good material and workmanship, free from defects, and free of any claim of any third party;
- 8.1.3 if Buyer does not provide the design for Items, the design of the Items shall be free from defects;
- 8.1.4 all Items will be fit and sufficient for the purposes intended by Buyer;
- 8.1.5 for any Items which contain patented, trademarked or copyrighted components which are otherwise the subject of intellectual property rights held by third parties, Supplier has all rights to such intellectual property sufficient to permit its full and complete performance hereunder and afford Buyer all of the benefits provided for herein; and
- 8.1.6 to the extent that Remedial Work and/or Supplier Performance are required by the Purchase Order, such Remedial Work and/or Supplier Performance will be performed in a good and workmanlike manner utilizing personnel with skill levels appropriate to the task and in full and complete accordance with the Purchase Order.

8.2 These warranties shall run to Buyer, its successors, assigns, Customers, and users of its products. Supplier will extend to Buyer all warranties it receives with respect to Items; however, this shall not relieve the Supplier of any warranties granted in the Purchase Order or otherwise allowed by law.

8.3 **Evidence of Supplier's Quality Assurance; Testing.** Upon Buyer's request, Supplier shall deliver to Buyer data, records and other materials to evidence Supplier's testing, inspection, and analysis of field quality data as provided by Buyer and such other quality assurance actions as will validate compliance with

Section 8.1. Buyer may, upon prior notice and during normal business hours, inspect the Items and/or work in process on the Items and conduct quality control measures and tests at Supplier's or any subcontractor's premises. Without cost to Buyer, Supplier shall provide facilities and assistance for Buyer's inspections, tests and measures. Buyer shall not be liable for any reduction in value of samples used, nor shall any Items rejected be submitted to Buyer.

8.4 **Approval.** Approval of any sample, inspection, test, acceptance, payment, or use of any Items furnished under the Purchase Order shall not relieve or affect Supplier's obligation under the Supplier's Warranties; such Supplier's Warranties shall survive payment, inspection, test, acceptance, and use.

8.5 **Remedies.** Buyer's remedies for a breach of the Supplier's Warranties shall include, but shall not be limited to, requiring Supplier, at its cost, (i) to accept a return of such Item(s); (ii) to perform the Remedial Work; and/or (iii) to provide replacement Items which fully comply with the requirements of the Purchase Order and all Buyer Specifications and Supplier Specifications. None of the remedies available to Buyer for the breach of any of the foregoing warranties may be limited except to the extent and in the manner agreed upon by Buyer in a separate contract specifically designating such limitation and signed by an authorized representative of Buyer. Buyer's inspection, acceptance of, and/or payment for Items shall not constitute a waiver of any warranties.

8.6 **Base Consumer Warranty Period.**

8.6.1 **Generally.** Except as otherwise required by applicable law and subject to the provisions of this Section 8, the duration of Supplier's Warranties for any particular Item (other than Items designated by Buyer as Service Parts (the "Service Parts")) shall be for a period beginning with the acceptance of such Item and ending on a date which coincides with the expiration of the consumer vehicle warranty (the "Base Consumer Warranty Period") for any vehicle into which the Item subject to Supplier's Warranties has been installed or incorporated. Supplier recognizes that the Customers produce a variety of vehicles under different nameplates, and that the consumer vehicle warranty for such vehicles will vary in length, duration and scope between such vehicles. As a result, even in the event Supplier provides Buyer with a uniform Item, but such Item is installed in or incorporated into different vehicles with differing consumer vehicle warranties, then in such event, the Base Consumer Warranty Period for such Items will likewise vary so as to correspond to the applicable consumer vehicle warranty.

8.6.2 **Other Warranties; Changes.** The Base Consumer Warranty Period shall be exclusive of any individual extended warranty period purchased by a Customer's customer. The parties hereto recognize that the Base Consumer Warranty Period may be modified from time to time by a Customer and that the Base Consumer Warranty Period as modified will

be effective prospectively to Items manufactured as of and after the effective date of any revision to the Base Consumer Warranty Period.

- 8.6.3 **Service Parts; Past Model Service Parts.** For Service Parts, the duration of Supplier's Warranties shall be the greater of (i) 12 months from the date of delivery of the part to the Customer; or (ii) the remainder of the Base Consumer Warranty Period on the vehicle on which the Service Part is installed.
- 8.7 **Dispute Resolution.** Supplier may object to Buyer's claims in writing within a reasonable period after Supplier's receipt of the claim notice from Buyer. Supplier and Buyer agree to negotiate and to make reasonable efforts to settle such situations prior to pursuing other remedies.
- 8.8 **Remedies Post-Base Consumer Warranty Period; Extension.** In case any substantial defect is found in any of the Items after the Base Consumer Warranty Period has expired but within reasonable years of such Item's life, and the cause for such defect is determined by mutual agreement of Buyer and Supplier to be attributable to Supplier, Buyer and Supplier shall, acting reasonably and in good faith, fully discuss the resolution of and apportionment of responsibility for such claims. If Buyer, in its sole judgment, elects to extend its Base Consumer Warranty Period or to otherwise provide additional remedies to a Customer because of any substantial defect in the Items, then Supplier shall also extend reciprocal remedial rights (both as to quality and as to duration) to Buyer, and the parties agree to negotiate in good faith to reasonably allocate the costs of providing the remedial rights to the Customer(s) and to Buyer.
- 8.9 **Warranty Cost Settlement Procedure.** The parties intend to mutually negotiate and resolve a means of calculating the actual cost of any warranty claim with respect to Supplier's Warranties, including but not limited to Remedial Work, replacement Items and related costs, all in conformity with such warranty cost settlement procedures as are adopted by Buyer from time to time. The parties agree to allocate such costs with respect to Supplier's Warranties in an effort to have both Buyer and Supplier each bear its respective share of the cost.
- 8.10 **No Limitation of Remedies.** It is the intention of Buyer to work with Supplier in the event of any nonconformity or warranty claim with respect to Supplier's Warranties, but such intention shall not be deemed a limitation of its remedies. If Buyer obtains replacement Items, such actions shall not be an Election of Remedies, nor shall it in any way limit the rights and remedies of Buyer under the Purchase Order.
9. **Confidential Information; Intellectual Property; Technical and Business Information.**
- 9.1 **Confidential Information.** Neither party may disclose to a third party any confidential or proprietary information concerning the business or technology of

the other party (“Confidential Information”). This provision shall not restrict or limit Buyer from using Confidential Information provided by Supplier under Section 4 in documents or reports prepared and submitted by Buyer to governmental agencies in order to comply with obligations arising under any Manufacturing and Legal Requirements. Further, Buyer reserves the right to disclose Confidential Information to any affiliate. Information will not be considered Confidential Information if it (i) is or becomes available in the public domain through no wrongful act of the receiving party; (ii) is already in the receiving party’s possession prior to the performance hereunder without an obligation of confidentiality; (iii) is rightfully disclosed to the receiving party by a third party without an obligation of confidentiality; (iv) is independently developed by the receiving party; or (v) is required to be disclosed pursuant to a final non-appealable court or regulatory order served on the receiving party, provided that the receiving party gives the disclosing party prompt notice of such order. This nondisclosure obligation shall survive the termination, expiration or cancellation of the Purchase Order.

- 9.2 **Additional Confidentiality Requirements.** Supplier recognizes that Buyer has agreed to comply with certain confidentiality requirements required by Customers, and Supplier agrees that Supplier shall cooperate with Buyer to ensure that the Purchase Order are in compliance with the confidentiality requirements of Customers.
- 9.3 **Limited Disclosure.** Confidential Information may be disclosed (i) in order for any party to fulfill its obligations under the Purchase Order; (ii) in ordinary course of business situations where disclosure is needed in order to comply with contract, insurance or similar obligations of either Buyer or Supplier; (iii) to any affiliate, or a person or entity directly involved in the design or manufacture of the Items; and (iv) by Buyer to Customers, or a person or entity directly involved in the design or manufacture of vehicles under the nameplates of Customers; provided, however, that with respect to (iii) and (iv), any third party to whom disclosure is made agrees to be bound by this Section 9, including the obligation not to commercially exploit the Confidential Information.
- 9.4 **Intellectual Property.** “Intellectual Property” shall mean (collectively) for any party (i) any patent, trade secret, trademark, service mark, copyright, mask work, or other intellectual property right of such party in information (electronic or written), documents, or property; and (ii) all sketches, drawings, blueprints, CAD designs or renderings, process sheets, dimensional layouts, test and trial result data and similar data that is proprietary to such party and which is used (directly or indirectly) or otherwise made available to the other party for or in connection with the manufacture, supply or production of any Tooling or any Items. Intellectual Property shall be Confidential Information.
- 9.5 **Buyer Intellectual Property.** Buyer does not transfer to Supplier any of its Intellectual Property (“Buyer Intellectual Property”) other than the limited right to use such Buyer Intellectual Property (which shall not be deemed a license) strictly

and solely in conjunction with Supplier's manufacture, supply and/or repair of any Items or Tooling.

## 9.6 **Supplier Intellectual Property.**

9.6.1 **Generally.** Supplier does not transfer to Buyer any Intellectual Property of Supplier ("Supplier Intellectual Property") other than the rights to use such Supplier Intellectual Property (i) in conjunction with the use of any Tooling manufactured by or for Supplier; and (ii) in connection with the use of any Items provided to Buyer for the manufacture, assembly, production and sale of vehicles of Customers (the "Customer Production"), whether by incorporating, modifying and/or assembling Items purchased from Supplier into other component parts or assembling Items directly into the Customer Production. Supplier grants to Buyer a non-exclusive, paid-up, worldwide license, with rights to grant sublicenses to any Affiliate or Customers, to use Supplier's Intellectual Property in the manufacture, assembly and production of Customer Production or components thereof.

9.6.2 **Other Rights.** If the Purchase Order is breached by Supplier and subsequently terminated by Buyer, Supplier shall be deemed to have simultaneously granted to Buyer a non-exclusive paid-up, worldwide license, with rights to grant sublicenses to any Affiliate or Customer (the "Limited License"), to use Supplier's Intellectual Property. Further, in the event there is no breach of the Purchase Order by Supplier, but after good faith consultation with Supplier Buyer deems the grant of a Limited License reasonably necessary in order to maintain the Customer Production, then Buyer shall be deemed to have a Limited License and the corresponding right to use Supplier Intellectual Property, and to allow third parties to use such Intellectual Property, in order to obtain Items or Tooling from alternate sources solely and exclusively for use in the Customer Production. The Limited License and use of Supplier Intellectual Property to maintain supply of the Customers shall be only for such period of time as is deemed reasonable by Buyer. There will be no fee to Supplier for the Limited License if Buyer terminates the Purchase Order by reason of a breach by Supplier. In all other instances, including the need to maintain supply of the Customers, the parties will negotiate a reasonable fee for use of Supplier Intellectual Property.

## 9.7 **Infringement.**

9.7.1 **Generally.** Subject to Subsection 9.7.2 below, Supplier will indemnify and defend Buyer against claims, liabilities, losses, damages, costs, and expenses, including reasonable attorneys' fees, arising out of the actual or alleged infringement by any Tooling or any Items manufactured or supplied by Supplier of a third-party Intellectual Property right (i) in the United States, the European Union, or Japan; and (ii) in another

jurisdiction if Supplier has knowledge or notice of the actual or alleged infringement in that other jurisdiction at any time and fails to promptly disclose it to Buyer in a manner and at a time which will allow Buyer to adequately respond to any such claim. If such a claim results, or is likely to result, in an injunction or other order that would prevent Supplier from producing or supplying, or Buyer from using or supplying, applicable Tooling or Items to the Customers, Supplier shall at its expense either (i) secure a license of the applicable Intellectual Property that permits Supplier to continue producing or supplying, or Buyer to continue using or supplying, applicable Tooling or Items to the Customers; (ii) if requested by Buyer and solely in conformity with any requirements of Buyer, modify the Tooling and/or Items so that they become non-infringing, so long as the modification does not materially alter the operation or performance of the Items; or (iii) replace the Items with non-infringing but practically equivalent Items, equivalency to be determined by Buyer in its sole discretion. Supplier expressly waives any claim against Buyer that such infringement arose out of compliance with Buyer's specification. Buyer may be represented by and actively participate through its own counsel in any such lawsuit or proceedings.

9.7.2 **Limitations.** Supplier will have no liability under this Subsection 9.7 unless Buyer provides Supplier with full information, cooperation, and assistance regarding a claim covered by Subsection 9.7.1. Buyer in the reasonable exercise of its business judgment will determine if it has fully cooperated with Supplier in the event of any infringement claim. Supplier will have no liability under this Subsection 9.7 if and to the extent that a claim of infringement is based on (i) an Item or Tooling modification made by Buyer; or (ii) an Item or Tooling modification made by Supplier at Buyer's request. Supplier will have proportional liability (if any) under this Subsection 9.7 as determined by the mutual agreement of the parties, or if the parties cannot agree, by Buyer in the reasonable exercise of its business judgment, if and to the extent that a claim of infringement is based on (i) use of Items in the Customer Production where, without the actual knowledge or involvement of Supplier, such Items are used or assembled in combination with other Items not made or sourced by Supplier; or (ii) Items manufactured or supplied to specifications not provided by Supplier or Buyer.

9.8 **Produced Technical Information and Data.** Any technical information, drawings, documents, data or other materials produced or acquired by Supplier in providing Items that are unique to Buyer under the Purchase Order which is not Supplier Intellectual Property ("Technical Information") shall be the property of Buyer. At Buyer's request, Supplier shall furnish to Buyer all Technical Information, without restrictions on disclosure or use. Supplier agrees not to assert any claim with respect to any Technical Information that Supplier has or may disclose to Buyer in connection with its performance of the Purchase Order.

9.9 **Other Information.** At Buyer's request, Supplier will furnish to Buyer from time to time any other information and data of Supplier which is not Supplier Intellectual Property and which Buyer deems necessary to understand (i) the design, manufacture, engineering, transportation, operation, or maintenance of any Items, or any other aspect of the Item and its relationship to any applicable Buyer's requirements; and (ii) any Technical Information (collectively, "Other Information"), without restrictions on disclosure or use by Buyer. Supplier agrees not to assert any claim with respect to any Other Information that Supplier has or may disclose to Buyer in connection with its performance of the Purchase Order.

9.10 **Audit Rights; Supplier's Financial Information.**

9.10.1 If requested by Buyer, Supplier will permit Buyer, including through its designated representatives for this purpose, to

- (a) Examine all pertinent documents, data and other information relating to Items under a Purchase Order, any payment made to Supplier or any claim made by Supplier that affects Buyer;
- (b) View any facility or process relating to Items, including those relating to production quality; and
- (c) Audit any facility or process to determine compliance with the requirements of a Purchase Order.

Any examination will be upon advance written notice to Supplier and conducted during normal business hours.

9.10.2 If requested by Buyer, Supplier will use its best efforts to permit Buyer to obtain from subcontractors of, and vendors to, Supplier the information and permission to conduct the reviews specified in this section 9.10, regardless of any other right Buyer may have to that information or those facilities.

9.10.3 If requested by Buyer, Supplier will provide to Buyer's purchasing office or designated financial reviewer Supplier's most current Financial Reports for Supplier and for any related company of Supplier involved in producing, supplying or financing the Items or any component part of the Items. "Financial Reports" include income statements, balance sheets, cash flow statements and supporting data. Buyer's purchasing office or designated financial reviewer may use Financial Reports provided under this section 9.10.3 only to assess Supplier's ongoing ability to perform its obligations under Purchase Orders and related supply arrangements and for no other purpose, unless Supplier agrees in writing to a broader use. Buyer will treat all Financial Reports as Confidential Information.

9.10.4 If Supplier is a public company, Supplier will provide Financial Reports to Buyer as requested under 9.10.3 only at the time permitted to do so under applicable law and the rules of applicable stock exchanges.

9.10.5 Supplier will keep all relevant documents, data and other written information concerning its supply to Buyer for at least two (2) years following (a) in the case of delivery of Items, the later of the last delivery of Items or the date of final payment to Supplier under a Purchase Order; and (b) in the specific case of Tooling, the later of the date of completion of the supply using the specific Tooling or the date of final payment for Items produced by such Tooling. Buyer may make copies of these materials.

10. **Design; Work Made for Hire; Inventions.**

10.1 **Mutually Developed Design or Proprietary Product.** If a design or other proprietary product is mutually developed between Supplier and Buyer (the “Mutually Developed Item”), the parties agree that control of the use of the Mutually Developed Item shall be governed by a joint agreement, to be mutually agreed upon by the parties (the “Joint Development Agreement”). The parties agree that no commercial development of any Mutually Developed Item shall occur without first entering into a mutually acceptable Joint Development Agreement.

10.2 **Work Made for Hire.** Any work of authorship created by Supplier or its employees which is ordered or commissioned by Buyer, or is a necessary part of the performance of Supplier under the Purchase Order, will be considered a “work made for hire” and all copyrights for such work shall belong to Buyer.

10.3 **Inventions.** With respect to inventions which Supplier conceives or first reduces to practice in the course of Supplier’s activities under the Purchase Order which has been issued by Buyer with the intent of having Supplier conceive and develop such inventions, Supplier grants to Buyer a permanent, paid-up, nonexclusive, worldwide license, with a right to sublicense others, to make, have made, use, have used any such inventions (whether patented or not) in any manufacturing or production process.

11. **Recall; Products Liability.**

11.1 **Remedies; Allocation of Costs.** Upon the occurrence of a Recall or Products Liability Situation (Recall and Products Liability Situation are collectively referred to as a “Reimbursement Event”), Supplier and Buyer will negotiate in good faith with one another, and with all other suppliers to reasonably allocate the costs of complying with or contesting any Reimbursement Event and of providing the remedial rights to the Customer(s) and to Buyer in connection with any such Reimbursement Event. Buyer shall be entitled to (but not limited to) any and all rights and remedies under the Purchase Order, and Supplier will indemnify and hold Buyer harmless for the costs of any services or other actions undertaken by Buyer to correct or remedy any Reimbursement Event that is determined to be attributable to Supplier. Buyer’s remedies under this Section 11 shall include, but not be limited to, a claim for actual, consequential and incidental damages (including, without limitation, attorneys’ fees and administrative costs and

expenses) arising out of, resulting from or related to any such Reimbursement Event. Notwithstanding anything contained in the Purchase Order that might be interpreted to the contrary, the provisions of this Section 11 shall survive the termination or expiration of the Purchase Order and the duration of Supplier's Warranties as set forth in Section 8.6.

- 11.2 **Recall.** The term "Recall" shall mean (i) a determination by Buyer that an Item fails to meet Buyer's requirements and/or contains a defect related to motor vehicle safety or otherwise fails to comply with applicable Manufacturing and Legal Requirements; (ii) a decision by a Buyer to voluntarily recall any Items or vehicles incorporating Items due to a determination that such Item or Items failed to meet Buyer's requirements or otherwise failed to comply with applicable Manufacturing and Legal Requirements; (iii) a determination by a government agency or authority that an Item failed to meet Buyer's requirements and/or contains a defect related to motor vehicle safety or otherwise failed to comply with applicable Manufacturing and Legal Requirements; or (iv) any activity by Buyer, whether as a safety, maintenance or improvement campaign or otherwise, that would be deemed or constitute a recall under applicable Manufacturing and Legal Requirements. Any decision of Buyer in its sole discretion to contest in a legal proceeding any determination by a governmental agency or authority with respect to a Recall shall not waive or diminish in any manner any rights of Buyer under the provisions of this Section 11.
- 11.3 **Products Liability.** The term "Products Liability" shall include any action brought for or on account of personal injury, death or property damage caused by or resulting from the manufacture, construction, design, formulation, development of standards, preparation, processing, assembly, testing, listing, certifying, warning, instructing, marketing, advertising, packaging or labeling of any Item. Furthermore, the term "Products Liability Situation" shall refer to any Products Liability contested by Buyer in a court of competent jurisdiction or applicable agency, and a determination is made by such court or agency as a result of the proceeding that there is Products Liability on the part of Buyer or Supplier with respect to any Item.
- 11.4 **No Limitation of Remedies.** If Buyer obtains damages or takes other action in response to a Reimbursement Event, such actions shall not be an Election of Remedies, nor shall it in any way limit the rights and remedies of Buyer under the Purchase Order for the breach by Supplier caused by a Reimbursement Event.
- 11.5 **Joint Defense Agreement.** Notwithstanding the terms and conditions of this Section 11, it is recognized that Supplier may from time to time enter into a Joint Defense Agreement ("JDA") with Buyer pursuant to which Buyer and Supplier agree to implement a joint defense program for any actual or potential claims, actions or proceedings for alleged Product Liability Situation (the "PL Claims"). As to any PL Claim which is subject to a JDA, Supplier's liability to Buyer for such PL Claim shall be determined solely by reference to such JDA and to such extent, the terms of the JDA shall be deemed to supersede this Section 11.

## 12. Tooling Terms and Conditions.

12.1 **Applicability; Definitions; Records.** “Tooling” as used here means any tool, jig, die, mold, fixture, equipment or other related materials and specifications required to make the Items. “Records” means all documents that identify or relate to the Tooling. This Section 12 shall govern all Tooling required to make the Items, unless Buyer and Supplier have entered into a specific written agreement to address Tooling, in which case the specific written agreement shall govern all Tooling matters between Buyer and Supplier. If no such specific written agreement concerning Tooling exists between Buyer and Supplier, the terms of Section 12 shall apply. Supplier shall complete, sign and return to Buyer any Record furnished to it by Buyer that requests Supplier’s response concerning the Tooling’s identification, receipt, location, condition or status.

12.2 **Ownership and Identification.** Tooling is and always will be the sole property of Buyer or Customer. All Tooling shall be plainly marked and clearly identified by Supplier as “Property of \_\_\_\_” (Buyer) or “Property of \_\_\_\_” (Customer) as specified by Buyer. Supplier will keep proper Records to determine at all times the Tooling’s ownership, and confirm that Tooling is not owned by Supplier and is not claimed by any third party that attempts to assert a right, lien or interest in the Tooling. Except as provided here, Supplier will have no interest of any type in the Tooling, except through Supplier’s status as a bailee of the Tooling during its possession.

12.3 **Maintenance.** Supplier will take all reasonable steps to keep the Tooling maintained, repaired and in good condition at Supplier’s expense, with normal wear and tear to be experienced over time from normal use. Supplier will promptly inform Buyer when any item of Tooling is nearing the state of becoming obsolete or unfit for its intended purpose, so that substitute Tooling can be ordered and in place without disruption to production of Items. Supplier will maintain the Tooling safely at the location identified on Records for each piece, and shall not be removed to another location without Buyer’s prior written approval. Supplier will safely store the Tooling after a model run and make it available for service orders at Buyer’s request.

12.4 **Insurance; Risk of Loss; Indemnity.** Supplier will serve in the capacity of a bailee of the Tooling, and will take all reasonable steps to protect and preserve it. Supplier will purchase insurance in an amount at least sufficient to repurchase replacement tooling for each piece of Tooling, in an amount approved by Buyer, with Buyer named as an additional insured and a certificate of insurance provided to Buyer confirming this. Supplier will provide Buyer with at least 30 days prior written notice of any notice of cancellation of insurance or an indication from an insurer of intent to cancel insurance covering the Tooling. While in Supplier’s possession or control, Supplier bears the risk of total or partial loss for the Tooling, except for normal wear and tear arising from normal use. Supplier will indemnify and hold Buyer harmless against any liability or expense incurred related to damage to the Tooling during Supplier’s custody or control of the

Tooling. Supplier will indemnify and hold Buyer harmless from any responsibility, liability, claims, demands, losses, expenses or commitment arising from Supplier's possession or use of the Tooling during Supplier's custody or control of the Tooling, including but not limited to any claims by third parties claiming injury related to the Tooling.

12.5 **Buyer Procedures; Tooling Procurement.** Unless otherwise provided to the contrary in a separate signed agreement between the Parties, the manufacture, testing, delivery, acceptance and payment for Tooling will be in accordance with Buyer's procedures, as provided to Supplier from time to time. Buyer may provide Tooling to Supplier, or may ask Supplier for quotations on Tooling to be created and purchased for Buyer by Supplier. All Tooling purchase orders from Buyer to Supplier are subject to the Purchase Order and the following provisions:

12.5.1 Supplier will start work to procure Tooling in accordance with a Tooling Authorization issued by Buyer and accepted by Supplier. Until a Tooling Authorization is received and accepted, Supplier will not start work to procure Tooling. "Tooling Authorization" means a specific written order from Buyer that is accepted by Supplier and that specifies Tooling to be procured and the price, delivery and other material terms of the order.

12.5.2 Upon receipt and acceptance of a Tooling Authorization, Supplier will promptly place an order with a competent toolmaker to supply the Tooling in accordance with Buyer Specifications, to permit Buyer to review and approve the Tooling when completed, to provide for Buyer to be the owner of the Tooling and have all rights of access to and possession of the Tooling, to name Buyer as an express third-party beneficiary in the agreement between Supplier and the toolmaker, to provide that title to the Tooling will pass directly from the toolmaker to Buyer (without regard to payment terms between Buyer and Supplier), and to provide that if any Tooling is not made within the countries of Mexico, Canada or the United States so that the Tooling qualifies for NAFTA country of origin status, to provide that Supplier will be the importer of record of the Tooling.

12.5.3 In its agreement with toolmakers, Supplier will secure for Buyer toolmaker's consent for Buyer to inspect toolmaker's premises and review all test data and other information related to the Tooling during manufacture and the acceptance process.

12.5.4 If Tooling ordered by Supplier from a toolmaker is not being produced in conformance with Buyer Specifications or is determined by Buyer to be nonconforming, Buyer may require Supplier at Supplier's cost either (i) to repair such rejected Tooling and render it compliant; or (ii) replace the rejected Tooling with new conforming Tooling.

12.5.5 Time, quality and quantity are of the essence in completion of Tooling. Tooling must be completed and delivered to Supplier within the time

specified in a Tooling Authorization. Supplier is solely responsible to Buyer for having Tooling completed by the specified completion and delivery dates. Buyer may shorten or lengthen the time specified in a Tooling Authorization; if any change from a specified time results in a changed cost to Supplier, Buyer and Supplier will negotiate in good faith to adjust the pricing accordingly.

12.5.6 If Supplier breaches the terms of an accepted Tooling Authorization, Buyer may exercise one or more of the following remedies, which remedies are cumulative and additional to any other or further remedies provided at law or in equity:

- (a) cancel the Tooling Authorization at no expense to Buyer;
- (b) deal directly with the toolmaker to have the toolmaker/supplier agreement assigned to Buyer, or allow Buyer to contract independently with toolmaker for completion of the Tooling; or
- (c) make payments to the toolmaker and credit such payments against any amounts due to Supplier.

12.5.7 If the toolmaker completes the Tooling and is paid in full for such work by Buyer, Buyer's payment to the toolmaker will fully satisfy any additional amounts due to Supplier for such Tooling, without regard to the price stated in the Tooling Authorization. If the toolmaker completes the Tooling and is paid more than the original amount specified in the Tooling Authorization, Supplier will reimburse Buyer for such differential in price or Buyer may offset what it otherwise owes Supplier by such differential.

12.5.8 Buyer may cancel or terminate any Tooling Authorization for any reason or no reason upon written notice to Supplier. In the event of such a cancellation other than by reason of Supplier's breach, Buyer will reimburse Supplier for its documented expenses incurred to that point for amounts related to the Tooling that is specified in the canceled or terminated Tooling Authorization.

12.5.9 If Buyer cancels or terminates a Tooling Authorization, regardless of the reason, Supplier will immediately stop production or use of any subject Tooling, segregate any subject Tooling from its machinery and production processes, allow Buyer to take possession of the subject Tooling, and indemnify and hold Buyer harmless from any claim arising from a mechanic's or molder's lien or similar statute.

12.6 **Installation and Testing.** Unless provided otherwise in a signed separate written agreement or unless Buyer has failed to provide Tooling within the time specified by Buyer, Supplier is responsible for installing Tooling in its operations no later than the date Buyer specifies, and to complete testing of the Tooling to be certain

that it is merchantable, accomplishes its intended purpose and is in compliance with all applications standards, specifications and instructions provided by Buyer.

- 12.7 **Use, Inspection, and Segregation of Tooling.** Supplier will use the Tooling (i) for the exclusive purpose of fulfilling orders and making Items for Buyer in compliance with all applicable laws, regulations and government requirements; and (ii) in conformance with all quality standards, specifications and other instructions of Buyer (including directions that come through or on behalf of Buyer by a Customer). Supplier will use the Tooling in a manner that makes it difficult or impossible for someone to use it for purposes other than Buyer's purposes, and will not modify, dispose of, alter, sell, lease, transfer or encumber Tooling without Buyer's prior written consent. Upon receipt of Tooling and throughout its possession or control of the Tooling, Supplier will inspect both the Tooling and Records and promptly inform Buyer of any disappearance or any defect, damage or condition that could affect the Tooling's utility and value or its suitability for production. Unless Supplier has so informed Buyer, Buyer will rely on Supplier's Records as being accurate as reported to Buyer, and will understand that the Tooling is satisfactory. Buyer or its designee (including a Customer) may inspect the Tooling and may enter Supplier's facility at any time during normal business hours. Buyer reserves the right at any time after Tooling delivery to reject and cause Supplier to hold at Supplier's expense Tooling that does not conform to specifications (even if previously inspected and accepted), to require Supplier to return Tooling or Items at Supplier's expense, or to rework or have Tooling reworked, at Supplier's expense.
- 12.8 **Return.** Buyer is hereby granted the unconditional right of entry at any time to remove the Tooling without liability for such entry. On Buyer's request at any time, Supplier will promptly prepare the Tooling for shipment and deliver it FOB Buyer's dock or as otherwise specified by Buyer, freight prepaid, in the same condition as originally received by Supplier, except for reasonable wear and tear incurred during normal use. Supplier consents to entry of an immediate order (if necessary in Buyer's discretion) from a court with jurisdiction over Supplier's premises where the Tooling is located, to obtain access and release of the Tooling to Buyer, without the need for any bond, and will release the Tooling pursuant to court procedures as Buyer requests. Upon its receipt of Tooling from Supplier, Buyer's inspection will be final and binding concerning the quality and quantity of Tooling returned, as reasonably documented.
- 12.9 **Waiver of Liens.** As a continuing condition to Supplier's use of Tooling, Supplier, for itself and its successors and assigns, hereby relinquishes and agrees to obtain from any third parties who might claim any lien or right, those parties' waiver and relinquishment of all rights and interests, if any, to any lien or other retention rights regarding Tooling. To the extent that any common law or code provision is deemed applicable to Tooling or is determined to confer upon or create in favor of Supplier any lien, right or remedy, whether for work performed on, goods produced with or raw materials ordered in connection with Tooling, Supplier hereby irrevocably waives and relinquishes, for itself and its successors

and assigns, any and all such liens, rights and remedies, agreeing that its rights and remedies are solely those stated in this Section 12. Supplier acknowledges that the provisions of this paragraph are a bargained consideration that is essential to Buyer's business and to Supplier's possession or control of the Tooling.

- 12.10 **Amortization.** The Parties may agree from time to time in a signed writing that Tooling may be furnished by Supplier and its cost amortized as agreed. In such cases, the Tooling will be subject to all provisions of this Section 12 and shall be the sole property of Buyer during and after the amortization period. Buyer has the right at any time to take possession and control of such Tooling under the Purchase Order, and in such case will pay the balance of any agreed amortization price within 30 days of taking possession of such Tooling.
- 12.11 **Further Assurances.** Supplier will, upon Buyer's request, promptly participate in obtaining, executing and filing any financing statement, lien waiver, bill of sale or other document deemed by Buyer to be prudent to protect Buyer's interest in the Tooling. Supplier hereby designates Buyer to be its attorney-in-fact in signing and filing any such documents on Supplier's behalf.
- 12.12 **Liability.** Supplier acknowledges that Buyer was never a manufacturer or distributor of the Tooling, and Buyer expressly disclaims liability for damage to persons or property resulting from use of the Tooling. **BUYER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE TOOLING, INCLUDING WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.**
13. **Termination.** Buyer may, at its option, immediately terminate all or any part of the Purchase Order at any time and for any reason by giving written notice to Supplier, and notwithstanding the existence of any event of a force majeure event pursuant to Section 6.3. Upon termination at Buyer's option, Buyer and Supplier agree to determine whether and to what extent Buyer shall reimburse Supplier for certain reasonable costs. Buyer reserves the right to terminate all or any part of the Purchase Order, without liability to Supplier, if Supplier: (i) repudiates, breaches or threatens to breach any of the terms of the Purchase Order; (ii) fails to perform or threatens not to provide Items as specified by Buyer; (iii) fails to make progress or to meet Buyer's requirements so as to endanger timely and proper completion or delivery of Items and does not correct the failure or breach within ten days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from Buyer specifying the failure or breach; (iv) sells or offers to sell a substantial portion of its assets used for the production of Items for Buyer, or sells or exchanges or offers to sell or exchange an amount of its stock or other equity interests that would result in a change in control of Supplier; (v) fails to remain competitive with respect to quality, technology, delivery and pricing of the Items; (vi) makes an assignment for the benefit of creditors; (vii) files a voluntary petition in bankruptcy; (viii) is adjudicated as bankrupt or insolvent; (ix) files a petition or answer in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief proceeding under any law or rule that seeks for itself any of those types of relief; (x) files an answer or other pleading admitting or failing to contest the material

allegations of a petition filed against it in any proceeding seeking the relief described in division (ix) of this Section; or (x) a period of 120 days has elapsed after the commencement against the Supplier of any proceeding seeking the relief described in division (ix) of this Section, and the proceeding has not been dismissed; a period of 90 days has elapsed after the appointment of a trustee, receiver, or liquidator for the Supplier or for all or any substantial part of its properties without the Supplier's consent or acquiescence, and the appointment has not been vacated or stayed; or a period of 90 days has elapsed after the expiration of that stay, and the appointment has not been vacated. Upon receipt of any notice of termination, and unless otherwise directed by Buyer, Supplier will: (i) terminate promptly all work under the Purchase Order; (ii) transfer title and deliver to Buyer the finished product, the work in process, and the parts and materials that Supplier reasonably produced or acquired in accordance with the Purchase Order and which Supplier cannot use in producing goods for itself or for others; (iii) verify and settle any claims by subcontractors for actual costs incurred directly and made unrecoverable by the termination and ensure the recovery of materials in subcontractor's possession; (iv) take actions reasonably necessary to protect property in Supplier's possession in which Buyer has an interest until disposal instruction from Buyer has been received; and (v) upon Buyer's reasonable request, cooperate with Buyer in transferring the production of the product to a different supplier.

14. **Indemnity and Insurance.** Supplier shall defend and indemnify Buyer and the Customers against all damages, liability, claims, losses, and expenses (including attorneys' fees) arising out of or resulting in any way from any defect in the Items purchased under the Purchase Order or arising out of or resulting in any way from any act or omission of Supplier, its agents, employees, or subcontractors. Supplier shall maintain such liability insurance, including, without limitation, products liability insurance and Workers' Compensation insurance, as will adequately protect Buyer against such damages, liabilities, claims, losses, and expenses (including attorneys' fees) but in no event less than that amount required of Buyer by Customer. Supplier agrees to submit certificates of insurance evidencing its insurance coverage when requested by Buyer. It is understood and agreed that Supplier is an independent contractor.
15. **Customer Requirements.** Supplier agrees to conform its performance to Buyer to meet all terms and conditions of any agreements ("Customer Purchase Orders") between Buyer and a Customer, in which Buyer agrees to supply to Customer, or incorporate into Items supplied to Customer, Items purchased by Buyer from Supplier. Supplier recognizes that in the automotive supply chain, each supplier is contributing to an ultimate product made by Buyer's Customer or the ultimate maker of an automobile, so that the automotive maker's requirements must be met by all elements of the supply chain. Buyer may supply Supplier with information regarding specific aspects of Customer Purchase Orders that will apply to Supplier that differ from or supplement these Terms and Conditions. Supplier is responsible for ascertaining any terms and conditions contained in Customer Purchase Orders that may affect Supplier's obligations under the Purchase Order. Supplier will do everything within its control, so that the Items Supplier delivers to Buyer will enable Buyer to meet the terms and conditions of Customer Purchase Orders. If this Section conflicts any other paragraph in the Purchase Order, Buyer has the right to have the provisions of this Section prevail.

16. **Remedies.** The rights and remedies reserved to Buyer in the Purchase Order shall be cumulative with and additional to all other or legal or equitable remedies. Buyer will notify Supplier if: (i) any Items fail to conform to the warranties set forth in Section 8; (ii) Supplier fails to comply with or breach any of Supplier's representations in the Purchase Order or any of the terms and conditions of the Purchase Order; or (iii) Supplier (or its agents, employees or subcontractors) commits any other negligent or wrongful act or omission. At Buyer's request, Supplier will reimburse Buyer for any incidental or consequential damages caused by nonconforming Items, including but not limited to costs, expenses and losses incurred directly or indirectly by Buyer or its Customer(s): (i) in inspecting, sorting, repairing or replacing the nonconforming Items; (ii) resulting from production interruptions; (iii) conducting recall campaigns or other corrective service actions; or (iv) resulting from personal injury (including death) or property damage caused by the nonconforming Items. Consequential damages shall include, without limitation, professional fees incurred by Buyer. In any action brought by Buyer to enforce Supplier's obligation to produce and deliver Items under the Purchase Order, the parties agree that Buyer does not have an adequate remedy at law and Buyer is entitled to specific performance of Supplier's obligations under the Purchase Order.
17. **Supply of Raw Materials, etc. Supply and Lending.** After due consultation with Supplier, Buyer may supply raw materials, semi-finished products, etc., necessary for the Purchase Order (the "Supply Materials") to Supplier, with or without charge. Supplier shall inspect the Supply Materials promptly upon receipt and shall protect and insure the Supply Materials in the same manner as provided in Section 15. Supplier shall not use materials or semi-finished products, etc., for any purpose other than for manufacturing Items for Buyer and shall not dispose of or sell them to any third party.
18. **Quality Systems.** Supplier agrees to produce all Items represented on the Purchase Order by the current ISO:9001:2000 and/or TS16949. Other quality systems must be approved in writing by Buyer prior to use.
19. **Miscellaneous.**
- 19.1 **Waiver.** Buyer's failure to insist on performance of any of the terms and conditions under the Purchase Order, failure to exercise any right or privilege, or waiver of any breach under the Purchase Order shall not thereafter waive any other terms, conditions, rights, privileges, or warranties.
- 19.2 **Assignments, Subcontracting & Setoff.** The Purchase Order issued and any payments to be made thereunder may not be assigned or transferred without the prior written approval of Buyer. Buyer will have the right to assign any benefit or duty under a Purchase Order to any third party upon notice to Supplier with or without consent. No invoices may be issued by other than the named Supplier without the written permission of Buyer. All claims for monies due or to become due from Buyer shall be subject to deduction by Buyer for any setoff or counterclaim arising out of this or any other contract with the Supplier and its affiliates or subsidiaries whether such setoff or counterclaim arose before or after

an assignment by the Supplier. Buyer will provide Supplier with a statement describing any offset or recoupment taken by Buyer.

- 19.3 **Kentucky Law.** All questions concerning the validity and operation of the Purchase Order and the performance of the obligations imposed on the parties as a result of the Purchase Order will be governed by the laws of the Commonwealth of Kentucky, United States of America, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly disclaimed, and any conflict of laws provisions that would require application of another source of law.
- 19.4 **Notices.** Notices required under the Purchase Order must be in writing and, if given to Buyer, must be sent by one of the following means: (i) regular mail or (ii) a nationally recognized overnight courier service, addressed to Buyer at the address set forth in the Purchase Order, Attn: Vice President, Purchasing, and must refer to the specific Purchase Order to which a notice relates. Notices sent to Supplier must be sent by one of the following means: (i) regular mail; (ii) a nationally recognized overnight courier service; or (iii) telefax, and must be sent to such address and to the attention of such department or individual as is maintained in Buyer's files concerning notices to or the contact person of Supplier.
- 19.5 **Battle of the Forms Not Applicable.** The parties have agreed and it is their intent that the battle of the forms section of §2-207 of the Uniform Commercial Code shall not apply to the Purchase Order or to any invoice or acceptance form of Supplier relating to the Purchase Order. It is the parties' intent that the Purchase Order shall exclusively control the relationship of the parties, and in the event of any inconsistency between any invoice or acceptance form sent by Supplier to Buyer and the Purchase Order, the Purchase Order shall control.
- 19.6 **Entire Agreement.** The Purchase Order constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties as of the effective date.
- 19.7 **Survival.** Any provision of the Purchase Order which by its nature extends beyond the expiration, termination or cancellation of the Purchase Order shall remain in full force and effect until fulfilled and/or performed and shall inure to the benefit of and be binding upon Supplier and Buyer and their respective successors and assigns.
- 19.8 **Dispute Resolution.** Subject to either party's right to seek interim injunctive relief, in the event of a dispute of any kind arising out of or in any way related to a Purchase Order, the parties shall endeavor in good faith to settle the dispute through negotiation. If the dispute is not resolved through negotiation or another mutually agreeable dispute resolution mechanism, either party may request mediation. If the parties agree to mediation but this process fails to resolve the dispute or if the parties do not agree to mediation, the parties will submit all

matters in dispute between them to binding arbitration. Written notice of the intent to submit a matter to arbitration shall be given by the party requesting arbitration. The arbitral proceedings shall be conducted in accordance with the CPR Rules for Non-Administered Arbitration in effect at the time of a party's written notice of intent to arbitrate, or, if the parties so agree, the relevant rules of another arbitration forum. There shall be a single arbitrator. The arbitration will be held in Bowling Green, Kentucky, or in such other location as the parties may agree. The arbitration and its recognition and enforcement shall be governed by the United States Arbitration Act, 9 U.S.C. §§1 et seq., and judgment upon the arbitrator's award may be entered in any court having jurisdiction. Each party agrees that any applicable limitations period, whether arising from contract, statute, or otherwise, will be tolled and suspended beginning when a party provides written notice to the other party, as provided for in the Purchase Order, of a dispute to be resolved under this Section or when the parties begin negotiations under this Section, whichever is earlier. Tolling and suspension of the limitations period will continue until: (i) the parties resolve the dispute as evidenced by a written settlement agreement; or (ii) 45 calendar days after a binding arbitration decision is rendered, whichever is earlier. Notwithstanding the foregoing, in the absence of a written notice from one party to the other to submit the dispute to either non-binding mediation or binding arbitration (an "ADR Notice"), then either party may provide the other party with written notice that it desires the running of the limitations period to recommence. Such limitations period shall recommence 45 days thereafter, unless within such 45 day period the receiving party delivers an ADR Notice to the other party, in which event the limitations period shall be tolled and suspended as set forth above.

**SUPPLIER ACKNOWLEDGES THAT ITS SALE OF ITEMS IS MADE SUBJECT TO THE PURCHASE ORDER, INCLUDING BUT NOT LIMITED TO THESE TERMS AND CONDITIONS.**