

**CADENCE INNOVATION LLC**  
**PURCHASE ORDER TERMS AND CONDITIONS**

These Purchase Order Terms and Conditions (the "Standard Terms") will apply to and be a part of all Purchase Orders issued by Buyer to Seller which reference these Standard Terms. The Buyer and Seller are identified on the face of the Purchase Order. If no Buyer is identified, the Buyer is Cadence Innovations LLC.

**1. Agreement.**

(a) A Purchase Order constitutes an offer by Buyer to purchase the goods or services ("Supplies") specified on the face of the Purchase Order. The terms of the Purchase Order consist of: (i) the Purchase Order itself; (ii) all raw material, fabrication, shipment and other releases and authorizations issued in connection with a purchase order, including without limitation material requirements releases (collectively "Releases"); (iii) these Standard Terms; (iv) any applicable Buyer's Supplier Manual, as further described in Section 4(a), below; and (v) any other documents specifically incorporated into or otherwise made a part of this Purchase Order by Buyer—all as they may be revised by Buyer from time to time in accordance with these Standard Terms. Unless the context indicates otherwise, any reference to Purchase Order shall include all of its terms.

(b) Seller will be deemed to have accepted a Purchase Order by written acknowledgement of the Purchase Order or by commencement of work upon, shipment of any of the Supplies under, or providing services called for by the Purchase Order.

(c) Acceptance by Seller of any Purchase Order is limited to acceptance of its terms as described in Section 1(a). Buyer objects to and rejects any proposal from Seller for additional or different terms, or any attempt by Seller to vary any of the terms of Buyer's offer. However, additional or different terms proposed by Seller shall not operate as a rejection of the Purchase Order if Seller commences work or otherwise accepts Buyer's offer, in which case the Purchase Order shall be deemed accepted by Seller without any additional or different terms or variations whatsoever. The Purchase Order does not constitute an acceptance of any offer or proposal made by Seller, and Seller acknowledges 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. Any reference in the Purchase Order to any prior communication by Seller is solely to incorporate the description or specifications of the Supplies in such prior communication, but only to the extent that such description or specifications are not directly in conflict with the description and specifications in the Purchase Order. If any Purchase Order is deemed to be an acceptance of a prior offer made by Seller, Buyer's acceptance is expressly conditioned on assent to the additional or different terms in the Purchase Order and such acceptance is limited to the express terms set forth in the Purchase Order.

(d) Unless a Purchase Order requires Buyer to manufacture, ship and/or provide a specified quantity of Supplies, the Purchase Order is a requirements contract under which Seller is required to supply Buyer's requirements. Buyer's requirements are determined by the needs of Buyer's Customer and such needs may change from time-to-time. Customer means each 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 higher tier supplier to an original equipment manufacturer. Any projected or estimated volumes provided by Buyer to Seller (including forecasted volumes in any requests for quotation) are for planning purposes only and do not represent a commitment or obligation to purchase a specified quantity.

**2. Term.**

Unless otherwise expressly agreed by Buyer in writing, the term of a Purchase Order (the "Term") is as Purchasing Terms, Revision 3/08

follows:

(a) If the Supplies are used in connection with the production of a motor vehicle by Buyer's customer, and is not for a fixed quantity of Supplies, then the term shall continue for the shorter of the life of the vehicle program, or the termination or expiration of Buyer's agreement with its Customer in connection with which the Supplies are used.

(b) If the Purchase Order is for a fixed quantity of Supplies, the term shall expire when the fixed quantity is supplied.

(c) In all other cases, the term shall be one-year, commencing on the date set forth on the Purchase Order, even if pricing or price-related terms are provided for more than one year. The Purchase Order will automatically renew for successive one-year periods after the initial term unless Seller provides written notice at least 180 days prior to the end of the current term of its desire that the Purchase Order not be renewed. The Term is not extended by an amendment or revision to an Order which does not expressly modify the termination date.

### **3. Pricing, Price-Related Terms, Payment Terms**

(a) The purchase price of the Supplies is set forth on the face of the Purchase Order. Unless otherwise stated in the Purchase Order, the purchase price: (i) is a firm fixed price for the duration of the Purchase Order (including all renewal periods) and not subject to increase for any reason, including increased costs (including but not limited to raw material, labor, manufacturing or development costs), or changes in volumes or program length from those estimated or expected; (ii) is inclusive of all federal, state, provincial, 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. Specified productivity improvements and price reductions are the minimum adjustments expected by Buyer, and committed by Seller, in the specified periods and do not necessarily represent competitive pricing for such periods.

(b) Seller will provide Buyer with pricing that is as least as low as the pricing Seller charges its other customers for the similar type of Supplies and in similar quantities, during the period of performance of each Purchase Order or six months before such period.

(c) Seller will remain competitive with respect to pricing, as well as quality, technology, delivery and responsiveness. To determine if pricing is competitive, Buyer may seek quotes from third parties and/or Buyer's internal production facilities.

(d) Buyer shall not be responsible for taxes, duties, assessments or tariffs on account of any Supplies provided by Seller.

(e) If payment terms are not otherwise specified in a Purchase Order, Buyer's payment terms will be net 60 days from the later of receipt of a valid invoice or receipt of the Supplies. Seller shall, at its expense, comply with Buyer's instructions and policies with respect to the form, content and method for submission of invoices. Payment shall be deemed to occur upon mailing of a check to Seller. Payment terms will be extended three business days for payments made by electronic funds transfer. Seller must provide Buyer with detailed written notice of payment problems, including past due invoices or short payments, within 90 days of the applicable payment due date(s). If Seller fails to provide Buyer with timely written notice of a payment problem, Seller shall be deemed to have waived and released the right to assert a claim against Buyer related to the problem.

#### **4. Buyer and Industry Standards and Policies.**

(a) Seller must comply with the terms of Buyer's Supplier Requirements Manual as modified from time to time (the "Supplier Manual"). The Supplier Requirements Manual is available at <http://www.CadenceInnovation.com/supplier/index.php/> and may also be obtained by written request to Cadence Innovation. To the extent of any conflict or inconsistency between the Supplier Requirements Manual and a Purchase Order or other written agreements between Buyer and Seller, the Purchase Order and other written agreements shall govern and control.

(b) Seller will conform to all quality control and other standards and inspection systems as established or directed by Buyer and its Customer for goods and services similar to the Supplies. These include without limitation, the most current version of ISO 9001 or ISO/TS 16949 quality certification, OHSAS 18001 health and safety certification and ISO 14001 environmental certification including registration. Seller will also participate in Buyer'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) Customer(s) and agrees to present this information to Buyer upon request, at the level requested. To the extent any of the standards, policies or systems cited above are amended, supplemented or replaced, Seller's obligations under the Purchase Order shall be automatically be amended.

(c) Promptly upon learning of defective or non-conforming Supplies, Seller will develop, document and implement corrective actions in accordance with all applicable quality control policies and standards of Buyer and its Customers. Seller will immediately notify Buyer in writing when it becomes aware of any ingredient, component, design or defect in the Supplies that is or may become harmful to persons or property.

#### **5. Amendments and Revisions.**

(a) Buyer may, at any time, by delivering to Seller a written change order, amendment or revision (a "Amendment"), change the Purchase Order, including the quantity, design, specifications, engineering level, materials, testing requirements, delivery dates, processing, packaging and shipping instructions under a Purchase Order. All Amendments must be in writing and signed by an authorized representative of Buyer and, unless otherwise provided, will be effective seven calendar days after mailing by Buyer.

(b) Seller shall not make any change in the Supplies or to any term of a Purchase Order, unless done pursuant to Buyer's written instructions or with Buyer's written approval.

(c) If Seller believes that a change directed by Buyer will affect cost or timing, the Seller will within thirty (30) days of being directed to make the change, submit a written claim for equitable adjustment, including detailed substantiation of its claim. If the Buyer determines that an adjustment is appropriate, the Buyer and the Seller will negotiate in good faith on an equitable price adjustment (up or down), a change in shipping or delivery terms, or other appropriate adjustment. If Seller fails to provide Buyer with a timely written request for equitable adjustment, Seller shall be deemed to have waived and released the right to assert a claim against Buyer related to the change. Failure to agree upon a claim for equitable adjustment shall not relieve Seller of any obligation under the Purchase Order.

#### **6. Delivery, Shipping; and Risk of Loss.**

(a) If delivery dates, quantities or locations are not specified in a Purchase Order, they shall be specified in Releases issued by Buyer to Seller. Time, as specified in the Purchase Order or Release, is of the essence in connection with all Purchase Orders. Seller is to procure materials and fabricate, assemble and ship goods or provide services only as authorized in a Purchase Order or Release. Notwithstanding anything in this Section 6(a), Seller shall, at its own risk and expense, possess or have access to, all materials,

equipment and other inputs required to produce the Supplies. Buyer may return overshipments to Seller at Seller's risk and expense for all packaging, handling, sorting, and transportation. Even when a Purchase Order specifies delivery times, Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which will entitle Seller to a modification of the price for Supplies covered by a Purchase Order.

(b) All shipments must be suitably packed, marked and shipped in accordance with all requirements for shipment by common carrier and in a manner to secure the lowest transportation cost (unless otherwise noted on the Purchase Order or directed in a writing signed by an authorized representative of Buyer), and must comply with any additional shipping requirements set forth in the Purchase Order. Seller will bear all expenses of boxing, packaging, crating and freight (to Buyer's "ship to" location set forth in the Purchase Order), unless specifically indicated otherwise in the Purchase Order.

(c) If any delivery required of Seller is behind the schedule specified in the Purchase Order or any shipment release issued by Buyer, Buyer may elect to have such delivery made via expedited means, at Seller's expense.

(d) Regardless of the FOB terms set forth in a Purchase Order, risk of loss and responsibility for damage in transit is the sole responsibility and liability of Seller until Supplies conforming to the terms of the Purchase Order are delivered to and inspected and accepted by Buyer.

(e) Except for Tools, Buyer shall take title to all Supplies upon the earlier of: (i) delivery and acceptance of the Supplies at Buyer's plant; or (ii) payment by Buyer of all or part of the purchase price of identified Supplies. Supplies shall be deemed identified upon fabrication, unless the Supplies are part of Seller's standard stock and sold to persons in addition to Buyer, in which case identification occurs when the Supplies are marked or otherwise designated by Seller as relating to the Purchase Order. Buyer shall take title to Tools upon fabrication or acquisition by the Seller, regardless of payment. Tools includes fixtures, gauges, jigs, patterns, castings, cavity dies and molds, with all related software, appurtenances, accessions, and accessories.

## **7. Inspection; Acceptance of Supplies.**

(a) Buyer may inspect Supplies during any stage of their manufacture, construction, preparation, completion or delivery. Buyer and Buyer's Customer may enter onto Seller's premises during normal business hours (or after business hours upon reasonable request) to verify that the Supplies (and materials and processes used in connection with the Supplies) conform to all specified requirements and Seller must provide all supporting documentation reasonably required by Buyer or Buyer's Customer in the course of such inspection. At Buyer's request, Seller must also provide copies of production and quality test reports and related data.

(b) Buyer's payment for or receipt of the Supplies does not constitute acceptance. Buyer has the right to inspect Supplies within a reasonable period after delivery, which period shall continue at least until the Supplies are transferred by Buyer to its Customer. Buyer is not obligated to exercise its right of inspection prior to cutting, processing, assembling or altering any Supplies, and such action by Buyer will not constitute acceptance of such Supplies. In the event Buyer accepts Supplies whose defect or nonconformity is not apparent on examination, Buyer reserves the right to reject or revoke its acceptance of the Supplies, and in such event Buyer will have all of the rights and remedies with respect to the Supplies as if they had been initially rejected. Buyer's acceptance of Supplies which are defective or non-conforming is without prejudice to any right or remedy available to Buyer for breach, and Seller waives any right to notice of breach with respect to any defect, non-conformity or breach.

(c) If Buyer rejects or revokes its acceptance of any of the Supplies, the quantities under the Purchase Order will be reduced unless Buyer otherwise notifies Seller, and Seller will not replace reduced quantities without a new Release from Buyer. Following rejection, Buyer may, without prejudice to any other right or

remedy of Buyer, at Buyer's sole discretion and at Seller's sole expense: (i) return the Supplies to Seller at full invoice price, plus transportation charges; or (ii) require Seller to replace the Supplies with conforming Supplies; (iii) require Seller at its own expense to promptly make such adjustments, alterations, repairs and replacements as Buyer determines may be necessary; or (iv) itself repair, adjust, replace or alter the Supplies. In any event, Seller shall promptly reimburse Buyer for any and all loss, damage and expense incurred by Buyer or Buyer's customer as a result of the delivery of nonconforming Supplies and the corrective action taken, including but not limited to, all costs of replacement, repair, alteration and adjustment, all packaging, transportation, insurance and handling charges, all sorting and containment costs, as determined by Buyer; all amounts charged by Customer to Buyer; and all other damages, whether direct, incidental or consequential.

## **8. Delays.**

(a) Any delay or failure of either party to perform its obligations will be excused if it is caused by an extraordinary event or occurrence beyond the control of the nonperforming party and without the nonperforming party's fault or negligence, such as acts of God, fires, floods, windstorms, explosions, riots, natural disasters and wars. Written notice of any excusable delay, including the anticipated duration of the delay, must be given by the nonperforming party as soon as possible but not later than ten (10) days after the event. During the period of any delay or failure to perform by Seller, Buyer, at its option, may purchase goods from other sources and reduce its shipment releases to Seller by such quantities or have Seller provide the goods from other sources (if reasonably available) in quantities and at times requested by Buyer at the price set forth in the Purchase Order, with shipments by expedited means, if necessary, at Seller's expense. If requested by Buyer, Seller shall, within three (3) days after such request, provide adequate assurance that the delay will not exceed a period of time as Buyer deems appropriate. If the delay lasts more than the time period specified by Buyer, or Seller does not provide adequate assurance that the delay will cease within such time period, Buyer may, among its other remedies, immediately terminate the Purchase Order for cause.

(b) In no event will the Seller's performance be excused by: (i) the change in cost or availability of materials, components or services based on market conditions, supplier actions, labor disruptions or contract disputes; (ii) the financial distress or insolvency of Seller or any of its subcontractors or suppliers; or (iii) any labor strike or other labor disruption applicable to Seller or to any of its subcontractors or suppliers.

(c) Seller shall provide Buyer with written notice upon learning of any event which may potentially interfere with Seller's performance of its obligations under this Purchase Order, including but not limited to any of the events described in Sections 8(a) or 8(b). Such notice shall be given as promptly as possible and, in the event of the possible expiration of a labor contract, not less than sixty days prior to expiration. Such notice shall include a description of the event and of the impact such event may have on Seller's performance, as well as a plan for Seller to avoid such impact, including but not limited to a plan to build a six week parts bank. Upon Buyer's written request (whether or not preceded by written notice by Seller), Seller shall build any requested parts bank and take all other actions reasonably requested by Buyer to avoid or mitigate the impact of any such disruption, all of which shall be performed without additional charge to Buyer.

## **9. Warranties.**

- (a) Seller expressly warrants that during the Warranty Period (as defined below) Supplies will:
- i) conform to all specifications and samples previously provided,
  - ii) be free from defects in materials and workmanship,
  - iii) if designed by Seller, be free from defects in design; and
  - iv) be merchantable, safe and appropriate for the purpose for which Supplies of that kind are normally used. Seller acknowledges that it knows Buyer's and Buyer's Customer's intended use of Supplies to be sold under a Purchase Order, and that Buyer is relying on Seller's skill or judgment to

select or furnish suitable Supplies, and Seller warrants that the Supplies will be fit for the particular intended purpose.

(b) The "Warranty Period" means the longer of the following time periods: (1) 24 months from the day of first use of the Supplies by Buyer or acceptance by Buyer, whichever occurs later, and (2) if the Supplies are installed on new motor vehicles produced by Buyer's Customer(s), the new vehicle warranty period offered by Buyer's Customer to retail buyers in the country in which the vehicle is sold; or (3) if the Supplies are purchased by Buyer as service or replacement parts, the warranty period offered by Buyer's Customer to retail buyers in the country in which the vehicle is sold with respect to the service or replacement part.

(c) Seller further expressly warrants that:

- i) at the time that Buyer receives title to the Supplies, they will be free and clear of all liens, charges, assessments and encumbrances'
- ii) the Supplies and the sale and/or use thereof (before or after incorporation into products during manufacture) do not and will not infringe any Intellectual Property Rights. Intellectual Property Right means any right arising under U.S. or foreign law relating to patent, trademark, copyright, moral, industrial design right or misuse or misappropriation of trade secrets..
- iii) All services performed by Seller will be performed in a competent, workmanlike manner and in accordance with industry standards.

(d) The warranties provided for in this Section 9 are in addition to all other warranties, express, implied or statutory, will survive Buyer's inspection, test, delivery, acceptance, use and payment, and inure to the benefit of Buyer, its successors and assigns, and Buyer's Customer and the users of Buyer's or its Customer's products. The warranties provided for in this Section 9 may not be limited or disclaimed by Seller, nor may any remedy available to Buyer for Seller's breach be limited by Seller. Buyer's approval of Seller's designs, materials, processes, drawings, specifications or the like shall not be construed to relieve Seller of any warranties, nor shall a waiver by Buyer of any required specification as to any particular Supplies constitute a waiver of any such requirements for the remaining Supplies to be delivered unless so stated by Buyer in writing.

## **10. Indemnification.**

(a) Seller agrees to indemnify, defend and hold harmless Buyer, its affiliates, Customers, employees and all end users of Supplies incorporating the Supplies supplied by Seller, and each of their shareholders, directors, officers, employers and agents, on demand, from and against any and all claims, demands, actions, causes of action, suits, costs, fees (including reasonable legal fees and costs), penalties, damages (consequential and otherwise) and all other liabilities and obligations ("Losses") arising out of or relating to:

- i) Personal injuries, damages or death to any natural person or damage to any property, including, without limitation, injuries, death or damage to Buyer, Seller, their agents, employees, or property, or any spill, discharge, or emissions of hazardous wastes or substances, which relate to in whole or in part to any manufacturing, design or other defect, failure to warn, improper handling, improper installation or other act or omission with respect to Supplies provided under a Purchase Order, including Losses caused by any subcontractor utilized by Seller;
- ii) Any claim of any third party (including Customer) relating to the breach of any warranty;
- iii) Any breach of a Purchase Order or other agreement between Buyer and Seller;
- iv) Any recall, retrofit or other corrective actions or campaigns in which Buyer or its Customer participate involving or related to Supplies sold by Seller;
- v) Any claim of infringement (including claims of direct or contributory infringement or inducement to infringe) of any Intellectual Property Right relating to Supplies provided by Seller, even if

they are made to Buyer's specifications and even if Seller has provided only a portion or part of the Supplies.

(b) To the maximum extent permitted by applicable law, Seller's indemnification shall be applicable even as to Losses caused in whole or in part by an indemnitee's negligence, but shall not apply to the extent Losses result solely and directly from the gross negligence or willful misconduct of the indemnitee. At its option Buyer may participate in the defense of any indemnified claim with its own counsel, at Seller's expense. Seller's obligations under this Section 10 shall survive the termination or expiration of the Purchase Order or the expiration of any Warranty Period.

## **11. Termination.**

(a) Termination by Buyer for Convenience. Unless a Purchase Order specifically states that this Section 11(a) does not apply, Buyer shall have the right to terminate a Purchase Order, in whole or in part, at any time, without cause, by providing a written notice of termination to Seller. (For purpose of this Purchase Order, "termination" includes any act which brings a Purchase Order to an end, whether labeled termination, cancellation, or any other term). Buyer shall have the right to terminate a Purchase Order without cause even if an excusable delay exists or if Seller is not in breach of its obligations under the Purchase Order.

(b) Termination by Buyer for Cause. Buyer may, at its option, terminate a Purchase Order for cause if:

i) Seller breaches any obligation, including if: (1) Seller delivers Supplies that are defective or otherwise do not conform to the Purchase Order; (2) Seller fails to deliver any Supplies in accordance with the delivery schedule set forth in the Purchase Order or any Releases issued by Buyer; (3) Seller, within 10 days (or a shorter period if the circumstances so merit) after request by Buyer, fails to provide Buyer with adequate assurances of its ability to perform under a Purchase Order; (4) Seller otherwise fails to comply with any of the terms of a Purchase Order; or (5) Seller is or becomes insolvent, files or has filed against it a petition under any bankruptcy or insolvency laws or if a receiver or trustee is appointed to take possession or control of Seller's business or a material portion of its assets.

ii) Seller sells, or offers to sell, a substantial portion of its assets used for the production of Supplies or provision of services for Buyer, or sells or exchanges, or offers to sell or exchange an amount of its stock that would result in a change in the control of Seller. Seller must notify Buyer no more than 10 days after entering into any negotiations for any such sale or exchange of its stock or assets. or

iii) Seller fails to remain competitive with respect to quality, technology, delivery, and pricing of the Supplies.

iv) Any other reason for which Buyer is permitted under this Purchase Order to terminate for cause.

(c) Termination by Seller. The Seller may terminate a Purchase Order only for non-payment of the purchase price for Supplies which are thirty or more days past due and material in amount, and then only if: (i) Seller first provides Buyer written notice specifying the amounts past due and Seller's intent to terminate the Purchase Order if the past due amount is not paid; (ii) Buyer, within 60 days of such notice, does not either: (x) pay the past due amounts; or (y) notify Seller that the amount claimed to be unpaid are disputed by Buyer; and (iii) following such sixty (60) day period, Seller provides Buyer with written notice of final termination, effective not earlier than thirty (30) days from the date of such final notice. Seller may not terminate or cancel the Purchase Order for any reason except as permitted under this Section. Seller may not suspend performance of the Purchase Order for any reason.

## 12. Obligations Following Termination or Expiration.

(a) Upon receipt of a notice of termination, unless otherwise directed by Buyer, Seller shall (1) promptly stop all work under the Purchase Order; (2) transfer title to and deliver to Buyer or its designee all finished goods, work in process, and parts and materials that Seller produced or acquired in accordance with the Purchase Order and which Seller cannot use in producing goods for itself or for others; (3) verify and settle all claims by subcontractors for actual costs that are rendered unrecoverable by the termination upon the subcontractors' delivery to Buyer or its designee of all finished Supplies, work in process, and parts and materials which the subcontractors cannot use in producing goods for themselves or others; (4) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest until Seller has received disposal instructions from Buyer; and (5) provide Transition Support, as described in Section 12(b).

(b) Following expiration or termination of the Purchase Order by either party for any reason (including termination by Seller) and notwithstanding any claimed or actual breach of any obligation by Buyer, Seller will cooperate in the transition of supply to a successor supplier, including the following, which will collectively be referred to as "Transition Support":

i) Seller will continue production and delivery of all Supplies as ordered by Buyer, at the prices and other terms stated in the Purchase Order, without additional charge or other condition, during the entire period reasonably needed by Buyer to complete the transition to the alternate supplier(s), interruption in Buyer's ability to obtain Supplies as needed;

ii) at no cost to Buyer, Seller will promptly provide all requested information and documentation regarding and access to Seller's manufacturing process, including on-site inspections, bill-of-material data, tooling and process detail and samples of Supplies and components; and

iii) subject to Seller's actual capacity constraints, Seller will provide special overtime production, storage and/or management of extra inventory of Supplies, extraordinary packaging and transportation and other special services as expressly requested by Buyer in writing. If the transition occurs for reasons other than Seller's termination for Default, Buyer will, at the end of the transition period, pay the reasonable, actual cost of the assistance under this Section 12(b)iii), provided that Seller has advised Buyer prior to incurring such amounts of its estimate of such costs.

(c) Subject to Section 12(g), upon termination by Buyer under the terms of Section 11(a), Seller shall be to pay Seller, without duplication and in complete and final satisfaction of any liabilities relating to the Purchase Order: (1) the Purchase Order price for all conforming finished Supplies accepted by Buyer; (2) Seller's and its subcontractors' actual cost of the work in process and parts and materials transferred to Buyer in accordance with Section 12(a); (3) Seller's actual cost of carrying out its obligations of 12(a)(3); and (4) any amounts due with respect to Transition Support as provided in Section 12(b)iii). However, in no event will Buyer's obligations for termination under this Section 12 exceed those Buyer would have had to Seller in the absence of termination.

(d) Subject to Section 12(g), upon any termination by Buyer under the terms of Section 11(b), shall be to pay Seller, without duplication and in complete and final satisfaction of any liabilities relating to the Purchase Order: (1) the Purchase Order price for all conforming finished Supplies accepted by Buyer; and (2) any amounts due with respect to Transition Support as provided in Section 12(b)iii). Buyer shall be entitled to recover from Seller all damages, whether direct, indirect, special or consequential, and for all losses of every type resulting from Seller's breach or default

(e) . Upon any termination by Seller under the terms of Section 11(c), Buyer's sole and exclusive obligation to Seller shall be the same is in event of termination by Buyer in accordance with Section 11(a).

(f) Subject to Section 12(g), if the Purchase Order expires, Buyer shall pay to Seller, without duplication and in complete and final satisfaction of any liabilities relating to the Purchase Order, only (1) the

Purchase Order price for all conforming finished Supplies accepted by Buyer; and (2) any amounts due with respect to Transition Support as provided in Section 12(b)iii).

(g) Buyer's obligation to Seller pursuant to Sections 12(c) - 12(f) is subject to the following:

i) Seller shall furnish to Buyer, within one month after the effective date of termination, or such other period as may be directed by Buyer in writing, Seller's proposed termination claim, which will consist exclusively of the permitted items listed in Sections 12(c) - 12(f), as applicable. Seller shall comply with all reasonable directions of Buyer with respect to the termination claim. Buyer may audit Seller's records, before or subsequent to payment, to verify amounts requested in Seller's termination claim.

ii) Seller shall use good faith best efforts to minimize the amount of its termination claim, including but not limited to avoiding the unnecessary accumulation of obsolescent materials and seeking to minimize the amount paid to subcontractors pursuant to Section 12(a)(3).

iii) 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 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.

iv) In the event of a termination of this Purchase Order by Buyer as a result of Buyer ceasing to be a supplier to the Customer for the product in respect of which Buyer issued this Purchase Order, Buyer shall only be obligated to compensate Seller for any costs permitted under Section 12(c)(2)-(3) if, when and to the extent that the Customer reimburses Buyer for such costs.

v) Buyer will have no obligation for and will not be required to pay Seller, directly or on account of claims by 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 from termination or expiration of the Purchase Order, except as otherwise expressly agreed in a separate Purchase Order issued by Buyer.

### 13. Buyer's Property.

(a) Buyer's Property means any tangible or intangible property to which Buyer has title. Buyer's Property includes:

i) all inventory, supplies and materials supplied by Buyer to Seller, either directly or indirectly, to perform the Order ("Inventory");

ii) tools, jigs, dies, gauges, fixtures, castings, cavity dies, molds, patterns, equipment, software, appurtenances, accessions, and accessories ancillary products, and related drawings furnished by Buyer to Seller or for which Seller has been reimbursed by Buyer (or Buyer's Customer) ("Tools") (including such items owned by Buyer's Customer and provided to Seller by Buyer or its Customer) for use in producing Supplies,

iii) Any other property (including, by way of example, returnable packaging) for which Seller has been reimbursed by Buyer (or Buyer's Customer) or for which Buyer (or Buyer's Customer) has agreed to compensate Seller;

iv) any modifications, repairs, refurbishments, and replacements of Buyer's Property.

(b) Only Buyer (or Buyer's affiliates) has any right, title or interest in Buyer's Property, except for Seller's limited right, subject to Buyer's sole discretion, to use Buyer's Property in the manufacture of Supplies.

(c) With respect to Tools and other Buyer's Property in the custody or control of Seller or Seller's suppliers, contractors or agents:

i) Seller shall have only temporary possession of Buyer's Property as a bailee at will;

ii) Seller bears the risk of loss of and damage (excluding normal wear and tear) even though Seller exercises reasonable care to preserve and protect such property.

iii) At its expense, Seller shall repair and maintain all Tools and other Buyer's Property in good operating condition, normal wear and tear excepted.

iv) Seller shall assume all risk of death or injury to persons and damage to property arising from use of Buyer's Property.

v) Seller shall: (1) inspect and approve all Buyer's Property prior to use; (2) properly house Buyer's Property; (3) use Buyer's Property only for performance under a Purchase Order and not for production or services for any third party; (4) prominently mark the Buyer's Property as property of Buyer or Buyer's customer, as applicable; (5) refrain from commingling Buyer's Property with the property of Seller or with that of a third party; (6) adequately insure the Buyer's Property against loss or damage, including but not limited to maintaining full fire and extended coverage insurance for replacement value and naming Buyer as an additional insured; and (7) not move the Tools or Inventory to a location other than that set forth in a Purchase Order without the prior written consent of Buyer, except that, in the case of an emergency, Seller may move the Buyer's Property if Seller gives Buyer notice that the Buyer's Property have been moved and the location of the Buyer's Property as soon as practicable.

vi) Buyer and Buyer's customer have the right to enter Seller's premises during normal business hours (or after normal business hours upon reasonable request) to inspect Buyer's Property (in operation, if requested) and Seller's records related to the Buyer's Property. Seller will assign to Buyer any claims Seller has against third parties with respect to any Tools or Inventory.

vii) Upon Buyer's request, or upon any bankruptcy or insolvency filing and without regard to whether Seller is in breach of a Purchase Order, Seller must immediately deliver the Buyer's Property (at Buyer's option, F.O.B. Seller's facility or F.O.B. Buyer's premises), properly packaged and marked in accordance with the requirements of the carrier, Buyer and all applicable laws and regulations. Seller shall cooperate with Buyer's removal of the Buyer's Property from Seller's premises. Seller is responsible for labor and other costs incidental to its return. The Seller will cooperate with the Buyer and will 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 but not limited to molder's and builder's liens; and (ii) any objection to the Buyer's repossession and removal of Buyer's Property for any or no reason, including bankruptcy or insolvency proceedings.

viii) Upon Buyer's request, Seller will provide Buyer with a listing of all Buyer's Property in Seller's possession or control, showing Buyer's part number(s) for Supplies made using Buyer's property, the location(s) of the Buyer's Property and a certification acknowledging Buyer's or Buyer's customer's, as applicable, ownership of the Buyer's Property.

(d) Seller agrees neither to create nor allow to exist 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 all 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 Buyer's interest in Buyer's Property. Seller expressly waives any lien or security interest which Seller might otherwise have on any Buyer's Property for any amounts owing by Buyer or Buyer's customer, including for goods shipped or services provided by Seller for work done or value added to Buyer's Property. The previous waiver includes but is not limited to molder's, builder's and artisan's liens, and applies regardless of whether such liens arise by statute, regulation or common law.

(e) Buyer does not guarantee the accuracy or adequacy of any of the Buyer's Property it furnishes to Seller.

#### **14. Seller-Owned Tools.**

If a Purchase Order specifies that the tooling required to support production under a Purchase Order is to be funded by Seller ("Seller-owned Tooling"), the following provisions shall apply:

(a) Seller acknowledges that the Purchase Order price for Supplies includes a cost element for Seller to recover the capitalization of Seller-owned Tooling. The Seller-owned Tooling will be properly maintained by Seller at its own expense for the term of the Purchase Order and any period Seller is obligated to provide service or replacement parts, unless otherwise specified in the body of the Purchase Order or another written agreement between Buyer and Seller.

(b) Unless expressly agreed to in writing by Buyer, Seller shall not use Seller-owned Tooling to produce Supplies for other Seller customers, including aftermarket customers.

(c) In consideration of Buyer's Purchase Order for Supplies to be produced using the Seller-owned Tooling, Seller grants Buyer an exclusive, irrevocable option to purchase Seller-owned Tooling by paying an amount equal to the outstanding un-recovered cost at the time Buyer exercises the option. The term "un-recovered cost" means its net book value less any amounts that Buyer has previously paid to Seller for the cost of such items. Buyer may exercise this option at any time and not just in the case of termination or expiration of this Purchase Order. Upon exercise by Buyer of its option to acquire Seller-owned Tooling, at Buyer's request, Seller will cooperate with Buyer's removal of the property from Seller's premises. If Seller finances any portion of the Seller-owned Tooling, Seller will obtain for Buyer the rights granted in this Section 14(c) from its financing source.

#### **15. Dedicated Property.**

In addition to Seller-owned Tooling, unless otherwise agreed to by Buyer, Seller shall, at its expense, furnish, keep in good condition, and replace when necessary all machinery and equipment and other items necessary for the production of the Supplies under a Purchase Order ("Dedicated Property"). Seller grants Buyer an exclusive, irrevocable option to purchase any or all of Dedicated Property by paying an amount equal to the lesser of net book value or fair market value less any amounts Buyer has previously paid Seller for the cost of such items.

#### **16. Tooling Order.**

Seller shall not purchase any Tooling for the account of Buyer or charge Buyer for any tooling except as authorized in an Order. If a Purchase Order is for the acquisition or manufacture of Tools (a "Tooling Order"), Seller will design and fabricate, rework, or acquire (from such sources as Buyer has given prior approval) the Tools subject to all terms and conditions of these Standard Terms, including this Section.

(a) **Samples, Status.** In connection with all Tooling Orders, Seller shall, at its own expense: manufacture a reasonable number of sample parts using the Tools for inspection and/or testing by Buyer to ensure the capability of the Tools to produce parts consistent with Buyer's performance requirements; (ii) complete all required testing (including completion of the PPAP process); and (iii) submit all necessary documentation and Tools will be deemed to be completed only when Seller has performed each of these steps. In addition to Seller's obligations under Section 9, to the extent technically feasible, the Tools shall be designed and fabricated to be sufficiently durable to support the manufacture of all production and service requirements through the production lifetime of the part and also permit the production of Buyer's subsequent service-only requirements. Buyer may request Seller to furnish periodic status reports on the construction and acquisition of Tools. Each status report shall identify the Tools, identify the subcontractors working on the Tools, and designate the percentage of completion of the work. Seller will notify Buyer immediately upon becoming aware that the Tools may not be completed by the completion date specified on the Purchase Order and Seller shall furnish to Buyer a schedule of the actions

that Seller will take, at Seller's expense, to achieve completion on the specified completion date. Time is of the essence for Seller's acquisition or fabrication of Tools. Buyer shall further have the right inspect the Tools at any time, both during fabrication and during production, and whether in the possession of Seller or a subcontractor.

(b) Tooling Invoices, Payment.

i) If Buyer has agreed to compensate Seller for Tools, payment for Tools will be made upon Buyer's approval of Tools, in accordance with Buyer's otherwise applicable payment terms unless stated otherwise in a Purchase Order or other written authorization issued by Buyer, provided that Seller shall be entitled to receive payment only after and to the extent of, and in proportion to, Buyer's actual receipt of such reimbursement or other payment from the Customer. Tools will not be approved until completed.

ii) The price for Tools set forth in the Tooling Order will be adjusted to credit Buyer in the amount, if any, by which the price exceeds Seller's actual cost as verified. Seller shall establish a reasonable accounting system that enables ready identification of Seller's cost and shall provide to Buyer, as requested, access to Seller's premises and all documentation relating to the Tools prior and subsequent to payment, to inspect work performed and to verify charges submitted by Seller against the Tooling Order. If Seller does not provide such access and documentation, Buyer may determine in its reasonable discretion an appropriate adjustment. Seller will retain all cost records for a period of two years after receiving final payment of the charges.

(c) Subcontractors

i) all or part of the fabrication, modification, repair or refurbishment of Tools will be subcontracted to a third-party toolmaker, the Seller will: (a) give Buyer advance written notice of the identity of the toolmaker and the location of the Tools; (b) inform the toolmaker in writing that it is a bailee-at-will, through the Seller, of Tools owned by the Buyer; and (c) be solely responsible for payments to the toolmaker. To the extent permitted by applicable law, any payments made by Buyer for Tools are expressly intended by Buyer to be held in trust for the benefit of any subcontractor(s) used by Seller to produce the Tools that are covered by such payments and Seller agrees to hold such payments as trustee in express trust for such subcontractors until Seller has paid the subcontractors in full for the Tools. Seller acknowledges and agrees that its subcontractors are intended third party beneficiaries of the terms of this Section relating to the express trust and as such, the Tool subcontractors shall have the right to enforce these terms directly against Seller in their own name. Seller agrees that Buyer has no obligation to Seller or Seller's Tool subcontractors under this Section other than making the payment to Seller in accordance with the applicable Purchase Order. In the event Seller's Tool subcontractor(s) brings an action against Seller under this section, Seller agrees that it will not join Buyer as a party to the action.

ii) If the Seller intends to subcontract all or part of the manufacture of the Supplies to a third-party subcontractor and to locate Tooling on the subcontractor's premises, the Seller will: (a) provide the Buyer in with written notice of the identity of the subcontractor and the location of the Tooling; (b) obtain the written permission of the Buyer in advance of the Seller's doing so; (c) inform the subcontractor in writing that it is a bailee-at-will, through the Seller, of Tooling owned by the Buyer; and (d) be solely responsible for payments to the subcontractor.

**17. Services Provided on Buyer's Premises.**

If Seller provides services to Buyer on Buyer's (or its Customer's) premises, Seller will examine the premises to determine whether they are safe for such services and shall advise Buyer promptly of any situation Seller deems to be unsafe. Seller shall be responsible for all acts and omissions of its employees, agents and subcontractors while on Buyer's (or its Customer's) premises and shall cause them to comply with all regulations that apply to the premises. Seller's employees, contractors and agents will not possess, use,

sell or transfer alcohol, illegal drugs, or medically unauthorized drugs or controlled substances, and will not be under the influence of alcohol or drugs on Buyer's (or its Customer's) premises.

#### **18. Service and Replacement Parts.**

(a) At Buyer's request during the longer of (i) the fifteen-year period after Buyer completes purchases for its customer's current model production, or (ii) such time period granted to Buyer's Customer for service and replacement parts, Seller will sell to Buyer Supplies to fulfill Buyer's past model service and replacement requirements at the prices specified in the applicable Purchase Order.

(b) If the Supplies sold under a Purchase Order are assemblies, at Buyer's request during periods in which the Supplies are in current model production (versus past model or service parts production), Seller will sell service and replacement parts for the assemblies at prices such that the total price of all parts of the assembly does not exceed the price of the assembly specified in the Purchase Order less assembly cost.

(c) Buyer's obligations under this Section shall survive termination or expiration of the Purchase Order.

#### **19. Compliance With Laws.**

Seller warrants and represents that the Supplies delivered under a Purchase Order, together with all containers and other packaging, and Seller itself, in the manufacture or installation of Supplies or otherwise, will comply with all applicable federal, state and local laws, regulations and orders, whether of the U.S.A. or any other country where the Supplies or Buyer's Customer's vehicles equipped with the Supplies are to be sold, including without limitation, import/export laws, customs clearance regulations and consumer product safety regulations (collectively, "Laws"). Upon request, Seller shall furnish a certificate of compliance with applicable laws, regulations and orders.

#### **20. Intellectual Property.**

(a) Seller grants to Buyer, its subsidiaries and assigns, and their respective successors and assigns, a permanent, paid-up, nonexclusive, worldwide license, for the purposes of manufacture, assembly, distribution or sale of Buyer's products, under: (i) any Intellectual Property Right now or in the future owned or controlled by Seller, or its affiliates, relating to the Supplies (including any operating software incorporated into the Supplies), to make, have made, use, offer for sale, or sell, sublicense others; to repair and have repaired, make and have made; rebuild and to have rebuilt; to reconstruct and have reconstructed 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 Purchase Order, to reproduce, distribute and display such works and to prepare derivative works based thereon, subject to the other provisions of this Purchase 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 understands that the License shall be effective from the first date of delivery of the Supplies under this Purchase Order. The License is intended to be subject to 11 USC Section 365(n), 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 Purchase Order and any other agreement with Seller.; .

(b) Seller shall not assert or transfer to any third party a right to assert against Buyer or its Customer, or its or their suppliers, any intellectual property right that Seller has or may have that is applicable to Supplies supplied or any works of authorship used or furnished under a Purchase Order.

(c) Seller shall not sell or otherwise dispose of any goods that incorporate any trademark, patentable invention, copyright work, industrial design or other matter the subject of any intellectual property right

of Buyer or any of its affiliates to any party other than Buyer unless specifically authorized by Buyer in writing.

(d) Any work of authorship created, by Seller or Seller's employees or other person working under the direction of Seller in connection with the performance of a Purchase Order will be considered as a "work made for hire" and all copyrights for such works of authorship will belong exclusively to Buyer. If any work of authorship created by the Seller in performing the services or manufacturing or selling Supplies under a Purchase Order does not qualify as "work made for hire", Seller hereby assigns (or, if Seller has failed to previously secure ownership of all copyrights in such portion of any work of authorship, Seller will obtain title and assign) all copyrights to such work to Buyer. All works of authorship which belong to Buyer under these Standard Terms will bear a valid copyright notice designating Buyer as the copyright owner, for example, "Copyright © 200X, Cadence Innovation LLC"

(e) If Seller, or any person employed by or working under the direction of Seller, in the performance of the Purchase Order conceives or first reduces to practice: (i) any invention or any experimental, development or research activities, including engineering related thereto, whether or not patentable, (ii) any reduction to practice of any subject matter, application or discovery which could be patented or copyrighted, or (iii) any improvement in the design of the Supplies or any alternative or improved method of accomplishing the objectives of the Purchase Order (collectively, Inventions), such Inventions shall be owned by Buyer and be deemed confidential and proprietary property of Buyer, whether such Inventions or any portions thereof can be copyrighted or patented or not. Seller shall immediately disclose all Inventions to Buyer and shall cooperate (and cause its employees to cooperate) in executing any documents and taking any other actions necessary or convenient to patent, copyright, assign to the Buyer or otherwise perfect or protect such Inventions for the benefit of Buyer.

(f) Seller shall not manufacture or provide, or offer to manufacture or provide, any goods or services that are based in whole or in part upon Inventions, confidential or proprietary information of Buyer or intellectual property of Buyer, whether for its own purposes (other than to satisfy its obligations under the Purchase Order), for the Customer or any other third parties, without Buyer's prior written consent

(g) Seller will ensure that the terms of its contracts with its subcontractors and employees are consistent with the terms of this Section.

(h) Seller's obligations under this Section 20 shall survive termination or expiration of a Purchase Order.

## **21. Insurance.**

Seller shall maintain insurance, including comprehensive general liability, workers' compensation, automotive liability and employer liability insurance to adequately cover any and all damages, liabilities, claims, losses and expenses for which Seller may be liable (including but not limited to indemnity obligations) pursuant to any Purchase Order. Any insurance coverage maintained by Seller shall not be construed as a cap or limit on Seller's liability for claims made under a Purchase Order. Seller agrees to furnish to Buyer promptly upon request a certificate from its insurance brokers or agent showing that it carries such coverage. The certificate must show the amount of coverage, policy number, and date of expiration and must require the broker or agent to give Buyer thirty (30) days prior written notice of any lapse or cancellation of any policy. Buyer shall also be shown as an Additional Insured on the Comprehensive General Liability policy reflected on the certificate of insurance if services are to be performed on Buyer's premises. If Seller is self-insured for Workers Compensation coverage, it will, if requested by Buyer, provide the applicable state certificate establishing such status to Buyer.

## 22. Confidential Information.

(a) Any information or knowledge which Buyer may have disclosed or may hereafter disclose to Seller in connection with this Purchase Order (including but not limited to its terms) and any and all services to be rendered and/or work to be performed pursuant to the Purchase Order (collectively “Confidential Information”) is and shall be deemed confidential and proprietary information of Buyer. Seller shall keep confidential, not disclose to any person or entity and not use for any purpose other than fulfilling its obligations under a Purchase Order, any Confidential Information. By accepting a Purchase Order, Seller is granted a limited, terminable at will license to use the Confidential Information for the sole purpose of performing under a Purchase Order and not for use in providing Supplies to other customers and not to directly or indirectly compete with Buyer. Seller shall not use Buyer's or Buyer's customer's name or the fact that Seller is selling goods or providing services to Buyer in any press releases, media statements or public communications or otherwise publicize a Purchase Order without Buyer's prior written consent. Seller shall also not use any of Buyer's names, logos, trademarks, service marks, or trade names in any way without Buyer's prior written consent, and Buyer shall not be deemed to have granted Seller a license of, or granted Seller any rights in, any of the foregoing by entering into a Purchase Order. Seller waives the right to assert any claims against Buyer, other than for patent infringement, arising out of any Confidential Information that Seller discloses to Buyer in connection with a Purchase Order. The provisions of this Section 22 shall survive the termination or expiration of the Purchase Order.

(b) The restrictions and obligations of Section 22(a) will 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 Buyer's information. Notwithstanding anything to the contrary in these Terms, any confidentiality or non-disclosure agreement between the parties that predates the Purchase Order will remain in effect except as expressly modified by the Purchase Order, and to the extent of a conflict between the express terms of such an agreement and this Section, the terms of that agreement will control.

## 23. Engineering Drawings, Specifications and Data.

(a) Buyer shall own any engineering drawings, specifications, data, or other documents produced or acquired by Seller under or in connection with a Purchase Order.

(b) Seller shall furnish to Buyer, or any party designated by Buyer, without restrictions on use or the right to disclose, all information and data Seller acquires or develops in the course of Seller's activities under a Purchase Order. At Buyer's request, Seller shall also discuss with Buyer or any party designated by Buyer, without restrictions on use or disclosure, any potential design, quality or manufacturing problems with Supplies Seller worked on or produced pursuant to a Purchase Order.

(c) At Buyer's request, Seller shall furnish to Buyer all other information and data of Seller which Buyer deems necessary to understand the operation of and to maintain Supplies delivered under a Purchase Order, and to understand and use the information and data referenced in this Section 23, with no restrictions on use.

## 24. Limitation of Buyer's Liability; Remedies

(a) Buyer's sole liability under the Purchase Order (including its termination or expiration) is to pay for the Supplies in accordance with Section 3 and to pay the specific termination related amounts described in Section 12. **In no event shall Buyer be liable to Seller in contract, in tort or under any other theory whatsoever, for anticipated profits or for special, multiple, punitive, incidental, indirect or consequential damages, or for penalties of any description.** Any action by Seller against Buyer arising

out of or related to a Purchase Order must be commenced within one year after the cause of action accrues.

(b) The rights and remedies reserved to Buyer under these Standard Terms are cumulative and in addition to any other rights and remedies available at law or in equity. While each Purchase Order is a separate contract, a default under any Purchase Order issued by a member of the Buyer Group to any member of the Seller Group shall be deemed a default under all Purchase Orders issued by the Buyer Group to the Seller Group.

(c) In any action brought by Buyer to enforce Seller's obligations in connection with the production or delivery of Supplies, or Transition Support, or for access to or possession of Tools or other property, the parties agree that Buyer does not have an adequate remedy at law and Buyer is entitled to an immediate order for specific performance of Seller's obligations (including related temporary and preliminary injunctive relief).

## 25. Customer Requirements.

(a) As directed by Buyer in writing, Seller agrees to comply with the applicable terms of any agreements between Buyer and its Customer(s). Seller will meet all applicable disclosed Customer terms or requirements. By written notice to Seller, Buyer may elect to have the provisions of this Section prevail over any conflicting term of the Purchase Order.

(b) In the event that Buyer's Customer files or has filed against it a petition in bankruptcy or insolvency and, in the course of such proceeding, Buyer permits a reduction in the price(s) paid to Buyer for products incorporating the Supplies, the price paid to Seller for the Supplies from and after the date of such reduction will be automatically adjusted proportionally by the same percentage as the price paid to Buyer by its Customer, and the Purchase Order will otherwise remain in effect without modification.

(c) If Buyer's Customer directed, recommended, requested, suggested or otherwise identified Seller as a source of the Supplies: (a) Buyer will pay Seller for the Supplies only following and to the extent of Buyer's actual receipt of payment from that Customer for those Supplies (or for the goods in which the specific Supplies are incorporated); (b) within three business days of any change in price, specifications or other terms negotiated or proposed between Seller and the Customer, Seller will notify Buyer in writing and will immediately adjust its invoices to reflect any price reduction, provided that no change will be binding on Buyer without Buyer's specific written consent.

## 26. Miscellaneous

(a) **Assignments and Subcontracting.** Seller may not assign or subcontract any part of a Purchase Order without Buyer's prior written consent. Seller shall inform Buyer in writing of any work under a Purchase Order that it proposes to subcontract, including identifying the third parties and specifying in detail the work to be subcontracted. Seller shall ensure that any third party to whom Seller subcontracts any of the work under a Purchase Order is bound by all terms and conditions relating to such work to which Seller is bound under a Purchase Order, and Seller shall be responsible for such third parties' performance or non-performance. Buyer may assign this Purchase Order, or any of its rights under it, at any time.

(b) **Right to Audit.** Seller shall maintain complete and accurate books and records of all materials, services and costs relating to Purchase Orders in accordance with generally accepted accounting principles for at least four years after Seller receives the final payment under a Purchase Order. Buyer shall have the right to audit and copy those records during the term of a Purchase Order and during the four year period after final payment under a Purchase Order.

(c) **Severability.** Any part of a Purchase Order which is held to be invalid or unenforceable shall be deemed ineffective without affecting the validity or enforceability of any other part of a Purchase Order.

(d) **Governing Law.** All Purchase Order and all transactions between Buyer and Seller will be governed by and construed in accordance with the jurisdiction laws of Michigan as if this Purchase Order and all other transactions between the parties were performed in Michigan. The state courts in Oakland County, Michigan and federal courts in the Eastern District of Michigan shall have exclusive jurisdiction and venue over any disputes between the parties related to the Purchase Order or the Supplies.

(e) **Counsel Fees.** In the event of any litigation between the parties, the prevailing party is entitled to cover its reasonable attorney's fees and costs from the other party. In the event of Seller's insolvency or financial distress, if Buyer retains legal counsel to provide legal services related to Buyer's business relationship with Seller, Buyer shall have the right to recoup its reasonable legal fees and costs from amounts owing by Buyer to Seller.

(f) **Setoff.** In addition to any right of setoff or recoupment provided by law, Buyer and its affiliates (the "Buyer Group") may, without notice, setoff against or recoup from any amounts owing to Seller or its affiliates (the "Seller Group") any amounts which any member of the Buyer Group determines in good faith is owed by any member of the Seller Group, including for damages resulting from breaches by Seller of its obligations to Buyer under a Purchase Order. The term "affiliate" means any entity in which Buyer or Seller, as the case may be, has more than a 20% ownership interest.

(g) **Electronic Communication.** The parties recognize that Purchase Orders, Releases and other communications may be transmitted by telecopier, e-mail or other electronic or telephonic means. Any Purchase Order, Release or communication so transmitted shall be deemed delivered when sent by Buyer. Both Buyer and Seller agree to accept "electronic records" and "electronic signatures" as those terms are defined under the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et. seq.

(h) **Duty Drawback Rights.** A Purchase Order includes all related customs duty and import drawback rights, if any (including rights developed by substitution and rights which may be acquired from Seller's suppliers), which Seller can transfer to Buyer. Seller agrees to inform Buyer of the existence of any such rights and upon request to supply such documents as may be required to obtain any drawbacks.

(i) **Waiver.** No waiver of any of the terms and conditions of a Purchase Order shall be effective unless made in a writing signed by an authorized representative of Buyer; no such waiver shall be construed as a waiver of any subsequent breach of the term or condition or any other term or condition.

(j) **Entire Agreement.** The Purchase Order and its terms, as specified in Section 1(a), contain the entire agreement of the parties relating to the subject matter and supersedes all prior and contemporaneous agreements, understandings, usages of trade and courses of dealing, whether written or oral. No modification shall be effective unless in writing and signed by Buyer's authorized representative.

(k) **Jury Trial Waiver.** The parties knowingly waive the right to trial by jury of any disputes related to the Purchase Order or the Supplies.

(l) **Survival.** The obligations of Seller to Buyer survive termination of the Purchase Order, except as otherwise provided in the Purchase Order.

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

(n) **Relationship of Parties.** Seller and Buyer are independent contracting parties and nothing in the Purchase Order will make either party the employee, agent or legal representative of the other for any purpose. The Purchase Order does not grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Seller will be solely responsible for all employment and income taxes, insurance premiums, charges and other expenses it incurs in connection with its performance of the Purchase 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.

(o) **Conflict of Interest.** Seller represents and warrants that its performance of the Purchase Order will not in any way conflict with any continuing interests or obligations of Seller or its employees or contractors. Seller further warrants that while the Purchase Order is in effect, Seller and those of its employees and contractors participating in the performance of the Purchase Order will refrain from any activities which could reasonably be expected to present a conflict of interest with respect to Seller's relationship with Buyer or its performance of the Purchase Order.