



February 2023

## 1. General.

1.1 These North American Non-Automotive Direct and Indirect Purchasing Terms and Conditions of Purchase and any applicable country supplement (collectively, "POTCs") are incorporated into and form a part of the contract for the purchase of the Goods and Services, products, equipment (the "**Order**"), which includes but is not limited to the executed framework/corporate/master services ("**Framework Agreement**") or individual supply agreement/individual contract/statement of work/service agreement ("**Individual Contract**"), accepted purchase order and/or scheduling agreement issued by Robert Bosch LLC and/or its North American affiliate(s). The Order shall also include any provisions incorporated by reference therein pursuant to Section 2.2 below. The terms "**Buyer**" and "**Seller**" refer to the entities designated as such on the attached purchase order and/or supply or scheduling agreement. The term "**Goods and Services**" refers to the goods and services, products and equipment to be provided to Buyer by Seller as specified in the Order and includes all hard copy and/or electronic drawings or specifications provided to Buyer in connection with the Goods and Services.

Seller acknowledges that Buyer is purchasing Goods and Services for use in a tiered supply chain, or under other circumstances in which timely manufacture and delivery is required, and that Buyer is relying upon Seller's agreement to timely manufacture and deliver to Buyer the Goods and Services at the price, in the quantities and on the other terms and conditions stated in the Order to allow Buyer to fulfill its contract to sell goods which incorporate the Goods and Services to Buyer's Customer (as defined in Section 2.2). Accordingly, Seller may not terminate the Order before expiration. In the event Seller requests that Buyer resource the Goods and Services from Seller to a new supplier in part or in whole, Buyer may in its sole and absolute discretion refuse such request for any reason, including a refusal of such request at the direction of Buyer's Customer, in which case Seller must fully and faithfully perform its obligations under the Order for the remaining term of the Order. In the event Buyer elects to resource the Goods and Services to a new supplier pursuant to Seller's request or Seller's failure to timely meet its obligations under the Order, Seller shall: (i) cooperate in all respects with the transition to the new supplier including, allowing Buyer, the new supplier and/or their respective agents to inspect the then current production processes being utilized at Seller's facility, granting to the new supplier a non-exclusive, royalty-free license to use any prints, drawings, specifications or other technology reasonably necessary (in Buyer's sole determination) for the new supplier to manufacture and sell Goods and Services to Buyer, and the removal from Seller's facilities of all Buyer-owned tooling (including manuals, logs and the like); (ii) reimburse Buyer for any PPAP (as defined in Section 4.1) costs that it may incur as a result of the resourcing; (iii) pay to Buyer the present value of any increased price for the Goods and Services over the expected life of the program prior to the time of resource; and (iv) fully comply with the provisions of the Order relating to the transition of supply, including as set forth in Section 13 below.

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

2.1 Any purchase order issued by Buyer is an offer by Buyer to purchase the Goods and Services from Seller on the terms of such purchase order. A binding contract is formed if (a) Seller accepts the purchase order within 2 weeks following Seller's receipt of Buyer's

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

2.2 The following documents are incorporated into and shall be part of the Order: (i) any executed framework or individual supply agreement or service agreement between Buyer and Seller; (ii) Material Releases (as defined in Section 35 below) issued by Buyer to Seller under the Order; (iii) prints and specifications for the Goods and Services that are provided or approved by Buyer; (iv) Buyer's policies (as defined below), as revised by Buyer from time to time; (v) Supplementary Terms and Conditions of Purchase for Software, and Additional Purchasing Terms and Conditions for Goods and Services Regarding Open Source Software each of which are available on Buyer's Website as defined below, as revised from time to time by Bosch; and (vi) any written agreement between Buyer and Seller which provides therein that it shall be part of the Order. As used herein, the term "**Buyer's policies**" includes any statement of work applicable to the Goods and Services, quality assurance documents, logistics guidelines, packaging specifications, Buyer's Quality Assurance Guideline for Sellers, Buyer's Logistics Manual, Buyer's Code of Conduct and Buyer's Delivery and Packaging Specifications, including but not limited to amendments or modifications to Buyer's policies as may be

implemented by Buyer during the term of the Order. Buyer's policies may be obtained by contacting Buyer's assigned purchasing representative or by accessing Buyer's internet website at <https://www.bosch.com/company/supply-chain/information-for-business-partners> or its successor website ("**Buyer's Website**"). The purchasing terms and conditions of Buyer's Customer, if any, (as defined below) will also be incorporated into and shall be part of the Order. "**Buyer's Customer**" means any entity to which Buyer, directly or indirectly, sells the Goods and Services, or sells any goods or services into which the Goods and Services are incorporated, including any original equipment manufacturer and any upper tier supplier to an original equipment manufacturer. Although Buyer may, from time to time and in its sole and absolute discretion, provide Seller with certain information regarding the applicable Buyer's Customer's terms and conditions, it is Seller's responsibility to determine if, and how, the Buyer's Customer's terms and conditions may affect Seller's obligations to Buyer and Buyer's Customer.

2.3 In the event of any ambiguities, express conflicts or discrepancies in the specification, drawings or other documents which are part of the Order, Seller shall immediately submit the matter to Buyer for its determination and the parties shall resolve the matter in mutual agreement. In the event of an express conflict between an executed supply agreement or service agreement, or a purchase order and/or scheduling agreement issued by Robert Bosch LLC and/or its North American affiliate(s), on the one hand, and these POTCs, on the other hand, the supply agreement or service agreement, or purchase order and/or scheduling agreement the former agreement(s) shall take precedence over these POTCs. In the event of an express conflict between these POTCS and the Supplementary Terms and Conditions of Purchase for Software, the Supplementary Terms and Conditions of Purchase for Software shall take precedence over these POTCs.

2.4 The terms of each Order may include and where indicated are superseded by the applicable country supplement if any for the country from which the Order is issued, or as specifically indicated in the Order, the country in which Seller is located.

2.5 The parties acknowledge that the Order, the POTCs and all documents related to them that are prepared in the English language will be interpreted and enforced in the English language. For purposes of reference only, translated versions of the POTCs have been prepared, and are available on Buyer's Website.

2.6 For Goods or products used in consumer products or indirect purchasing, unless otherwise specified in the Order, the term of the agreement shall be the length of the applicable original equipment manufacturer's program production life (including model refreshes as determined by the original equipment manufacturer). If the Order states that it is a blanket order, Buyer commits to purchasing from Seller each of the Goods and Services and no more than 100% of Buyer's requirements of the Goods and Services. Under no circumstances shall Buyer be required to purchase from Seller more than 100% of Buyer's requirements for the Goods and Services, or, except as otherwise stated herein, any specific volume or percentage of Buyer's requirements for the Goods and Services.

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

what was projected; and (v) Seller's reliance upon a volume/duration projection is at its own risk.

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

### **3. Price; Payment Terms.**

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

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

3.3 Unless otherwise stated in the Order, Buyer shall pay invoices for Goods and Services that are properly presented and not subject to dispute according to the terms stated in the Order. If no terms are stated in the Order, Buyer shall pay net one hundred and twenty (120) days, after the later of: (i) the Goods and Services being received and accepted at Buyer's facility; or (ii) Buyer's receipt of Seller's invoice. Buyer may withhold payment until a correct and complete invoice or other required information is received and verified. If the payment date is not a business day, payment shall be due the next business day thereafter. Payment shall be deemed to occur upon transmittal by Buyer of any paper draft or Buyer's wire transfer of payment into the account of Seller.

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

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

**4. Quality.** Payment for Goods and Services shall not constitute acceptance of nonconforming Goods and Services, nor shall it limit or affect any rights or remedies of Buyer.

4.1 Seller shall comply with the Bosch Agreement on Quality and Corporate Social Responsibility (the “**QAA**”), as it may be changed or updated from time to time by Bosch in its sole and absolute discretion. Seller shall conform to all quality control and other standards and inspection systems as established or directed by Buyer and Buyer’s Customer for goods and services. These include without limitation the then current versions of quality control policies, such as ISO 9001 or IATF 16949 quality certification, ISO 45001 health and safety certification and ISO 14001 environmental certification including registration. Seller shall also participate in Buyer’s and/or Buyer’s Customer’s supplier quality and development programs as directed by Buyer. As applicable, Seller agrees to meet the full requirements of industry Production Part Approval Processes (“**PPAP**”) as specified by Buyer (and as applicable, Buyer’s Customer) and agrees to present this information to Buyer upon request, at the level requested. If any of the standards, policies or systems cited above are amended, supplemented or replaced, Seller shall comply with such changes.

4.2 Seller is responsible for the performance and quality of all of its suppliers from which Seller obtains goods and services it uses to produce Goods and Services, including suppliers that Buyer and/or Buyer’s Customer has directed, recommended, requested, suggested or otherwise identified to Seller as a supplier from which Seller should obtain goods and services. Seller shall maintain adequate development, validation, testing, launch and on-going supervision to assure that all Goods and Services sold to Buyer conform to all specifications, standards, prints, samples and descriptions set forth in the Order, including as to performance, fit, form, function, PPAP processes and materials, if applicable, and appearance. In the event that Seller ships any Goods and Services that are nonconforming or breach the warranties of Section 5 below, Buyer may require Seller, at Seller’s sole cost and expense, to inspect the Goods and Services in such a manner (including the use of a third-party inspector or sorter) as Buyer determines will ensure that all future Goods and Services will conform to the Order. Any inspection or testing, the lack thereof, or lack of response shall in no way release Seller from any quality or warranty obligations under the Order.

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

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

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

## **5. Warranty.**

5.1 Unless otherwise specified in the Framework Agreement, or Individual Contract and in addition to any other express or implied warranties provided by law or otherwise, Seller warrants to Buyer, Buyer’s Customer and their respective customers, successors and assigns that the Goods and Services when delivered to Buyer shall: (i) be new and conform in all respects to the Order and to all specifications, drawings, samples and other descriptions furnished by Buyer or otherwise obtained by Seller; (ii) be merchantable and free from any defects in design, workmanship and/or materials and be of highest quality and workmanship; (iii) be selected, designed, manufactured, assembled and packaged by Seller based upon Buyer’s stated use and be fit and sufficient for the specific purposes intended by Buyer; (iv) conform to all applicable laws and regulations in countries where the Goods and Services (or Buyer’s goods into which the Goods and Services are incorporated) are to be sold or used, and (v) be performed in a professional and workmanlike manner, consistent with all standards and specifications agreed to with Buyer and otherwise consistent with the highest industry standards.

5.2 All warranties of Seller extend to future performance of the Goods and Services and are not modified, waived or discharged by delivery, inspection, tests, acceptance and/or payment. Buyer’s approval of any design, drawing, material, process or specifications shall not relieve Seller of these warranties. Seller waives any right to notice of breach. The warranties in this Section 5 are intended to and shall provide Buyer with protection from any and all warranty claims brought against Buyer by Buyer’s Customer and their respective customers, successors and assigns, relating in any manner to the Goods and Services.

5.3 The warranty period shall run to the latest of the following: (i) four (4) years from the date Buyer accepts the Goods and Services; (ii) the warranty period provided by applicable law; (iii) the warranty period offered by Buyer to Buyer’s Customer or Buyer’s end users; or (iv) the warranty period Buyer’s Customer offers to end-users of the Goods and Services or for the goods and services into which the Goods and Services are incorporated.

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

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

## **6. Remedies; Indemnification Obligation.**

6.1 Unless otherwise specified in the Framework Agreement, or Individual Contract, the rights and remedies reserved to Buyer in each Order shall be cumulative with and in addition to all other legal or equitable remedies available to Buyer. Seller is liable for all damages incurred by Buyer, including but not limited to compensatory, indirect, special, punitive, exemplary or consequential (as opposed to compensatory) damages, including damages for lost profits or other damages directly or indirectly related to profits, fines, penalties, charges, assessments or other costs, incurred by Buyer as a result of Seller’s: (i) breach of any representation or warranty set forth in the Order; (ii) failure to timely deliver conforming or otherwise non-defective Goods and Services; (iii) failure to comply with the shipping

and/or delivery or other requirements of Buyer; (iv) breach of any obligations pursuant to Section 18 and/or iv) failure to otherwise comply with the Order, even if Seller has cured the breach. Such damages shall include but not be limited to costs, expenses and losses incurred directly or indirectly by Buyer: (a) in connection with inspecting, testing, sorting, storing, reworking, repairing or replacing the nonconforming Goods and Services; (b) resulting from production interruptions; (c) conducting or participating in Remedial Action(s) or other corrective service actions; (d) resulting from or arising in connection with any Security Incident (defined in Section 18.4 below), including (without limitation) the costs of providing any modifications, credit monitoring or fraud prevention services to impacted individuals or (e) resulting from personal injury (including death) or property damage caused by the nonconforming Goods and Services. Buyer's damages include reasonable legal and attorneys' fees and other professional fees, fines, penalties, settlements and judgments incurred by Buyer and other costs associated with Buyer's administrative time, labor and materials and any late or partial delivery of Goods and Services.

6.2 In any action brought by Buyer to enforce Seller's obligations in connection with the production or delivery of Goods and Services or Transition Support), for any deviation from an applicable PPAP and/or for possession of property, Seller acknowledges and agrees that monetary damages are not a sufficient remedy for any actual, anticipated or threatened breach of the Order and that, in addition to all other rights and remedies that Buyer may have, Buyer shall be entitled to specific performance including injunctive relief without the requirement to post bond or other security or other equitable relief as a remedy for any such breach, in addition to recovery of Buyer's reasonable legal and/or attorneys' fees and expenses.

6.3 If requested by Buyer, Seller shall enter into a separate agreement for the administration or processing of warranty chargebacks for Goods and Services, that do not conform to the Quality and Warranty standards of Sections 4 & 5 and shall fully participate in and comply with warranty reduction or related programs of Buyer or Buyer's Customer that relate to the Goods and Services.

6.4 If the Goods and Services or goods sold by Buyer that incorporate the Goods and Services are subject to a Remedial Action (defined in Section 5.5 above), the extent of Seller's liability shall be based upon a good faith allocation by Buyer of responsibility for the Remedial Action. Buyer shall notify Seller as soon as practicable after Buyer learns in writing that a Remedial Action implicates the Goods and Services, and thereafter provide Seller with the data associated with the Goods and Services provided to it by Buyer's Customer relating to the potential Remedial Action. In the event Buyer's Customer sets-off the cost of a Remedial Action against sums due to Buyer and Buyer and/or Buyer's Customer determine/s, in good faith, that the Remedial Action was caused by the failure of the Goods and Services to conform to the quality standards and/or warranties set forth in Sections 4 and 5 hereof, in whole or in part, Buyer may set-off the costs to Buyer of the Remedial Action against sums due to Seller prior to the allocation of responsibility set forth above.

6.5 To the fullest extent permitted by law: (i) Seller hereby assumes the entire, sole responsibility for any injury to person, including death, or damage to property of any kind or nature caused by, resulting from or in connection with the furnishing of Goods and Services by Seller or anyone acting on its behalf; (ii) Buyer shall not be responsible for any injury to person (including death) or damage to any property resulting from Seller's possession, use, misuse or failure of any equipment, tooling or other property of Buyer furnished to Seller, and the use of any such property by Seller shall constitute acceptance by Seller of all responsibility for any claims for such injury or damage; and (iii) Seller shall defend, indemnify and hold harmless Buyer, Buyer's Customer and the end-users of the Goods and Services sold by Buyer or the end users of the goods which incorporate the Goods and Services (or, if applicable, the vehicles in which such Goods and Services are incorporated) and all of their respective agents, customers, invitees, subsidiaries, affiliates, successors and assigns, against all damages,

losses, claims, liabilities and expenses (including reasonable attorneys' and other professional fees, settlements, judgments, and costs and expenses related to Remedial Actions) arising out of or resulting from any defective Goods and Services, or from any negligent or wrongful act or omission of Seller or Seller's agents, employees or subcontractors, or any breach or failure by Seller to comply with any of Seller's representations or other terms and conditions of the Order (including any part of these POTCs) including the cost of Remedial Actions.

6.6 If Seller performs any work on Buyer's premises or utilizes the property of Buyer, whether on or off Buyer's premises: (i) Seller shall examine the premises to determine whether they are safe for the requested work and shall advise Buyer promptly of any situation it believes to be unsafe; (ii) Seller's employees, contractors, and agents shall comply with all laws and regulations that apply to the premises and if so requested, must leave Buyer's premises at Buyer's sole and absolute discretion; (iii) Seller's employees, contractors, and agents shall not possess, use, sell, transfer or be under the influence of alcohol or unauthorized, illegal, or controlled drugs or substances on the premises; and (iv) to the fullest extent permitted by law, Seller shall indemnify and hold Buyer and its agents, successors and assigns, harmless from and against any liability, claims, demands, costs or expenses (including reasonable attorneys' and other professional fees, settlements and judgments) for damages to the property of or personal injuries (including death) to Buyer, its employees or agents, or any other person or entity to the extent arising from or in connection with Seller's work on Buyer's premises or Seller's use of Buyer's property.

6.7 Seller's obligations under this Section 6 to defend and indemnify shall apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise and, to the maximum extent permitted by applicable law, Seller's indemnification obligations shall apply even as to losses caused in whole or in part by an indemnified party's negligence, except to the extent that losses resulted solely and directly from the gross negligence or willful misconduct of such indemnified party. Buyer has the right to be represented by and actively participate through its own counsel in the defense and resolution of any indemnification matters, at Seller's expense. The indemnification obligations of Seller set forth in these POTCs, including this Section, are independent of and in addition to any insurance and warranty obligations of Seller. The indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the benefit of Seller under applicable workers' compensation legislation, or laws governing occupational diseases, disability benefits or other employee benefits.

## **7. Changes.**

7.1 Buyer reserves the right at any time, by written notice to Seller, to make changes, or to require Seller to make changes, to drawings, specifications, sub-suppliers, samples or descriptions of Goods and Services. Buyer also reserves the right to otherwise change the scope of the work covered by the Order, including work with respect to such matters as inspection, testing or quality control. Buyer may also require Seller to source the supply of raw materials either from itself or from specified third parties. Seller shall promptly make any such requested change.

7.2 In order for Seller to request a reasonable difference in price or time for performance as a result of a change described in Section 7.1, Seller must notify Buyer of its request in writing within ten (10) days after receiving notice of the change. Seller shall if requested by Buyer provide additional documentation from Seller relating to any change in specifications, price or time for performance. After receiving all requested documentation, Buyer, in consultation with Seller, may equitably adjust the price or time for performance. If Seller does not provide timely notice to Buyer that a requested change may result in a difference in price or time for performance, Buyer's requested change shall not affect the price or time for performance.

7.3 Seller shall not make any change relating to Goods and Services, including without limitation, in the Goods and Services'

contents, design, specifications, processing, packing, marking, shipping, price or date or place of delivery, except at Buyer's written instruction or with Buyer's prior written approval.

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

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

## **8. Customs Regulations.**

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

"accepted" shall be deemed to be rejected by Buyer. Without limiting the foregoing, Supplier shall comply with all chemical import requirements under the U.S. Toxic Substances Control Act ("**TSCA**").

8.2 Seller shall comply with all applicable recommendations or requirements of the Canada Customs and Revenue Agency, including but not limited to the laws, regulations and other requirements of the Agency's initiative Partner's in Protection (for information go to <https://www.cbsa-asfc.gc.ca/security-secure/pip-pep/menu-eng.html>). At Buyer's or the Canadian Customs and Revenue Agency's request, Seller shall certify in writing its compliance with the foregoing. For Goods and Services imported into Canada, Seller shall comply with all applicable recommendations or requirements of the Canada Border Services Agency (the "**CBSA**"), including but not limited to the laws, regulations and other requirements of the Agency (for additional information please go to <https://www.cbsa-asfc.gc.ca/publications/cn-ad/menu-eng.html>). At Buyer's or the CBSA's request, Seller shall certify in writing its compliance with the foregoing.

8.3 Seller shall comply with all applicable laws and regulations relating to the export and import of the Goods and Services under the Order. Seller shall obtain all export licenses or authorizations necessary for the export of Goods and Services, unless otherwise set forth in the Order, in which case Seller shall promptly provide to Buyer all information necessary to enable Buyer to obtain the licenses or authorizations. Seller shall promptly notify Buyer in writing of any material or components incorporated in the Goods and Services that Seller purchases in a country other than the country in which the Goods and Services are delivered. Seller shall provide Buyer: (i) for Goods and Services that originate in the U.S., the U.S. Export Control Classification Number (ECCN) and U.S. HTS Number or Schedule B; and/or (ii) for Goods and Services that originate outside of the U.S., the HTS Number and dual use designation. Seller shall furnish any and all documentation and information necessary to establish the country of origin or to comply with the applicable country's rules of origin requirements. Seller shall promptly advise Buyer of any material or components imported into the country of origin and any duty included in the Goods and Services' purchase price. If Goods and Services are manufactured in a country other than the country in which Goods and Services are delivered, Seller shall mark Goods and Services "Made in [country of origin]". Seller shall provide to Buyer and the appropriate governmental agency the documentation necessary to determine the admissibility and the effect of entry of Goods and Services into the country in which Goods and Services are delivered. Seller warrants that any information that is supplied to Buyer about the import or export of Goods and Services is true and that all sales covered by the Order shall be made at not less than fair value under the anti-dumping laws of the countries to which the Goods and Services are exported.

8.4 Goods and Services and the containers into which they are placed for shipment shall be marked in accordance with all U.S. laws including but not limited to 19 CFR §134 (as amended from time to time). Scientific and laboratory instruments shall be legibly and conspicuously marked in accordance with U.S. laws. Seller shall also be responsible for compliance with additional regulations and guidelines regarding supply chain security published by US Customs, the Canada Customs and Revenue Agency, and any other government or agency, including the Security and Accountability for Every Port Act of 2006.

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

8.6 Seller shall indemnify and hold Buyer harmless from and against any liability, claims demands or expenses (including attorney's fees or other professional fees) arising from or relating to Seller's noncompliance with this Section. Seller shall be responsible for the full costs of any delay in delivery of the Goods and Services caused by its

failure to comply with the requirements of this Section 8, including but not limited to missing, incomplete, untimely or inaccurate data being furnished to Buyer, Buyer's agents or any governmental authority.

## **9. Excusable Delay.**

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

9.2 Seller shall use its best efforts to avoid an Excusable Delay and/or mitigate the potential effect of an Excusable Delay on Buyer and Buyer's Customer. All costs reasonably associated with the avoidance and/or mitigation of an Excusable Delay including, but not limited to, expedited shipping, logistics, labor, storage, alternative sources, taxes, customs, duties, and other extraordinary costs shall be borne exclusively by the party claiming the Excusable Delay.

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

9.4 During any delay or failure to perform by Seller, Buyer may at its option and at Seller's expense: (i) purchase Goods and Services from other sources and reduce its schedules to Seller by such quantities, without liability to Seller; (ii) require Seller to deliver to Buyer at Buyer's expense all finished Goods and Services, work in process and parts and materials produced or acquired for work under the Order; or (iii) have Seller provide Goods and Services from other sources in quantities and at a time requested by Buyer and at the price set forth in the Order. In addition, Seller, at its sole expense, shall take all necessary actions to ensure the supply of Goods and Services to Buyer for a period of at least forty-five (45) days during any anticipated labor disruption or resulting from the expiration of Seller's labor contracts.

## **10. Termination.**

10.1 Unless otherwise specified in the Framework Agreement or Individual Contract, Buyer may terminate the Order for Cause, without liability to Seller, which shall be effective upon delivery of written notice or upon such other date specified by Buyer in writing. "**Cause**" for termination includes the following actions: (i) Seller breaches any representation, warranty or other term of the Order; (ii) Seller repudiates, breaches or threatens to breach any of the terms of the Order; (iii) Seller fails to deliver, or threatens not to deliver, Goods and Services in accordance with a Material Release; (iv) Seller fails to meet

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

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

10.3 Buyer also may, at its option and in its sole and absolute discretion, immediately terminate all or any part of the Order at any time and for any reason upon seven (7) days written notice to Seller. Upon receipt of notice of termination, whether under Section 10.1 above or this Section 10.3, unless otherwise directed by Buyer, Seller shall: (i) promptly terminate all work under the Order on the effective date of termination; (ii) transfer title and deliver to Buyer or its designee the finished Goods, the work in process, and the parts and materials that Seller reasonably produced or acquired according to quantities ordered by Buyer and that Seller cannot use in producing Goods and Services for itself or for others; (iii) verify and settle any claims by subcontractors for actual costs incurred directly as a result of the termination; (iv) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest; and (v) upon Buyer's request, fully cooperate with Buyer in transferring the production of Goods and Services to a different supplier.

10.4 Upon termination by Buyer under Section 10.3, Buyer shall pay only the following without duplication: (i) the Order price for all finished and accepted Goods and Services in the quantities ordered by Buyer in Material Releases that conform to the Order for which Seller has not been paid; (ii) Seller's reasonable actual cost of merchantable and useable work-in-process and the parts and materials transferred to Buyer under Section 10.3; (iii) Seller's reasonable actual, documented costs of settling claims regarding its obligations to its subcontractors required under the Order, to the extent directly caused by the termination, but limited to the amount of the firm quantities of Goods and Services and raw materials/components specified in Material Releases issued by Buyer and then currently outstanding; (iv) Seller's reasonable actual cost of carrying out its obligations under Section 10.3; and (v) if applicable, amounts due under Transition Support under Section 13.

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

**BUYER SHALL HAVE NO LIABILITY OR OBLIGATION FOR, AND SHALL NOT BE REQUIRED TO PAY SELLER DIRECTLY OR INDIRECTLY IN RESPECT OF, CLAIMS BY SELLER OR SELLER'S SUBCONTRACTORS, FOR LOSS OF ANTICIPATED PROFIT, FAILURE TO REALIZE ANTICIPATED PRODUCTION VOLUMES, REVENUES OR SAVINGS, UNABSORBED**

**OVERHEAD, INTEREST ON CLAIMS, PRODUCT DEVELOPMENT AND ENGINEERING COSTS, TOOLING, FACILITIES AND EQUIPMENT REARRANGEMENT COSTS OR RENTAL, UNAMORTIZED CAPITAL OR DEPRECIATION COSTS, OR GENERAL ADMINISTRATIVE BURDEN CHARGES RESULTING FROM OR RELATED TO THE TERMINATION OR EXPIRATION OF THE ORDER, EXCEPT AS OTHERWISE EXPRESSLY AGREED IN A SEPARATE ORDER.**

**12. Price Competitiveness.**

Seller warrants that the Goods and Services will remain competitive in terms of technology, price, design and quality with similar materials available to Buyer during the term of the Order. If, in the reasonable opinion of Buyer, any of the Goods and Services do not remain competitive, Buyer will notify Seller in writing of the area(s) in which the Goods and Services are not competitive. Seller will have thirty (30) days from the date of such notice within which to submit a plan acceptable to Buyer to make the Goods and Services competitive. If Seller is unable or unwilling to do so, or if Seller fails to implement the plan, Buyer may terminate the Order and purchase such Goods and Services from another supplier without liability to Seller.

**13. Transition of Supply.**

13.1 In connection with the expiration, cancellation, nonperformance or termination of the Order, including by Buyer, in whole or in part, for any or no Cause or because of Buyer's election to change or add to an alternate or new supplier of the Goods and Services or products (including a Buyer-owned or operated facility) whether in response to Seller's request or otherwise, (i) Seller shall give Buyer its full and prompt cooperation as set forth herein in transitioning from Seller to Buyer's alternate or new supplier the responsibility for providing and delivering Goods and Services to Buyer. Seller shall continue production and delivery of all Goods and Services as ordered by Buyer, at the prices and in compliance with the terms of the Order, without premium or other condition, during the entire period reasonably needed by Buyer to complete the transition to the alternate or new supplier(s); (ii) subject to Seller's reasonable capacity constraints, Seller shall provide special overtime production, storage and/or management of extra inventory of the Goods and Services, extraordinary packaging and transportation and other special services as expressly requested by Buyer in writing; (iii) at no additional cost to Buyer, Seller shall promptly provide and allow Buyer to access and use Seller's Intellectual Property, Seller's property and Seller's manufacturing and service processes, including, CAD models, drawings, material supplier details, bill-of-material data, tooling and process detail and samples of products, goods and components and on-site inspections; (iv) Seller shall promptly provide all notices deemed by Buyer in its sole and absolute discretion to be necessary or desirable for Buyer to resource the Order to an alternative or new supplier; and (v) if and when requested by Buyer, Seller shall return to Buyer all Buyer's property in as good condition as when received by Seller (reasonable wear and tear excepted) and shall comply with Seller's obligations relating to Seller's property and in relation to subcontracts (collectively, "**Transition Support**").

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

**14. Insurance.**

Unless otherwise specified in the Framework Agreement or Individual Contract, Seller shall maintain and require its subcontractors to maintain, the following insurance coverages: (i) commercial general liability insurance; (ii) comprehensive automobile liability insurance; (iii)

property all risk/business interruption insurance; (iv) workers compensation and employer's liability insurance covering all employees engaged in the performance of this Order for claims arising under any applicable workers' compensation, occupation disease or health and safety laws and or regulations; and (v) such other insurance coverage as may be requested from time to time by Buyer in its sole and absolute discretion. In each case Seller's insurance coverage will name Buyer and its affiliates (as applicable) as loss payee(s) and/or "additional insured(s)" and the coverage will be in such amounts sufficient to cover obligations set forth herein or in such amounts specifically set forth on Buyer's Insurance Addendum which when published, will form part of the Order. Seller's insurance coverage shall be primary and non-contributory with respect to Buyer and its affiliates. Such insurance coverage shall among other things provide full fire and extended coverage insurance for the full replacement value of all Seller's Property and all bailed Buyer's Property. Seller hereby waives all mechanics' liens and claims, rights of subrogation, and agrees that none shall be filed or maintained against Buyer's premises on account of any Goods and Services and shall cause all its subcontractors, materialmen and suppliers (and subcontractors of such parties) to provide similar waivers and agreements in form satisfactory to Buyer.

If requested by Buyer in writing, Seller shall furnish to Buyer a certificate showing full compliance with the requirements set forth in this Section 14 or certified copies of all insurance policies after the commencement of the Order and then annually thereafter or within ten (10) days of Buyer's written request. The certificate shall provide that Buyer shall receive thirty (30) days prior written notice from the Seller or its insurer of any termination or reduction in the amount or scope of coverage. The existence of insurance shall not release Seller of its obligations or liabilities under the Order.

**15. Audit; Plant Inspections.**

15.1 Upon reasonable notice to Seller, either Buyer, Buyer's Customers or their respective third-party designees may audit Seller's production facility, Goods and Services and any other Buyer property (including all pertinent documents, data, data storage and protection, and other information) related to the Order for the purpose of verifying Seller's costs and its compliance with or its ability to perform its obligations under the Order. Seller shall provide, without additional charge, all reasonable facilities and assistance. No inspection under this Section 15 shall constitute acceptance of any work-in-process or finished goods and shall not relieve Seller of any of its responsibilities or warranties under the Order.

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

15.3 Buyer's right to conduct any inspection, audit or review under this Section 15 or otherwise is at its sole and absolute discretion. Buyer shall have no obligation to Seller to conduct any inspection, audit or review under this Section 15 or otherwise and Buyer's decisions as to whether, how and when to conduct any inspection, audit or review shall not modify or relieve Seller of any obligations under the Order, shall not give rise to any liability of Buyer to Seller and shall be without prejudice to any rights or remedies available to Buyer.

**16. Buyer's Property.**

This Section 16 shall only apply if there is no applicable bailment agreement in force between the parties.



16.1 "Buyer's Property" shall mean and include: all information and materials, including tooling which has been furnished by Buyer to Seller or for which Seller has been reimbursed by Buyer (such as fixtures, gauges, jigs, patterns, castings, cavity dies, molds, with all related appurtenances, accessions, and accessories, collectively herein referred to as "Tooling"), packaging, documents, standards, specifications, samples, models, trade secrets, manufacturing processes, marketing and pricing data, proprietary information and other materials and items (including whether or not such materials are in any way modified, altered or processed) furnished by Buyer either directly or indirectly to Seller to perform the Order, along with any and all Products, Tooling, deliverables, data, and Intellectual Property Rights (as defined in Section 18.1) which are property of Buyer under the terms of the Order. Buyer's Property shall be and remain the sole and exclusive property of Buyer.

16.2 With respect to Buyer's Property in the custody or control of Seller or Seller's suppliers, contractors or agents: (i) Seller shall use it or permit its use only for the production of Products for Buyer; (ii) Seller, at its own expense, shall keep Buyer's Property in good working condition and house, maintain, repair and replace it as necessary so that such Buyer's Property shall remain in the same condition as it was when it was received by Seller, except for normal wear and tear; (iii) Seller shall keep such Buyer's Property fully insured for the benefit of Buyer at all times while in Seller's possession; and (iv) Seller shall keep Buyer's Property, and cause any of its suppliers, contractors or agents in possession of such Buyer's Property to keep such Buyer's Property, segregated from all other assets and labeled as being the property of Buyer. Seller shall not release, relocate or dispose of Buyer's Property to any third party without the prior, express, written permission of Buyer. Seller shall promptly notify Buyer of the location of Buyer's Property if located at any place other than Seller's facility.

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

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

16.5 Seller shall assume all risk of death or injury to persons or damage to property arising from its use of Buyer's Property. **TO THE EXTENT PERMITTED BY LAW, BUYER SHALL HAVE NO LIABILITY TO SELLER OR ANYONE CLAIMING BY OR THROUGH SELLER FOR ANY INCIDENTAL OR CONSEQUENTIAL OR OTHER DAMAGES OF ANY KIND WHATSOEVER RELATING TO BUYER'S PROPERTY SUPPLIED BY BUYER. BUYER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO SUCH BUYER'S PROPERTY, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND SELLER WAIVES, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, ALL CLAIMS OF NEGLIGENCE AND STRICT LIABILITY.**

16.6 Immediately upon Buyer's request, pursuant to any bailment agreement or upon any bankruptcy or insolvency filing, and without payment of any kind, Seller shall return Buyer's Property, and shall comply with Buyer's instructions relating to its return, including the method and location for its return. Seller shall be responsible for labor and other costs incidental to such Buyer's Property's return. Seller shall cooperate with Buyer and shall provide Buyer with access to all facilities at which Buyer's Property is located. Seller expressly waives any right to additional notice or process relating to Buyer's exercise of its rights under this Section 16. Seller waives, to the extent permitted by law: (i) any lien or other rights that Seller might otherwise have on any of

Buyer's Property, including molder's and builder's liens; and (ii) any objection to Buyer's repossession and removal of Buyer's Property for any or no reason, including bankruptcy or insolvency proceedings.

## 17. Tooling.

17.1 Seller shall not purchase any Tooling for the account of Buyer or charge Buyer for any tooling except as authorized in the Order or in a tooling purchase order delivered by Buyer to Seller ("**Tooling Purchase Order**"). Seller represents that the price in the Order or the Tooling Purchase Order for the Tooling is no greater than Seller's actual cost of such Tooling and that there is no mark-up for profit (unless as authorized in this Section 17).

17.2 If Seller is responsible for fabricating or acquiring Tooling, such Tooling shall: (i) comply with any specifications provided by Buyer (or, where directed by Buyer, those of Buyer's Customer); (ii) be capable of making their intended contribution to the manufacture of Products that satisfy the Order, including meeting any volume requirements or estimates provided to Seller during the life of the product as well as satisfying the requirements, if any, for Service Parts. Seller represents and warrants that the Tooling fabricated or acquired by Seller shall not infringe on the Intellectual Property (as defined in Section 18.1) of any third party and shall defend, hold harmless and indemnify Buyer, its successors and assigns against any suit, claim or action for actual or alleged direct or contributory infringement of or inducement to infringe any Intellectual Property and against any resulting damages, expenses (including attorney's and other professional fees and expenses), settlements and judgments arising out of or in any way connected to the Tooling, including any claim against Buyer that the infringement arose out of compliance with Buyer's specifications. If the use of the Tooling for manufacture of the Products is enjoined or, in Buyer's sole judgment, is likely to be enjoined, Seller shall, at Buyer's election in its sole and absolute discretion and at Seller's sole expense, procure for Buyer the right to continue using the Tooling or modify the Tooling so it becomes non-infringing. Time is of the essence for Seller's acquisition or fabrication of Tooling. Seller shall provide Tooling progress reports from time to time at Buyer's request and shall promptly notify Buyer in writing if it believes that the Tooling might not be completed by the completion date specified in the Order or Tooling Purchase Order.

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

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

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



Order shall be adjusted to credit Buyer in the amount, if any, by which the price exceeds Seller's actual cost as verified. Seller shall not disclose to any third party, except for its attorneys and professional advisors who are required to maintain confidentiality, the results of any such Tooling audits or any adjustments made by Buyer to the prices and amounts payable to Seller as a result of such audit. Seller shall retain (and cause its Tooling sub-suppliers, if any, to retain) all cost records for a period of three years after receiving final payment of the charges.

17.6 To the extent permitted by applicable law, any payments made by Buyer for Tooling that is manufactured by a third party are expressly intended by Buyer to be held in trust for the benefit of any subcontractor(s) used by Seller to produce such Tooling and Seller agrees to hold such payments as trustee in trust for such subcontractor(s) until Seller has paid the subcontractor(s) in full for such Tooling. Seller acknowledges and agrees that such subcontractor is an intended third-party beneficiary of the terms of this Section 17.6 relating to the trust and as such, such Tooling subcontractor shall have the right to enforce the terms of this Section 17.6 directly against Seller in subcontractor's own name. Seller agrees that Buyer has no obligation to Seller or Seller's Tooling subcontractor under this Section 17 other than making the payment to Seller in accordance with the Order or Tooling Purchase Order, as applicable.

## **18. Intellectual Property.**

18.1 "**Intellectual Property**" shall mean and include patents, copyrights, trademarks, trade names, trade dress, trade secrets, know-how, concepts, ideas, discoveries, inventions (whether or not patentable), processes, developments, designs, dimensions, tolerances, suggestions, materials, improvements, works of authorship, artwork, software, documentation, intellectual property/proprietary rights, rights in other tangible and intangible assets of a proprietary nature, domain names, company names, and the like. "**Intellectual Property Rights**" means all forms of Intellectual Property protection or proprietary rights available throughout the world, including, without limitation, utility patents, design patents, patent applications, design registrations, utility models, industrial designs, copyrights, trademarks, trade dress, trade secrets, and rights in domain names. "**Background IP**" means a party's Intellectual Property Rights, whether registered or unregistered, under any applicable law that exist prior to the effective date of the Order, are acquired thereafter but independently of the Order, or developed by a party, at any time, without any use, knowledge of, or reference to, the other party's confidential information or other information obtained in connection with the Order, including all updates, improvements, modifications and derivative works thereof.

18.2 Seller warrants that the Goods and Services and the sale and/or use thereof (including without limitation before or after incorporation into products during manufacture) are original to Seller and do not and shall not infringe any third-party's Intellectual Property Rights.

18.3 Seller agrees: (i) to defend, hold harmless and indemnify Buyer and its owners, shareholders, affiliates, officers, directors, members, managers, partners, employees, attorneys and agents and any of their respective successors and assigns (each a "**Buyer Indemnified Party**") against any suit, claim or action for actual or alleged direct or contributory infringement of or inducement to infringe or violate any third party's Intellectual Property or Intellectual Property Rights and against any resulting damages or expenses (including attorney's and other professional fees and expenses, settlements and judgments) arising out of or relating to the manufacture, sale or use of the Goods and Services, including cases where the Goods and Services or use thereof form only a portion of the claimed instrumentality or conduct; (ii) to waive any claim against any Buyer Indemnified Party, including any hold-harmless or similar claim, in any way related to a third-party claim asserted against such Buyer Indemnified Party for infringement of any Intellectual Property Right, including any claim against Buyer that the infringement arose out of compliance with

Buyer's specifications; and (iii) that if the sale or use of the Goods and Services is enjoined or, in Buyer's sole and absolute judgment, is likely to be enjoined, Seller shall, at Buyer's election in its sole and absolute discretion and at Seller's sole expense, procure for Buyer the right to continue using the Goods and Services, replace the same with equivalent non-infringing goods or modify such Goods and Services so they become non-infringing.

18.4 Upon Buyer's request or other written agreement between the parties, Seller shall provide Buyer with any information and data related to Seller's Background IP with regard to the design, manufacture, engineering, transportation, installation, operation, use or maintenance of the Goods and Services, including as may be necessary for utilization of the License (defined below in Section 18.9). Seller shall promptly inform Buyer of all third-party Intellectual Property claims, limitations, explanations and the provision of any document, file or other information reasonably required by Buyer before and any information about the Intellectual Property which is the subject matter of the claims.

18.5 Buyer shall maintain exclusive title, right and interest in and to its products and goods, its Background IP, whether or not incorporated into products, services and/or confidential information of Buyer, but specifically excluding Seller's Background IP or confidential information of Seller. Except as otherwise agreed in a separate written agreement or this Section 18, Seller and its affiliates maintain all title, right and interest in and to its Background IP. For the avoidance of doubt, Seller's Background IP shall include all Intellectual Property Rights relating to the Goods and Services that were owned or controlled by Seller or its affiliates prior to any discussions with or Seller's receipt of any materials from Buyer, as evidenced by Seller's written documentation.

18.6 Unless otherwise agreed to by Buyer in a separate written agreement, all Intellectual Property and all other deliverables prepared or developed by Seller in performance of the Order hereunder, and any and all Intellectual Property Rights relating thereto shall be the sole and exclusive property of Buyer, subject to Seller's limited right to use the same pursuant to Section 18.7 below. Seller shall promptly disclose in an acceptable form and assign to Buyer all such Intellectual Property. Seller shall cause its employees to promptly sign any papers necessary to enable Buyer to file applications for patents throughout the world and to record rights in and to such Intellectual Property. To the extent that the Intellectual Property includes any works of authorship created by or on behalf of Seller, such works shall be considered "works made for hire", and to the extent that such works do not qualify as "works made for hire", Seller hereby assigns to Buyer all right, title, and interest in all copyrights and moral rights therein. Seller shall ensure that the terms of its contracts with its subcontractors and employees are consistent with the terms of this Section.

18.7 Buyer hereby grants to Seller a limited, non-transferable, non-sublicensable, revocable, non-exclusive right to utilize the Buyer's Background IP as provided by Buyer only to the extent necessary for Seller to fulfill its obligations under the Order, and for no other purpose whatsoever. Upon termination or expiration of the Order for any reason, all rights to use Buyer Background IP granted pursuant to this Section 18.7 shall automatically terminate effective as of the date of termination or expiration of the Order.

18.8 Upon Buyer's direction and at no additional expense to Buyer (unless otherwise agreed in writing by the parties), Seller shall promptly place a data package relating to the design, manufacture, assembly or use of the Goods and Services, including without limitation any software source code, object code and related documentation in escrow. Unless otherwise agreed by Buyer, the escrow materials shall be made available to Buyer in the event, based on Buyer's reasonable determination, that there is a possible disruption to the Seller's production or delivery of the Goods and Services to Buyer or a termination of the Order due to Seller's default. Seller shall update the escrow materials as necessary to ensure that a current, complete, and functional copy of such materials is held in escrow at all time. In the event the escrow materials are delivered to Buyer pursuant to the

foregoing, Seller agrees that Buyer may retain third parties or former Seller employees to perform maintenance and support services for the Goods and Services, and Seller hereby waives any claims against Buyer and the third party (including any former Seller employees) so retained in order to accomplish the foregoing.

18.9 Seller hereby grants to Buyer, its subsidiaries and affiliates, and their respective successors and assigns, and Buyer hereby accepts, a non-exclusive, irrevocable, royalty-free, fully paid up worldwide license, including the right to sublicense to others in connection with the Goods and Services and any deliverable, including without limitation any deliverables containing Seller's Background IP, provided to Buyer or Buyer's Customer, under: (i) Seller's Background IP and any Intellectual Property Rights owned or controlled by Seller or its affiliates, and relating to the Goods and Services, to make, have made, repair, reconstruct, rebuild, relocate, use, sell and import the Goods and Services and any deliverables; and (ii) any works of authorship fixed in any tangible medium of expression (including drawings, prints, manuals and specifications) furnished by Seller, to reproduce, distribute and display such works and to prepare derivative works based thereon, subject to the other provisions of the Order (the "License"). Seller acknowledges and agrees that the License shall be effective from the first date of delivery of Goods and Services under the Order and extend for so long as Buyer or Buyer's Customers continue to utilize such Goods and Services. The License is intended to be subject to 11 USC Section 365(n) (as amended from time to time) as an executory agreement under which Buyer has license rights to Seller's Background IP and is supplementary to any other rights of Buyer under the Order and any other agreement with Seller. For purposes of the foregoing, the License shall include any updates, upgrades, or modifications of Seller Background IP as related to the Goods and Services even if provided by Seller after a bankruptcy petition. The rights granted under the Supplementary Terms and Conditions of Purchase for Software shall be supplemental to and shall apply in addition to the rights granted under this Section 16.

#### **19. Confidential and Proprietary Information; Record Retention.**

19.1 Any information, data, or knowledge that Buyer may have disclosed or may hereafter disclose to Seller, or to which has been granted access or may hereafter be granted access, in connection with the Order and any and all Goods and Services to be rendered and/or work to be performed pursuant to the Order is and shall be deemed confidential and proprietary information of Buyer. Seller shall not, without authorization in writing from Buyer, communicate or disclose such confidential and proprietary information of Buyer or use such information for any purpose other than to perform its obligations under the Order. Seller agrees to safeguard the confidential and proprietary information of Buyer by using reasonable efforts, consistent with those used in the protection of its own proprietary information of a similar nature, to prevent its disclosure to third parties. Seller agrees to cause its employees, contractors, officers, directors, agents and representatives to be bound by and comply with the foregoing restrictions regarding the use or disclosure of such confidential and proprietary information.

19.2 The restrictions and obligations of Section 19.1 shall not apply to information that: (i) is already publicly known at the time of its disclosure by Buyer; (ii) after disclosure by Buyer becomes publicly known through no fault of Seller; or (iii) Seller can establish by written documentation was properly in its possession prior to disclosure by Buyer or was independently developed by Seller without use of or reference to any of Buyer's information. Notwithstanding anything to the contrary in these POTCs, any confidentiality or non-disclosure agreement between the parties that predates the Order shall remain in effect except as expressly modified by the Order, and to the extent of a conflict between the express terms of such an agreement and this Section, the terms of that agreement shall control.

19.3 All documents containing proprietary information relating to the Goods and Services produced or acquired by Seller in connection with this Agreement shall belong to Buyer. All drawings, know-how,

and confidential information supplied to Seller by Buyer and all rights therein shall remain the property of Buyer and shall be kept confidential by Seller.

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

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

19.6 Seller shall keep all relevant documents, data and other written information relating in any manner to the Goods and Services for at least three (3) years following: (i) in the case of the Goods and Services, the later of the last delivery of the Goods and Services or the date of the final payment to Seller under the Purchase Order; and (ii) in the case of tooling, the later of the date of completion of any applicable PPAP, the date of submission of any applicable part submission warranty, or the date of final payment. Prior to the destruction of these materials, Seller shall notify Buyer in writing and allow Buyer an opportunity to make copies thereof.

#### **20. Personal Data Privacy; Data Protection.**

20.1 In connection with the Order and any and all Goods and Services to be rendered and/or work to be performed pursuant to the Order, Seller may obtain certain information relating to identified or identifiable individuals ("Personal Data"). For purposes of these POTCs, "Personal Data" shall include any information relating to (i) any identified or identifiable natural person, and (ii) identified or identifiable legal entity (where such information is protected similarly as personal data personal information or personally identifiable information under applicable data privacy laws). Seller shall have no right, title or interest in Personal Data obtained by it as a result of performance under an Order. Seller warrants that Seller shall, and shall ensure, that any Seller's affiliates with access to Personal Data: (a) collect, access, maintain, use, disclose, process and transfer Personal Data in accordance with the requirements set forth in this Section 20 and for the sole purpose of performing Seller's obligations under the Order; (b) comply with Buyer's instructions regarding Personal Data, as well as all applicable data protection, cyber security, data breach, and privacy laws, regulations and international accords or treaties (collectively, "Legal Requirements"), and refrain from engaging in any behavior which renders or is likely to render, Buyer in breach of such Legal Requirements; (c) promptly notify Buyer's Privacy Policy Administrator at 38000 Hills Tech Drive, Farmington Hills, Michigan 48331 of any Security Incident (as defined below) or requests from an individual or data protection regulator or similar authority with respect to Personal Data, and work with Buyer to promptly and effectively handle such requests; and (d) when data is received directly or indirectly from the European Economic Area, Buyer's European affiliates, or Buyer's affiliates located in the United Kingdom, abide by Buyer's standard contractual clauses related to processing or exporting Personal Data in or from a member state of the European Union or the United Kingdom to a data recipient outside of the EEA or the United Kingdom, which subjects it to obligations under the EU General Data Protection Regulation ("GDPR") and/or the United Kingdom General Data Protection Regulation.

20.2 To the extent that Seller processes Personal Data, Seller has implemented and maintains reasonable administrative, organizational, physical, and technical safeguards designed: (i) to maintain the security, confidentiality availability and integrity of such Personal Data; (ii) to protect such Personal Data from known or reasonably anticipated threats or hazards to its security and integrity, including (without limitation), to protect against theft, accidental loss, alteration,

disclosure and all other unlawful forms of processing, and (iii) to ensure that any data processing activities do not constitute unfair, deceptive or abusive acts or practices with respect to such Personal Data.

20.3 Seller is solely responsible for procuring and maintaining its network connections and Seller shall be responsible for obtaining and maintaining any equipment and ancillary Goods and Services needed to connect to, access, or otherwise use the Goods and Services and associated software, including without limitation, modems, hardware, servers, software, operating systems, networking and web servers ("**Seller Equipment**"). If applicable, Seller shall also be responsible for maintaining the security of the Seller Equipment, Seller account, passwords (including, but not limited to, administrative passwords) and files, and for all uses of Seller account or the Seller Equipment with or without Buyer's knowledge or consent.

20.4 Seller shall report to Buyer as soon as feasible (and, in any event, within 72 hours following discovery by Seller), any of the following circumstances (collectively "**Security Incident**"): (i) if Seller learns or has reason to believe that any person or entity has breached or attempted to breach Seller's security measures, or gained unauthorized access to Personal Data or that there has been any loss of or unauthorized disclosure of Personal Data; and/or (ii) any "breach of security safeguards" or "confidentiality incident" as defined pursuant to any applicable Legal Requirements, or other circumstance giving rise to any recordkeeping, reporting or notification obligation(s) pursuant to the Legal Requirements, including any reporting or notification obligation to any regulatory authority or affected individual. Upon discovery of any such Security Incident, Seller will, at its cost and expense: (i) investigate, remediate, notify regarding, and mitigate the effects of the Security Incident as required by applicable Legal Requirements; (ii) provide Buyer with any and all information and cooperation, as requested by Buyer to comply with any record keeping, notification and reporting obligations (or other legal obligations) applicable to Buyer; and (iii) provide Buyer with a plan to remediate the effects of such Security Incident and prevent and further incidents, together with written assurances reasonably satisfactory to Buyer that such Security Incident will not recur. Without limiting the above, Seller will take such corrective actions(s) as are reasonably requested by Buyer in order to prevent or minimize damage and prevent any similar future Security Incident. Furthermore, without limiting the above, if Buyer determines that notices (whether in Buyer's or Seller's name) or other remedial measures (including notice, credit monitoring services, fraud insurance and the establishment of a call center to respond to customer inquiries) are warranted following a Security Incident, Seller will, at Buyer's request and at Seller's cost and expense, undertake the aforementioned remedial actions. Notwithstanding anything contained above, unless strictly required for compliance with applicable Legal Requirements, Seller shall not issue any communications, notices, press releases, or reports related to any Security Incident that specifically refer to Buyer without first obtaining the written approval of an officer of Buyer. In the event of a confirmed Security Incident as determined by Buyer, Buyer shall have the right to terminate these POTCs or the Order immediately, without any liability to Buyer from such termination.

20.5 In the event of an investigation by a data protection regulator or similar authority regarding Personal Data, Seller shall provide Buyer with reasonable assistance and support, including, where necessary, access to Seller's premises to the extent needed to respond to such investigation. In the event that Seller is unable to comply with the obligations stated in this Section 20, Seller shall promptly notify Buyer, and Buyer may do one or more of the following: (i) suspend the transfer of Personal Data to Seller; (ii) require Seller to cease processing Personal Data; (iii) demand the return or destruction of Personal Data; or (iv) immediately terminate the Order.

20.6 Upon termination of the Order by either party and for any reason, Seller shall promptly contact Buyer for instructions regarding the return, destruction or other appropriate action with regard to Personal Data. Seller shall promptly comply in full with all such instructions. Furthermore, Seller shall promptly and securely return,

delete, or destroy any or all Personal Data, at Buyer's request at any time, in accordance with such instructions as may be given by Buyer; provided, however, that Seller shall not be obligated to return, delete or destroy any information that Seller is obligated by applicable law to retain until such time as the legally required retention period has expired, provided that Seller continues to comply with its obligations under this Section 20 with respect to any Personal Data that it retains. Where requested by Buyer, Seller shall certify that it has complied with this Section 20.6.

## **21. Setoff.**

In addition to any right of setoff or recoupment permitted by law, all amounts due to Seller shall be considered net of indebtedness or obligations of Seller to Buyer. Buyer may set off against or recoup from any amounts due or to become due to Seller, any amounts due to Buyer however and whenever arising. If an obligation of Seller to Buyer is disputed, contingent or unliquidated, Buyer may defer payment of all or a portion of the amount due to Seller until such obligation is resolved in accordance with Section 30. Further, in the event Buyer reasonably feels itself at risk, Buyer may in its sole and absolute discretion withhold and recoup a corresponding amount due to Seller to protect against such risk. For purposes of this Section only, the terms "Buyer" and "Seller" shall include their parent companies, subsidiaries, brother/sister companies and affiliates.

## **22. Social Responsibility and Protection of the Environment.**

22.1 Seller shall comply with all laws and regulations regarding environmental protection and to work on reducing the adverse effects of its activities on human beings and the environment. In this respect Seller shall set up and further develop a management system in accordance with ISO 14001 wherever possible. In the event Buyer is required by law or otherwise or Buyer's Customer requires Buyer and its suppliers to participate in any human rights, social responsibility, energy saving (or green initiative) or other environmental protection program, Seller shall fully comply and assist Buyer, at Seller's cost and expense, with Seller's participation in such program as Buyer directs, including, but not limited to providing Buyer with certification of such participation

22.2 Seller warrants that neither it nor any of the subcontractors associated with the Goods and Services shall utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in human trafficking, abusive employment or corrupt business practices, in the supply of Goods and Services or provision of Goods and Services under these POTCs. At Buyer's request, Seller shall certify in writing its compliance with the foregoing.

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

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

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

23.2 Seller also warrants that all Goods and Services furnished by Seller in performance of the Order shall comply fully with the Occupational Safety and Health Act of 1970 (as amended from time to time) and State plans approved under this Act; the Toxic Substances Control Act (as amended from time to time); and the regulations promulgated under both Acts, to the extent applicable to such

equipment and in addition to any other rights or remedies which Buyer may have. Seller also warrants all Goods and Services fully comply with all federal and state environmental regulations including, without limitation, state laws regulating the amount of mercury. Seller shall promptly notify Buyer in the event that any environmental factors associated with Seller's Goods and Services, products and/or processes may adversely impact Buyer or its employees, either directly or indirectly. Such impacts may involve, but are not limited to, direct exposure to toxic substances in Seller's Goods and Services, products and/or processes, and/or negative publicity or litigation arising from Seller's use of endangered species or other environmentally sensitive materials.

23.3 Buyer serves from time to time as a contractor and/or a subcontractor concerning contracts to supply to the United States government, including the supply of "commercial items" as defined in FAR 52-202-1. In those cases, Seller shall comply with the federal laws, regulations, and rules applicable to subcontractors of government contractors, including but not limited to those relating to equal employment opportunity and affirmative action in the employment of minorities, women, the handicapped, and certain veterans, and contracting with women-owned or small and disadvantaged business concerns, which includes, but is not limited to, the following FAR clauses: FAR 52.203-13, 52.203-15, 52.219-8, 52-222-21, 52.222-26, 52.222-35, 52.222-36, 52.222-37, 52.222-40, 52.222-50, 52.222-55, 52.225-26, 52.232-40, 52.247-64 ("Commercial Item FAR Clauses"). Seller agrees to flow-down all applicable FAR and supplementary clauses, including but not limited to the Commercial Item FAR Clauses, to any lower-tier subcontractors working pursuant to this Order. Where necessary, to make the language of the FAR clauses applicable to the Order, the term "Contractor" shall mean "Seller", "Supplier", "Vendor" or "Subcontractor" as appropriate, and the term "Contract" shall mean the "Order" or "Subcontract" as appropriate, and the terms "Government", "Covered Entity", "Contracting Officer", and equivalent terms and phrases shall mean "Buyer" or "Robert Bosch LLC". Where applicable, Seller certifies that it maintains no segregated employee facilities in compliance with applicable law, and that it is not debarred from being awarded federal or federally assisted contracts.

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

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

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

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

23.7 Seller shall indemnify and hold Buyer harmless from and against any liability claims, demands or expenses (including attorney's or other professional fees) arising from or relating to Seller's noncompliance with this Section 23.

23.8 Upon Buyer's request, Seller shall certify to Buyer in writing the origin of any substances or materials in Goods and Services. To enable Buyer to comply with legal requirements related to "conflict minerals", including 15 U.S.C. § 78m(p) and regulations promulgated thereunder, Seller shall certify in writing the presence of any such conflict minerals in the Goods and Services. Such certification shall identify the country of origin of the conflict minerals, whether the conflict minerals came from scrap or recycled sources, whether the conflict minerals came from a covered country, whether the conflict minerals from the covered countries directly or indirectly finance armed groups, and Seller's process for determining and verifying the information provided. If there are any changes to the Seller's supply chain that affect the information contained in the certification, Seller shall promptly send an amended certification to Buyer. Buyer reserves the right to request any additional information and/or documentation related to conflict minerals associated with the Order that is reasonably necessary to comply with applicable legal requirements, and Seller will make good faith efforts to provide the requested information. Further, Seller shall promptly provide, in writing, any information regarding the Goods and Services requested by Buyer so that Buyer may comply in a timely manner with reporting requirements under applicable law with respect to consumer protection or any other requirements related to substances or materials present in the Goods and Services. All information under this Section shall be in accordance with the Conflict Minerals Reporting Template form published by the Conflict-Free Sourcing Initiative, or such other form as may be directed by Bosch in writing.

23.9 Seller shall not deliver Counterfeit Goods and Services or Suspect Counterfeit Goods and Services to Buyer under the Order and/or supply agreement. Seller shall only purchase Goods and Services or goods and services to be delivered or incorporated into the Goods and Services to Buyer directly from the Original Component Manufacturer ("OCM")/Original Equipment Manufacturer ("OEM"), or through an OCM/OEM authorized distributor chain. Seller may use another source only if: (i) the foregoing sources are unavailable; (ii) Seller's inspection and other counterfeit risk management processes will be employed to ensure the authenticity of the Goods and Services; and (iii) Seller obtains the advance written approval of Buyer. Seller shall immediately notify Buyer if Seller becomes aware that it has delivered Counterfeit Goods and Services or Suspect Counterfeit Goods and Services. When requested by Buyer, Seller shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM. Seller, at its sole expense, shall provide reasonable cooperation to Buyer in conducting any investigation regarding the delivery of Counterfeit Goods and Services or Suspect Counterfeit Goods and Services under this Order and/or supply agreement. This provision applies in addition to and is not altered, changed, or superseded by any quality provision, specification, statement of work, regulatory flow down, or other provision included in this Order and/or supply agreement addressing the authenticity of Goods and Services. "**Counterfeit Goods and Services**" means Goods and Services that are or contain unlawful or unauthorized reproductions, substitutions, or alterations that have been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used Goods and Services represented as new, or the false identification of grade, serial number, lot number, date code or performance characteristics. "**Suspect Counterfeit Goods and Services**" means Goods and Services for which credible evidence (including, but not

limited to, visual inspection or testing) provides reasonable doubt that the Goods and Services or any part thereof are authentic.

23.10 In the event that Goods and Services delivered under this Order and/or supply agreement includes Counterfeit Goods and Services, Seller shall, at its sole expense, promptly replace such Counterfeit Goods and Services with genuine Goods and Services conforming to the requirements of this Order or supply agreement. Notwithstanding any other provision of this Order and/or a supply agreement, Seller shall be liable for all costs relating to the removal and replacement of Counterfeit Goods and Services, including without limitation Buyer's costs of removing Counterfeit Goods and Services, of installing replacement Goods and Services and of any testing necessitated by the reinstallation of Suppliers after Counterfeit Goods and Services have been exchanged. The remedies contained in this provision are in addition to any remedies Buyer may have at law, equity or under other provisions of this Order and/or the supply agreement.

23.11 Seller shall include Section 23.9 and this Section 23.11 and Section 24 (or their equivalent) in lower tier subcontracts or supply agreements for the delivery of items that will be included in or furnished as Goods and Services to Buyer.

23.12 The following DFAR clauses apply to this Order, if applicable: DFARS 252.204-7012 and DFARS 252-246-7007.

## **24. NDAA Compliance.**

22.1 The terms of this Order require that the Goods and Services provided conform to applicable laws and regulations. The applicable laws and regulations include, but are not limited to, Section 889(a)(1)(B) Parts A & B of the 2019 National Defense Authorization Act, ("**NDAA**") which are implemented in regulations FAR 52.204-24, FAR 52.204-25, DFARS 252.204-7016, DFARS 252.204-7017 and DFARS 252.204-7018. Seller is obligated to independently review the foregoing NDAA laws and regulations which, absent an exception or waiver, broadly prohibit federal executive branch agencies from contracting with entities that supply or use any equipment, system or services that use "covered telecommunications equipment or services" as a substantial or essential component of any system. Seller warrants and represents the Goods and Services provided pursuant to this Order are in conformance with all laws and regulations and agrees that nonconformance is a material breach of contract.

22.2 Seller specifically shall comply, and certify compliance, with FAR 52.204.25 which prohibits contracting for the sale of covered telecommunications equipment or services. The reporting requirements in FAR 52.204-25(d)(1) and DFARS 252.204-7018(d) stipulate the Seller must notify Buyer immediately upon discovery of any covered telecommunications equipment or services being used as a substantial or essential component of any system as applicable to this Order. Seller agrees to cooperate in good faith with Buyer inquiries of Seller regarding NDAA compliance, including timely responding to Buyer's information requests.

22.3 Seller represents that any Goods and Services delivered to Buyer do not contain any covered telecommunications equipment or services as defined in the NDAA.

## **25. Buyer's Limited Liability to Seller.**

Buyer's sole liability under the Order (including its termination, expiration or cancellation) is to pay for the Goods and Services in accordance with Section 3 and to pay the specific termination related amounts described in Section 10.4. **IN NO EVENT SHALL BUYER BE LIABLE TO SELLER FOR ANY DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO COMPENSATORY, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL (AS OPPOSED TO COMPENSATORY) DAMAGES, LOST PROFITS OR OTHER DAMAGES DIRECTLY OR INDIRECTLY RELATED TO PROFITS, OR LIABILITIES OF ANY KIND IN CONNECTION WITH THE ORDER, WHETHER FOR BREACH OF CONTRACT, TORT LIABILITY, LATE PAYMENT, PROPERTY DAMAGE, PERSONAL INJURY, ILLNESS, OR DEATH OR OTHERWISE.**

## **26. Assignment.**

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

26.2 With Buyer's prior written consent, Seller may make an assignment of receivables due or to become due to a single financial institution; provided, however, that any such assignment shall be subject to set-off (see Section 21 above) or other method of enforcing any claims that Buyer may have under the Order.

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

**27. No Publicity.**

Seller shall not advertise, publish or disclose to any third party (other than to Seller's professional advisors on a confidential and need-to-know basis) in any manner the fact that Seller has contracted to furnish Buyer the Goods and Services covered by the Order or any terms of the Order (including prices), or use any trademarks or trade names of Buyer in any press release, advertising or promotional materials, without first obtaining Buyer's written consent.

**28. Relationship of the Parties.**

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

**29. Conflict of Interest.**

Seller represents and warrants that its performance of the Order shall not in any way conflict with any continuing interests or obligations of Seller or its employees or contractors. Seller further warrants that while the Order is in effect, Seller and those of its employees and contractors participating in the performance of the Order shall refrain from any activities which could reasonably be expected to present a conflict of interest with respect to Seller's relationship with Buyer or its performance of the Order. Except with respect to the directing Customer in the event Seller is a directed Seller, Seller may not directly solicit Buyer's Customer for sales of the Goods and Services, goods substantially similar to the Goods and Services or any goods substantially similar to the goods sold by Buyer to Buyer's Customer.

**30. Governing Law; Dispute Resolution.**

30.1 Any and all disputes, controversies, differences, or claims arising out of or relating to the Order (including the formation, existence, validity, interpretation (including of this Section 28), breach or termination thereof) or the Goods and Services shall be resolved through binding arbitration, except that either party shall have the right at its option, to seek interim injunctive relief at any time, under seal to maintain confidentiality to the extent permitted by law, (i) in either the Michigan Circuit Court for the County of Oakland or the United States Court for the Eastern District of Michigan, (or (ii) pursuant to the American Arbitration Association Commercial Arbitration Rules. A request by a party to a court of competent jurisdiction for such interim measures shall not be deemed incompatible with, or a waiver of, this agreement to arbitrate. The parties agree that any ruling by the arbitration tribunal on interim measures shall be deemed to be final for purposes of enforcement of the interim measures. The arbitration proceedings shall be conducted before a panel of three arbitrators (one appointed by each party and the neutral appointed by the other two arbitrators, but if the arbitrators appointed by the parties are unable to agree upon the third, the third arbitrator shall be selected by the AAA) in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as amended from time to time, and shall be governed by the *United States Federal Arbitration Act* and this Section 28. The arbitration shall be conducted in Detroit, Michigan, USA, and the language of the arbitration shall be English. The arbitrators' award shall be final and binding. The arbitrators shall issue a written opinion setting forth the basis for the arbitrators' decision. The written opinion may be issued separately from the award, in the arbitrators' discretion. Each party shall bear its own attorney fees and costs, and each party

shall bear one half the cost of the arbitration hearing fees and the cost of the arbitrators, unless the arbitrators find the claims or defenses to have been frivolous or harassing, in which case fees and costs may be assessed in the arbitrators' discretion. While arbitration proceedings are pending, the parties shall continue to perform their obligations under the Order without setoff for any matters being contested in the arbitration proceedings. The arbitrators shall have no authority to award punitive damages against Buyer or any other damages excluded herein, to the greatest extent permitted by law. Except as may be required by law, neither a party, its counsel, the American Arbitration Association, nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

30.2 Venue for confirmation of or any challenge to the Arbitration Award shall be in either the Michigan Circuit Court for the County of Oakland or the United States Court for the Eastern District of Michigan and shall be done under seal to maintain confidentiality to the greatest extent permitted by law.

30.3 The Order, including these POTCS, shall be construed and governed in accordance with the laws of the State of Michigan except for its choice of law rules. The provisions of the United Nations Convention on Contracts for the International Sale of Goods, and any conflict-of-law's provisions that would require application of another choice of law, are excluded.

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

**31. Material Releases; Delivery.**

31.1 Seller shall manufacture and ship Buyer's requirements for the Goods and Services in such quantities and at such time as identified by Buyer as firm orders in scheduling agreements, manifests or other similar releases ("**Material Releases**") that are transmitted to Seller from time to time during the term of the Order, and after consideration by Buyer of agreed upon lead times. Material Releases are incorporated into, and are an integral part of, the Order and are not independent contracts. No charge shall be allowed for packing, shipment, storage or handling unless otherwise stated in the Order. All Goods and Services received in excess of the quantities in a Material Release shall be subject to return for credit at Seller's expense. Buyer shall not be responsible for payment for Goods and Services in excess of the quantities specified in the Material Releases. Seller agrees to accept all risks associated with lead times for raw materials and/or subcomponents if beyond the quantities specified in the Material Releases.

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

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

transportation method possible. In either case, Seller shall be solely responsible for any incremental costs due to the more expeditious transportation method.

31.4 Unless otherwise agreed upon, all pricing and shipments are to be made FCA (as defined in *Incoterms 2020* published by the International Chamber of Commerce) to Buyer's designated destination.

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

31.6 Upon written request by Buyer, Seller shall manufacture Goods and Services in excess of Buyer's current requirements as a reserve for shipment at such levels as may be set by Buyer from time to time in its sole and absolute discretion, at the prices and in compliance with the terms of a then-current Order, without premium or other condition, for such reasons including an anticipated or actual inadequacy of supply, or other uncertainty relating to the supply or delay in the performance of Seller's obligations. Until such reserve Goods and Services are purchased by Buyer, they shall remain the property of Seller and shall be held by Seller at its sole risk and expense.

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

31.8 Seller shall comply with the Bosch Logistics Manual and the Delivery and Packing Specifications, as they may be changed or updated from time to time by Bosch in its sole and absolute discretion. Seller shall: (i) properly pack, mark, and ship Goods and Services according to the requirements of Buyer, the involved carriers and the laws and regulations of the country of manufacture and the country of destination; (ii) route all shipments according to Buyer's instructions; (iii) label or tag each package according to Buyer's instructions; (iv) provide papers with each shipment showing the Order number, amendment or release number, Buyer's part number, Seller's part number (where applicable), number of pieces in the shipment, number of containers in the shipment, Seller's name and number, and the bill of lading number; and (v) promptly forward the original bill of lading or other shipment receipts for each shipment according to Buyer's instructions and carrier requirements. Buyer's count shall be accepted as final and conclusive on shipments not accompanied by Seller's itemized packing list. Partial shipments, if authorized by Buyer, shall not be construed as making the obligations of Seller severable. In the case of Goods and Services for use in motor vehicle manufacturing, if Buyer provides no packing requirements, Seller shall pack the Goods and Services in accordance with the applicable Automotive Industry Action Group packing standards.

31.9 Seller shall comply with the Bosch Norm N2580, as it may be changed or updated from time to time by Bosch in its sole and absolute discretion. The current form of Bosch Norm N2580 can be accessed at Buyer's Website. Upon request by Buyer, Seller shall provide all information related to the requirements of Bosch Norm N2580 or as otherwise reasonably requested in order to comply with applicable law and/or customer requirements, including but not limited to: (i) a list of all substances or materials in Goods and Services; (ii) the amount of all substances or materials; and (iii) information concerning any changes in or additions to the substances or materials. Before Goods and Services are shipped, Seller shall give Buyer sufficient warning in writing (including appropriate labels on all Goods and Services, containers, and packing, including, without limitation disposal and recycling instructions, material safety data sheets and certificates of analysis) of any hazardous or restricted material that is a substance or material or is otherwise part of the Goods and Services, together with any special handling instructions that are needed to advise carriers, Buyer, and their respective employees or others handling the Goods and Services how to take appropriate measures while handling, transporting, processing, using or disposing of the Goods and Services, containers, and packing to best prevent bodily injury or property damage. Seller

shall comply with all national, state, provincial, and local laws and regulations pertaining to product content and warning labels, including but not limited to the U.S. Toxic Substances Control Act and European Union Directive 2000/53/EC or any successor law.

### **32. Service Parts.**

32.1 For Goods and Services used in the manufacture of motor vehicles, for a period of fifteen (15) years after Buyer completes current model purchases for its Customer or such longer time as may be required of Buyer by Buyer's Customer, and for Goods and Services not used in the manufacture of motor vehicles, for a period of twelve (12) years after Buyer purchases the Goods and Services, Seller shall sell to Buyer the quantity of Goods and Services needed to fulfill Buyer's Customer's past model service and replacement requirements ("**Service Parts**"), unless the parties otherwise mutually agree on another timeframe. All such parts shall be sold at the last price specified in the latest revision to the Order plus the actual cost differentials for packaging, materials and manufacturing as a result of service volume levels but in no case to exceed twenty (20%) percent of the price for the last production year. If the Goods and Services are systems, modules or assemblies, Seller shall, upon request, sell the components or parts that comprise the systems, modules or assemblies at pricing that will not in the aggregate exceed the price of the system, module or assembly. During the fifteenth (15<sup>th</sup>) year of such period, Buyer and Seller shall negotiate in good faith with regard to Seller's continued manufacture of Service Parts.

32.2 At Buyer's request, Seller shall make service literature and other materials available at no additional charge to support Buyer's Service Parts sales activities. Unless otherwise expressly agreed in writing by an authorized representative of Buyer, or unless Buyer removes tooling from Seller necessary for the production of Service Parts, Seller's obligations under this Section 30 shall survive termination or expiration of the Order for any reason.

### **33. Goods and Services Discontinuation.**

If Seller intends to discontinue or consolidate production of any Goods and Services that Buyer has purchased from Seller within the preceding twenty-four (24) months or to modify any such Goods and Services in such a way as to necessitate a renewed release of the Goods and Services by Buyer or Buyer's Customer, Seller shall notify Buyer in writing, in compliance with at least the periods of advance notice set forth below in this Section 31, prior to the intended discontinuation of production or modification of the Goods and Services:

Non-Buyer-specific Goods and Services: twelve (12) months prior to discontinuation of production/modification

Buyer-specific Goods and Services: twenty-four (24) months prior to discontinuation of production/modification

Buyer is permitted to place a reasonable last-time order for its residual requirements within the twelve (12) or twenty-four (24) month period, and Seller is obligated to fulfill such order.

### **34. No Waiver.**

Buyer's failure to insist on the performance by Seller of any term or failure to exercise any right or remedy reserved in the Order, or Buyer's waiver of any breach or default hereunder by Seller shall not, thereafter, waive any other terms, conditions, rights, remedies, breaches or defaults, whether of the same or a similar type or not.

### **35. Severability.**

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

### **36. Survival.**



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

**37. Notices.**

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

37.2 A written notice may be provided by: (i) first class mail; (ii) courier service; (iii) fax; or (iv) standard e-mail. A written notice using method (i) or (ii) is effective as of the date of delivery and using method (iii) or (iv) is effective as of the date of transmission.

**38. Interpretation.**

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

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

39.1 The Order is the entire agreement between the parties respecting the Goods and Services and supersedes any prior agreements, negotiations or understandings of the parties respecting the Goods and Services, whether written or oral. These POTCs may only be modified by: (i) a written amendment executed by authorized representatives of each party; or (ii) by Buyer (a) for changes within the scope of Section 7, by an amendment to the Order issued by Buyer or (b) from time to time by posting revised POTCs to Buyer's Website. Such revised POTCs shall apply to all purchase order revisions/amendments and new Orders issued on or after the effective date thereof. Seller shall be responsible to review Buyer's Website periodically.

39.2 Buyer's Website may also contain specific additional requirements for certain items covered by the Order, including labeling, packaging, shipping, delivery and quality specifications, procedures, directions and/or instructions. Any such requirements shall be deemed to form part of the terms and the Order. Buyer may periodically update such requirements by posting revisions thereto on Buyer's Website. In the event of any inconsistency between the Order and Buyer's Website, the terms of the Order shall prevail, unless the requirements specified on Buyer's Website expressly provide otherwise.

39.3 Seller represents and warrants that there is no outstanding litigation, arbitrated matter or other dispute to which Seller is a party which, if decided unfavorably to Seller, would reasonably be expected to have a material adverse effect on Buyer's or Seller's ability to fulfill its respective obligations under this Agreement.

39.4 Seller covenants that each express representation and warranty of Seller in this Agreement shall remain true and correct during the term and any extension thereof. To the extent that Seller becomes aware that any such representation or warranty becomes untrue in any material respect during the term, Seller shall notify Buyer of the facts and circumstances surrounding such situation.

39.5 Buyer has instituted a process by which the Order and any corresponding agreements may be executed using an electronic signature (hereinafter referred to as "E-Signature"). As a condition of Buyer's acceptance of any E-Signature, Seller acknowledges and agrees that: any E-Signature is the legal equivalent of Seller's manual signature; Seller is legally bound by the terms and conditions bearing Seller's E-Signature; the Order and/or agreement will be electronically executed by authorized signers of the Seller. Seller shall indemnify and hold Buyer harmless from and against any damages, losses or claims that arise out of the E-Signature contemplated hereby.