

# Americas Motherson Automotive Terms and Conditions of Purchase



1. **General.** These Americas Motherson Automotive Terms and Conditions of Purchase (“Terms”) apply to all goods and services (collectively, “Products”) purchased by a subsidiary of Motherson (“Buyer”) and are incorporated into each and every purchase order issued by Buyer with respect to the Products (“Order”). The provisions of Buyer’s “Global Supplier Manual” are hereby incorporated into these Terms and Conditions. By supplying Products to Buyer, Supplier acknowledges and agrees that it has read, understands and agrees to be bound by these Terms and Conditions of Purchase.

2. **Offer and Acceptance.** Each Order is an offer by Buyer to the party to whom the Order is addressed (“Supplier”) to enter into the agreement the Order describes, including, without limitation, to purchase the Products identified in the Order. The Order does not constitute an acceptance by Buyer of any offer or proposal by Supplier, whether in Supplier’s quotation, acknowledgement, invoice or otherwise. In the event that any Supplier quotation or proposal is held to be an offer, that offer is expressly rejected and is replaced in its entirety by the offer made up of the Order. Supplier will be deemed to have accepted Buyer’s offer and the Order in its entirety, without modification, upon the earliest of (a) Supplier’s acceptance via a formal written acknowledgment to Buyer, (b) Supplier’s delivery of any Products that are the subject of the Order or (c) any other conduct by Supplier that recognizes the existence of the Order, including, without limitation, preparation for or commencement of any of the work stated in the Order. Acceptance of Buyer’s offer is expressly limited to and made conditional on Supplier’s acceptance of all of the terms and conditions set forth in the Order. Any additions or modifications proposed by Supplier are expressly rejected by Buyer and are not part of the agreement in the absence of an agreement in writing signed by an authorized representative of Buyer. Upon acceptance by Supplier, the Order will become a binding contract between Buyer and Supplier (the “Contract”). Notwithstanding the foregoing sentence, if a Nomination Agreement has been signed by Buyer and Supplier related to the Products the term “Contract” as used in these Terms shall be as defined in that Nomination Agreement and that Nomination Agreement is incorporated into these Terms as if fully set forth herein. Supplier acknowledges and agrees that all policies, guidelines, manuals, specifications and requirements referenced in the Contract or otherwise communicated by Buyer to Supplier during the term of the Contract, are incorporated into, and a part of, the Contract.

3. **Customer Terms.** Supplier acknowledges that Products covered by the Contract may be sold, or incorporated into goods or services that will be sold, by Buyer to an original equipment manufacturer, whether directly or indirectly through an upper tier supplier, or any other third-party customer (collectively, “Customer”). Accordingly, Supplier shall take such steps, provide such disclosure, comply with such requirements and do all other things as Buyer deems necessary or desirable and within Supplier’s control to enable Buyer to meet Buyer’s obligations under the terms and conditions of any contract or purchase order or other document (“Customer Terms”) that may be applicable to Buyer from time to time in respect of its direct or indirect supply of such goods or services to the Customer. While Buyer may, from time to time, provide Supplier with information regarding the applicable Customer Terms, it is Supplier’s responsibility to ascertain the Customer Terms that may affect Supplier’s obligations under the Contract.

4. **Price.** Buyer shall not be invoiced at a price higher than that stated in the Contract. Unless otherwise expressly stated in the Contract, all prices for Products include (a) all applicable federal, state, provincial, value added and local taxes and any excises, duties or other governmental impositions applicable to the provision of the Products ordered, and (b) the charges for insurance, packaging, freight, transportation and any other fee or expense relating to the provision of the

Products ordered. All state and federal excise, sales and use taxes shall be stated separately on invoices. Supplier shall cooperate with Buyer in obtaining and furnishing certificates or other evidence of inapplicability of or exemption from any sales, use, excise or other taxes to which Buyer may be entitled. No surcharges, premiums or other additional charges of any kind may be imposed upon Buyer unless expressly agreed to in writing by an authorized representative of Buyer. Supplier expressly assumes the risk of any event or cause, whether or not foreseen or foreseeable, affecting the prices stated in the Contract, including, without limitation, any foreign exchange rate changes, increases in raw materials costs, inflation, increases in labor and other manufacturing costs, or fluctuations in volume. Supplier warrants that the price charged to Buyer for Products is not less favorable than the price currently extended to any other customer for the same or similar goods or services in similar quantities or specifications. Supplier shall ensure that the price charged to Buyer for Products is and remains competitive with the price for similar goods and services available to Buyer from other Suppliers.

5. **Invoices.** No invoices shall be issued prior to delivery of Products. Supplier shall comply with Buyer's instructions and then current policies with respect to the form, content and method for submission of all invoices before any payment will be made by Buyer. Without limiting the generality of the foregoing, all invoices for Products shipped pursuant to the Contract must reference the Order number, amendment or Release number, Buyer's part number, Supplier's part number where applicable, quantity of pieces in shipment, number of cartons or containers, Supplier's name and number, and bill of lading number. Buyer reserves the right to return all invoices or related documents submitted incorrectly, and payment terms will be determined as of the date of the latest correct invoice received by Buyer.

6. **Delivery Schedules.** Deliveries will be made in the quantities, on the dates, and at the times specified by Buyer in the Contract or any subsequent scheduling agreements, releases, or instructions (each a "Release") issued by Buyer under the Contract. Time and quantity are of the essence with respect to all delivery schedules Buyer establishes through a Release. Buyer will not be required to pay for any Products that exceed the firm quantities specified in Buyer's Releases or to accept Products that are delivered in advance of the delivery date specified in such Releases. Supplier shall inform Buyer immediately about any impending delay in delivery, including the estimated duration of the delay, the estimated time of actual delivery, and the reasons giving rise to such delay. If Supplier delivers or fails to deliver Products in an amount or on a schedule other than as required by a Release, Buyer shall have the right, without prejudice to any rights set forth in the Contract or in applicable law, to do any or all of the following: (i) accept the delivery, even with the incorrect quantities, and change the quantities of future Orders accordingly; (ii) reject the quantity in excess, with over shipments to be returned to Supplier at Supplier's sole risk and expense, and with the stock costs to be charged to Supplier; (iii) request Supplier to immediately deliver any missing quantity of the Products; (iv) impose and recharge to Supplier a contractual penalty equivalent to one-half percent (0.5%) of the corresponding Order value for each week of delay, including partial weeks, but which total penalty amount shall not exceed five percent (5.0%) of the corresponding Order value; or (v) recharge to Supplier the contractual or legal penalty amounts levied on Buyer by the Customer caused by Supplier's improper delivery or failure to deliver Products. Supplier bears the risk of loss of all Products delivered in advance of the delivery date specified in Buyer's Releases. If the requirements of Buyer's Customers or market, economic or other conditions require changes in delivery schedules, Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments without entitling Supplier to a price adjustment or other compensation. Before any of Supplier's labor contracts expire and as soon as Supplier anticipates or learns of any impending strike, labor dispute, work stoppage or other disruption at Supplier's facilities

that might affect the delivery of Products to Buyer, Supplier will produce and locate in an area that will not be affected by any such disruption a finished inventory of Products in quantities sufficient to ensure the supply of Products to Buyer for at least thirty (30) days after such disruption commences.

7. **Shipping.** Shipments will be routed in accordance with Buyer's instructions and, unless otherwise specified by Buyer, shall be delivered DDP (Incoterms® 2020) Buyer's designated location. All Products will be shipped in accordance with sound commercial practice and in accordance with any information furnished by Buyer to Supplier. Supplier will comply with Buyer's packaging, labeling, shipping notification and freight requirements. Supplier will not charge for costs relating to handling, packaging, storage or transportation, including duties, taxes, or fees, unless otherwise expressly stated in the Contract. Supplier shall bear all risk of loss for the Products until such Products are delivered and fully unloaded at Buyer's designated location. Premium shipping expenses or other related expenses necessary to meet Buyer's customary delivery schedules shall be the responsibility of Supplier. If Supplier is unable to meet Buyer's delivery requirements using the transportation method originally specified by Buyer and Buyer requires a more expeditious method of transportation for the Products to meet such delivery requirements: (a) Buyer may, in its sole discretion, require Supplier to pay the premium shipping expenses to have the Products delivered or Buyer may pay such expenses, and (b) Supplier shall promptly reimburse to Buyer the entire cost of the more expeditious method of transportation, if paid by Buyer or Buyer may reduce its payment of Supplier's invoices by the entire cost of the more expeditious method of transportation.

8. **Acceptance of Products.** Acceptance of Products by Buyer is subject to Buyer's inspection on their arrival on Buyer's premises, notwithstanding any prior payment. Products rejected by Buyer as not conforming to the Contract by reason of inferior quality, failure to meet specifications, late delivery or otherwise shall be returned to Supplier with charges for transportation and labor being for the account of Supplier. Products rejected by Buyer and returned to Supplier shall not be replaced except upon express instructions given by Buyer. Buyer retains all remedies to which it is entitled by statute or under common law.

9. **Payment.** Payment terms are as set forth in the Contract. Supplier will promptly submit correct and complete invoices or other agreed billing communications with appropriate supporting documentation and other information required by Buyer after delivery of Products, and Buyer may withhold payment until a correct and complete invoice or other required information is received and verified.

10. **Volume Projections.** Supplier acknowledges that any estimates, forecasts or projections of future anticipated volume or quantity requirements for Products provided by Buyer are provided for informational purposes only, are not binding obligations to purchase, and, like any other forward-looking projections, are based on a number of economic and business factors, variables and assumptions, some or all of which may change over time. Buyer makes no representation, warranty, guaranty or commitment of any kind or nature, express or implied, regarding any such estimates, forecasts or projections provided to Supplier, including with respect to the accuracy or completeness of any such estimates, forecasts or projections.

11. **Safety Stock.** Upon written request by Buyer, Supplier shall manufacture Products in excess of Buyer's current requirements as a reserve for shipment at such levels as may be set by Buyer from time to time in its sole and absolute discretion, for such reasons including an anticipated or actual inadequacy of supply, or other uncertainty relating to the supply or delay in the performance of

Supplier's obligations. Until such reserve Products are purchased by Buyer, they shall remain the property of Supplier and shall be held by Supplier at its sole risk and expense.

12. **Sourcing Limitations.** Unless the Contract expressly states that Supplier shall produce one hundred percent (100%) of Buyer's requirements for Products, Buyer shall have the right to obtain a portion of such Products from another third-party source or from Buyer's internal sources.

13. **Changes.** Buyer may from time to time in its sole discretion, by notice to Supplier, make changes to the drawings, specifications, materials, packaging, testing, quantity, time or method of delivery or shipment, or other requirements prescribed in the Contract. Any such changes shall be deemed not to affect the time for performance or cost under the Contract unless Supplier notifies Buyer in writing within ten (10) days of receipt by Supplier of notice of any change and provides supporting documentation, in such form and detail as Buyer may require. If Supplier so notifies Buyer timely and Buyer, in its sole discretion, determines that an adjustment is appropriate, Buyer and Supplier shall negotiate an equitable adjustment to the time for performance or cost after receipt by Buyer of such documentation. Buyer has the right to examine any of Supplier's pertinent books and records for the purpose of verifying Supplier's claim. If Buyer determines that no adjustment is appropriate, Buyer will so advise Supplier in writing. Nothing in this Section shall excuse Supplier from proceeding with the Contract as modified, including failure of the parties to agree upon any adjustment to be made under this Section. Supplier shall not make any change to the Contract or to the Products covered by the Contract without the prior written approval of an authorized representative of Buyer, including, without limitation, any change to (a) any third party supplier to Supplier of services, raw materials or goods used by Supplier in connection with its performance under the Contract, (b) the facility from which Supplier or such supplier operates, (c) the nature, type or quality of any services, raw materials or goods used by Supplier or its suppliers in connection with the Contract, (d) the design, manufacturing process, PPAP or PCN process, or any process used in the production or provision of any Products under the Contract, or (e) the price of the Products.

14. **Service and Replacement Parts.** During the term of the Contract, Supplier will sell to Buyer Products necessary to fulfill Buyer's service and replacement parts requirements to Buyer's Customers at the then current production price(s) under the Contract. If the Products are systems or modules, Supplier will sell the components or parts that comprise the system or module at price(s) that will not, in the aggregate, exceed the price of the system or module less assembly costs. If the Contract is in effect at the end of the vehicle production program into which the Products are incorporated, Supplier will also sell Products to Buyer to fulfill Buyer's and its Customers' service and replacement parts requirements during the fifteen (15) year period following the end of such vehicle production program or such other period as is required of Buyer by the Customer ("Post-Production Period"), and the Contract will automatically remain in effect during the entire Post-Production Period. During the initial five (5) years of the Post-Production Period, the price(s) for the Products will be the production price(s) which were in effect at the commencement of the Post-Production Period. For the remainder of the Post-Production Period, the price(s) for the Products will be as reasonably agreed to by the parties. If requested by Buyer, Supplier will also make service literature and other materials available at no additional charge to support Buyer's service activities.

15. **Compliance with Law.** Supplier will comply with all federal, state, provincial, local and foreign laws, orders, rules, regulations and ordinances that may be applicable to Supplier's performance of its obligations under the Contract ("Laws") and the Contract shall include and hereby incorporates by reference all of the clauses required by the provisions of such Laws. Without limiting the generality of the foregoing, Supplier hereby certifies that the Products described in the Contract have been or will

be produced in compliance with the Fair Labor Standards Act of 1938, as amended (the "Act") and any amendments thereto, as well as the provisions of any other law with respect to labor relations, minimum wages and hours of employment, now in effect or hereafter enacted, and with any and all rules and regulations issued under the Act and other laws. Supplier agrees that, in its performance under the Contract, it is solely responsible for required compliance with the import and export laws and regulations of the United States of America, and those of any other jurisdiction or country that may be applicable. Supplier shall furnish Buyer with certificates of compliance, where required under applicable Laws or when requested by Buyer.

16. **Disclosure Requirements.** If requested by Buyer, Supplier shall promptly furnish to Buyer in such form and details as Buyer may direct: (a) a list of all ingredients in the Products purchased hereunder; (b) the amount of one or more ingredients; or (c) information concerning any changes in or additions to such ingredients. Prior to and with the shipment of the Products purchased under the Contract, Supplier agrees to furnish to Buyer sufficient warning and notice in writing including appropriate labels on goods, containers and packing of any hazardous material which is an ingredient or a part of any of the Products, together with such handling instructions as may be necessary to advise carriers, Buyer and their respective employees as to how to exercise that measure of care and precaution which will best prevent bodily injury or property damage in the handling, transportation, processing, use, or disposal of the Products, containers and packing shipped to Buyer. Whenever Supplier becomes aware that any ingredient or component of the Products covered by the Contract are or may become harmful to persons or property or that the design or construction of the Products is defective in any manner, Supplier shall immediately give notice thereof, including all relevant information with respect thereto, to Buyer. Upon request, Supplier shall furnish Buyer with such written verification as Buyer deems necessary to certify the origin of any ingredients or materials in the Products. Supplier shall also promptly furnish to Buyer all documents and other information requested by Buyer so that Buyer may comply in a timely manner with all applicable laws and Customer requirements governing consumer protection, conflict minerals or similar materials or ingredients.

17. **Quality Management.** Supplier will maintain, and will cause any sub-supplier of Supplier with respect to the Products to maintain, an appropriate quality system that meets Buyer's and Buyer's Customers' quality specifications and will ensure overall compliance with all quality requirements of Buyer and Buyer's Customer. Upon Buyer's request, Supplier shall furnish Buyer with copies of Supplier's certification documents, including any amendments thereto. Supplier shall have available at all times appropriate equipment and personnel to perform all required quality procedures and inspections with respect to the Products and shall conduct timely internal audits of its quality system. Supplier shall ensure at all times during the Contract that overall equipment and plant capacity are adequate to meet Buyer's needs. Supplier will promote continuous improvement in its quality, manufacturing and logistics processes in compliance with the international state of the art for the automotive industry and with any applicable laws or regulations in force in each country where the Products will be manufactured, used, or sold. Supplier will participate in any supplier quality programs of Buyer and the Customers that may apply to the Products described in an Order. Supplier shall meet the full requirements of industry production part approval processes ("PPAP") or any similar applicable approval processes as specified by Buyer or Buyer's Customers and agrees to present evidence of compliance to Buyer upon request in a form acceptable to Buyer.

18. **Ownership of Proprietary Materials.** Buyer is the sole owner of all right, title, and interest in and to all works of original authorship, ideas, inventions, whether or not patentable or patented, know-how, processes, compilations of information, trademarks and other intellectual property created by

Supplier in connection with, or pursuant to, the Contract (collectively, "Proprietary Materials"), and all intellectual property rights in such Proprietary Materials. Supplier agrees that all such Proprietary Materials created by Supplier are "works made for hire" as that term is used in connection with the U.S. Copyright Act. To the extent that, by operation of law, Supplier owns any intellectual property rights in the Proprietary Materials, Supplier hereby irrevocably assigns to Buyer all rights, title and interest, including copyrights and patent rights, in such Proprietary Materials. Supplier shall ensure that all employees and authorized subcontractors to Supplier shall have contracts with Supplier in writing consistent with the terms of this Section.

19. **Warranties.** In addition to any warranties otherwise set forth in the Contract, Supplier expressly warrants that all Products will be free from any liens, encumbrances and rights of third parties, will conform to any specifications, drawings, samples or descriptions furnished to Supplier by Buyer, all U.S. industry standards, and all laws, regulations and other governmental requirements in force in countries where Products or products equipped with such Products are to be installed or sold, and will be new, merchantable, of good material and workmanship and free from defects. Supplier acknowledges that Supplier knows of Buyer's intended use for the Products and expressly warrants that all Products will be fit and sufficient for the particular purpose intended by Buyer, including, without limitation, the specified performance in the component, system, and/or subsystem specified by Buyer and the environment in which the Products are or reasonably may be expected to perform. Supplier expressly warrants that the Products do not and will not infringe any United States or foreign patent, trademark, copyright, industrial design right, or other proprietary right of any third party. The warranties under this Section shall be effective for the longer of (a) the period provided by applicable law, regulation or other governmental requirement, or (b) the warranty period provided by Buyer to its Customers; provided, however, in the case of any recall campaign or other customer satisfaction or corrective service action undertaken by Buyer or its Customers, the warranty will continue for such time period as may be dictated by Buyer's Customer or the federal, state, local or foreign government where the Products are used. Supplier shall repair any defects during the applicable warranty period at Supplier's cost and expense (including, without limitation, for all parts, labor and transportation costs) immediately after being notified of any such defect or defects by Buyer. THE WARRANTIES AND REMEDIES CONTAINED IN THE CONTRACT SUPPLEMENT THE WARRANTIES AND REMEDIES PROVIDED BY THE UNIFORM COMMERCIAL CODE AND SHALL NOT BE DISCLAIMED OR LIMITED IN ANY WAY. All warranties contained in the Contract shall run, and all remedies shall be available to, Buyer and Buyer's affiliates, successors, Customers and any other users of the Products or products equipped with such Products and all such warranties shall survive any delivery of Products, or inspection or acceptance of such Products, or payment therefor, by Buyer. The following communications shall each constitute notice of breach of warranty under the Contract: (i) any communication specifying a defect, nonconformity, default, claim of defect or nonconformity or other problem or quality issue with Products sold under the Contract; (ii) any communication to Supplier claiming that any Products are in breach of any warranty or that Supplier is in default under the Contract; and (iii) a termination notice from Buyer under Section 26. To mitigate its damages, Buyer may fully defend any claim from any Customer that any Products supplied by Supplier are defective, in breach of warranty, or otherwise did not meet applicable legal or contractual requirements. Supplier and Buyer agree that this defense is in the interest of both Supplier and Buyer. Supplier hereby waives the right to argue that the fact that Buyer took any such position in any way limits Buyer's right to assert a claim against Supplier by Buyer for breach of warranty, contribution, indemnification or other claim that may arise from or be related to the subject matter of any of the foregoing.

20. **Nonconforming Goods.** Buyer, at its option, may reject and return at Supplier's risk and expense, or retain and correct or have a third party correct, any Products that fail to conform to the requirements of the Contract even if the nonconformity does not become apparent to Buyer until the manufacturing, processing or assembly stage or later. Nonconforming Products will be held by Buyer for disposition in accordance with Supplier's written instructions at Supplier's risk. Supplier's failure to provide written instructions within ten (10) days after notice of nonconformity shall entitle Buyer, at Buyer's option, to charge Supplier for storage and handling, or to dispose of the Products without any liability of Buyer to Supplier. Supplier shall reimburse Buyer for (a) any amounts paid by Buyer on account of the purchase price of any rejected nonconforming Products, and (b) any costs incurred by Buyer in connection with the nonconforming Products, including, but not limited to inspection, sorting, testing, evaluations, storage, removal, installation or rework (including, without limitation, for all parts, labor and transportation costs), within ten (10) days after a debit memo for the costs has been issued by Buyer. Payment by Buyer for nonconforming Products shall not constitute an acceptance, limit or impair Buyer's right to assert any legal or equitable remedy, or relieve Supplier's responsibility for latent defects.

21. **Indemnification.** To the fullest extent permitted by applicable law, Supplier hereby agrees to indemnify, defend and hold harmless Buyer, Buyer's affiliates, Buyer's Customers, and their respective successors, assigns, shareholders, directors, officers, employees and agents, from and against any and all actions, claims, demands, judgments, recall campaigns or other customer satisfaction or corrective service actions, losses, costs, liabilities, damages, expenses, reasonable attorneys' fees and costs, expert fees, penalties or citations of whatsoever kind, character or description ("Claims") that are incurred by or asserted against Buyer and that are related in any way to or arise in any way from: (a) Supplier's actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright, industrial design right, or other proprietary right, by reason of the manufacture, provision, use or sale of the Products, except for infringement arising solely out of compliance with specifications furnished by Buyer; (b) any defect or nonconformity or alleged defect or nonconformity in any Products provided by Supplier under the Contract; (c) any failure by Supplier to timely deliver any Products under the Contract in accordance with Buyer's shipping and delivery requirements; (d) any noncompliance or alleged noncompliance by Supplier or its employees, agents or subcontractors with its representations, warranties or obligations under the Contract; (e) any negligence or fault or alleged negligence or fault of Supplier in connection with the design, manufacture or provision of Products; or (f) any injury or death of any person or damage or loss of any property allegedly or actually resulting from or arising out of any act or omission of Supplier or its employees, agents or subcontractors in connection with performing its obligations under the Contract, in each case unless such Claims have been specifically determined by the trier of fact to be solely the result of the gross negligence or willful misconduct of Buyer. Supplier will defend any and all Claims which may be brought or threatened against Buyer for which those Claims are the responsibility of Supplier and will pay on behalf of Buyer all expenses incurred by reason of such Claims including, but not limited to, court costs and actual attorneys' fees incurred in defending or investigating such Claims. The indemnification obligations of Supplier under this Section are not in lieu of and shall not in any way impair or exclude Buyer's rights to be indemnified and held harmless by Supplier under any other agreement, any statute, or the common law, and all such rights shall be cumulative.

22. **Insurance Requirements.** In addition to any specific insurance requirements as may be specified in the Contract, throughout the term of the Contract and the warranty period of any Products, Supplier shall obtain and maintain, at its sole expense, insurance coverage as required by applicable law or as reasonably requested by Buyer (including, without limitation, full public and employee

liability, property damage, and workmen's compensation coverage) with such carriers, and in such amounts, as are reasonably acceptable to Buyer. Each policy of insurance shall name Buyer as an additional insured and contain endorsements stating that the policy is primary and not excess over or contributory with any other valid, applicable, or collectible insurance in force for Buyer and also provide a waiver of subrogation in favor of Buyer under all policies. Supplier shall furnish to Buyer certificates of insurance setting forth the amount of coverage, policy number and date(s) of expiration for insurance maintained by Supplier and such certificates of insurance shall provide at least sixty (60) days' prior written notice to Buyer of cancellation, material alteration or nonrenewal.

23. **Confidentiality.** In connection with the performance of Supplier's obligations under the Contract, Supplier may have access to information that is considered confidential by Buyer. This information may include, but is not limited to technical know-how, technical specifications, protocols, strategic business plans, results of testing, systems, financial information, product information, methods of operation, customer information, supplier information and compilations of data ("Confidential Information"). Supplier shall use Buyer's Confidential Information only for the purposes of, and in performance of its obligations under, the Contract. Without limiting the scope of this duty, Supplier agrees not to use any Confidential Information for its own benefit or for the benefit of anyone other than Buyer, and Supplier agrees not to design, manufacture or provide any goods or services, other than the Products, which incorporate any Confidential Information. Supplier shall maintain the confidentiality of Buyer's Confidential Information in the same manner in which it protects its own confidential information of like kind, but in no event shall Supplier take less than reasonable precautions to prevent the unauthorized disclosure or use of Buyer's Confidential Information. Supplier is permitted to disclose Buyer's Confidential Information to its employees and authorized subcontractors on a need-to-know basis only, provided that such employees and authorized subcontractors have written confidentiality obligations to Supplier no less stringent than the confidentiality obligations under this Section. Supplier shall be responsible for any breach of the Contract by any person or entity to whom it has disclosed Buyer's Confidential Information. All Confidential Information remains the property of Buyer, its affiliate or the applicable third party to whom such information belongs. Buyer, its affiliate or the applicable third party to whom such information belongs owns all right, title and interest, including any and all copyrights, patents, trade secrets, trademarks, trade dress and any and all moral rights in the Confidential Information. No license or other rights in the Confidential Information is granted under the Contract. Upon termination of the Contract, Supplier shall return Buyer's Confidential Information and shall not use Buyer's Confidential Information for its own, or any third party's benefit. ALL INFORMATION PROVIDED BY BUYER TO SUPPLIER IS PROVIDED "AS IS" AND WITHOUT ANY WARRANTY, EXPRESS, IMPLIED, OR OTHERWISE, REGARDING ITS ACCURACY OR PERFORMANCE. Supplier shall comply with any information security standards of Buyer or its Customers. Supplier's confidentiality obligations shall survive termination of the Contract for so long as the Confidential Information remains confidential. In order to assure that Buyer is able to obtain the full benefit of the restrictions set forth in this Section, Buyer shall be entitled to injunctive relief, including, but not limited to, emergency, preliminary, temporary and permanent injunctions, from any court of competent jurisdiction as may be necessary to enjoin any violation of the foregoing covenants, without the necessity of proving immediate irreparable harm or an inadequate remedy at law. No bond, indemnity or other security will be required to obtain such injunctive relief. If Buyer and Supplier have entered into a separate confidentiality or non-disclosure agreement, the terms of such agreement shall control and take precedence over this section.

24. **Bailed Property.** Buyer is and shall remain the sole owner of all right, title, and interest in and to all supplies, materials, molds, machinery, equipment, spare parts, trial parts, dunnage, racks,



containers, patterns, tools, dies, jigs, fixtures, blueprints, designs, specifications, drawings, photographic negatives and positives, art work, copy layout, consigned material for production or repair and any other items furnished by Buyer, either directly or indirectly, to Supplier or to any sub-supplier of Supplier to perform the Contract, or for which Supplier has been reimbursed by Buyer (collectively, "Bailed Property"). Supplier shall at all times hold Bailed Property on a bailment-at-will basis. Supplier shall bear the risk of loss of and damage to the Bailed Property and Supplier at its own expense shall keep such property insured for the benefit of Buyer. Supplier shall be responsible for all personal property taxes and other charges or levies imposed on the Bailed Property while in Supplier's possession and for compliance with all laws and regulations applicable to the Bailed Property while in Supplier's possession. The Bailed Property (i) shall at all times be properly housed and maintained by Supplier; (ii) shall not be used by Supplier for any purpose other than the performance of the Contract; (iii) shall be deemed to be personalty; (iv) shall be conspicuously marked by Supplier to identify it as the property of Buyer and indicate Buyer's name; (v) shall not be commingled with the property of Supplier or with that of a third person; and (vi) shall not be moved from Supplier's premises without prior written approval by an authorized representative of Buyer. Supplier, at its expense, shall maintain, repair and refurbish the Bailed Property in first class condition. All replacement parts, additions, improvements and accessories for such Bailed Property automatically shall become Buyer's property upon their incorporation into or attachment to the Bailed Property. Supplier agrees that Buyer has the right, at any time, with or without reason and without payment of any kind to retake possession of or request return of any or all Bailed Property, without the necessity of obtaining a court order. Upon the request of Buyer, Bailed Property shall be immediately released to Buyer or delivered to Buyer by Supplier, either (a) F.O.B. transport equipment at Supplier's plant, properly packed and marked in accordance with the requirements of the carrier selected by Buyer to transport such property, or (b) to any location designated by Buyer, in which event Buyer shall pay to Supplier the reasonable cost of delivery of such property to such location. Supplier shall keep a true record of all Bailed Property in its possession or control, shall give the representatives of Buyer access to such record on demand, shall provide Buyer, upon Buyer's request, with a written inventory of all Bailed Property, and shall permit representatives of Buyer to perform their own inventory of Bailed Property in Supplier's possession or control. Supplier acknowledges and agrees that it may not hold Bailed Property after Buyer requests its return for any reason, including, without limitation, any alleged breach by Buyer. Supplier's failure to deliver any item of Bailed Property to Buyer or its agent at the end of the bailment, as directed by Buyer, will (1) be a breach of the Contract, and (2) subject Supplier to liability for, among other things, conversion and responsibility for all costs and expenses, including actual attorneys' fees, incurred by Buyer to recover such Bailed Property. Supplier acknowledges and agrees that (i) Supplier has inspected the Bailed Property and is satisfied that the Bailed Property is suitable and fit for its purposes, and (ii) BUYER HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF ANY BAILED PROPERTY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. Buyer will not be liable to Supplier for any loss, damage, injury or expense of any kind or nature caused, directly or indirectly, by any Bailed Property, including, without limitation, its use or maintenance, or its repair, service or adjustment, or by any interruption of service or for any loss of business whatsoever or howsoever caused, including, without limitation any anticipatory damages, loss of profits or any other indirect, special or consequential damages. Supplier shall not take or permit any third party to take any security interest, lien or other interest in any Bailed Property. As permitted by applicable law, Supplier hereby waives any lien or other rights that Supplier might otherwise have on any Bailed Property for work performed on such property, for the purchase price of any Products or otherwise. All requests for reimbursement for tooling costs are subject to review, approval, and audit by Buyer.

25. **Insolvency of Supplier.** Without limiting any of Buyer's rights under applicable law, upon written notice to Supplier, Buyer may immediately terminate the Contract, without any liability to Buyer, in the event of the happening of any of the following or any other comparable event: (a) the insolvency of Supplier; (b) the filing of a voluntary petition in bankruptcy by Supplier; (c) the filing of an involuntary petition in bankruptcy against Supplier; (d) the appointment of a receiver or trustee for Supplier; or (e) the execution of an assignment for the benefit of creditors of Supplier.

26. **Termination for Breach.** Without limiting any of Buyer's rights under applicable law, upon written notice to Supplier, Buyer may immediately terminate all or any part of the Contract, without any liability to Buyer, if Supplier (a) repudiates, breaches, or threatens to breach any of the terms of the Contract, including Supplier's warranties, (b) fails to perform or threatens not to deliver Products in accordance with the provisions of the Contract; or (c) fails to assure timely and proper completion or delivery of Products.

27. **Termination for Convenience.** Without limiting any of Buyer's rights under applicable law and in addition to any other rights of Buyer to terminate the Contract, Buyer may for any reason or no reason, upon sixty (60) days written notice to Supplier, terminate all or any part of the Contract, even if the Contract is, or is deemed to be, a requirements contract. Upon receipt of notice of termination pursuant to this Section, Supplier, unless otherwise directed in writing by an authorized representative of Buyer, shall terminate immediately all work under the Contract. Upon such termination, Buyer may, at its option, purchase from Supplier any or all raw materials, work-in-process and finished goods inventory related to the Products under the Contract that are useable and in a merchantable condition. The purchase price for such finished goods, raw materials and work-in-process, and Supplier's sole and exclusive recovery from Buyer (without regard to the legal theory which is the basis for any claim by Supplier) on account of such termination, will be (a) the contract price for all Products that have been completed in accordance with the Contract as of the termination date and delivered and accepted by Buyer and not previously paid for, plus (b) the actual costs of work in process and raw materials incurred by Supplier in furnishing the Products under the Contract to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting principles to the terminated portion of the Contract, less (c) the reasonable value or cost (whichever is higher) of any goods or materials used or sold by Supplier with written consent by an authorized representative of Buyer. In no event will Buyer be required to pay for finished goods, work-in-process or raw materials that Supplier fabricates or procures in amounts that exceed those Buyer authorizes in firm delivery releases nor will Buyer be required to pay for any goods or materials that are in Supplier's standard stock or that are readily marketable. Additionally, Buyer shall not be liable for and shall not be required to make payments to Supplier, directly or on account of claims by Supplier's subcontractors, for any other alleged losses or costs, whether denominated as loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, general and administrative burden charges resulting from termination of the Contract, or otherwise. Payments made under this Section will not exceed the aggregate price for finished goods that would be produced by Supplier under Buyer's firm delivery or release schedules outstanding at the date of termination. Within sixty (60) days after the effective date of termination under this Section, Supplier shall submit a comprehensive termination claim to Buyer, with sufficient supporting data to permit an audit by Buyer, and will thereafter promptly furnish any supplemental and supporting information Buyer requests.

28. **Transition Support:** Upon the expiration or earlier termination of all or any portion of the Contract for whatever reason, Supplier agrees to promptly comply with all of its obligations under the

Contract and to take such further action as may be reasonably required by Buyer, including, without limitation, provision, at Buyer's request, of a sufficient bank of Products in addition to the firm quantities specified in Buyer's outstanding delivery schedules, to ensure that the transition of supply from Supplier to any alternate Supplier chosen by Buyer will proceed smoothly.

29. **Force Majeure.** Neither party shall be liable to the other party for any breach of the Contract if, and only to the extent that, the party is unable to perform specifically due to a Force Majeure Event. The phrase "Force Majeure Event" shall mean any circumstance beyond a party's reasonable control and which, by exercise of reasonable diligence, a party is unable to foresee, prevent or overcome, and which objectively prevents a party from performing its contractual obligations, including, but not limited to, flood, fire, acts of God, epidemic, pandemic, severe weather events, acts of government, including with respect to the refusal to issue necessary import or export licenses, war, riots, or embargos. If the impediment to a party's performance under the Contract can be overcome, even if financially more burdensome, the failure to perform is not a Force Majeure Event, is not excusable, and shall lead to the respective party's liability for damages arising from the non-performance. For the avoidance of doubt, labor disruptions, strikes, lockouts and slowdowns affecting Supplier's facilities shall not be a Force Majeure Event. A party that anticipates being affected by a Force Majeure Event shall notify the other party in writing no later than forty-eight (48) hours after learning such information and shall include in its notice (i) a specific description of the event or circumstance, (ii) what actions the party is taking to avoid or minimize the event or circumstance, and (iii) the anticipated length of time the event or circumstance will affect that party's ability to perform under the Contract. If Supplier is affected by a Force Majeure Event, Buyer, at its option, may purchase Products from other sources and reduce its purchases from Supplier accordingly, without liability to Buyer, or have Supplier provide Products from other sources in quantities and at times requested by Buyer and at the price set forth in the Contract.

30. **Netting, Setoff and Recoupment.** All amounts due from Buyer or Buyer's affiliates to Supplier or Supplier's affiliates shall be net of any indebtedness or other obligations of Supplier or Supplier's affiliates to Buyer or Buyer's affiliates. Buyer or any of Buyer's affiliates may, without notice to Supplier or any of Supplier's affiliates, set-off against or recoup from any amounts due or to become due from Supplier or Supplier's affiliates to Buyer or Buyer's affiliates, however and whenever arising. In the event that Buyer or any of Buyer's affiliates reasonably feels itself at risk as to any amount owed by Supplier or Supplier's affiliates, Buyer or Buyer's affiliates may withhold and recoup a corresponding amount due Supplier or Supplier's affiliates to protect against such risk. In addition to any rights otherwise provided or allowed by law or the Contract, Buyer or any of Buyer's affiliates may retain or defer payment of all or any portion of the amount due from Buyer or Buyer's affiliates to the extent of any obligation of Supplier or Supplier's affiliates to Buyer or Buyer's affiliates, even if such obligation is disputed, contingent or unliquidated, until such obligation is resolved. Without limiting the generality of the foregoing, and by way of example only, in the event Supplier or any of Supplier's affiliates is subject to insolvency, bankruptcy, receivership, liquidation or other similar proceedings, Buyer or any of Buyer's affiliates may defer payments due to Supplier or any of Supplier's affiliates, via an administrative hold or otherwise, against potential damages arising from rejection or otherwise. Supplier unconditionally guarantees payment when due of all existing and future obligations of any of its affiliates to Buyer or any of Buyer's affiliates, provided however, that the amount guaranteed by Supplier shall not exceed the amount owed by Buyer to Supplier under the Contract from time to time and at any given time.

31. **Permits and Licenses.** Supplier shall promptly apply for and procure without additional compensation all permits, certificates and licenses required by governmental authorities having

jurisdiction over the Products, Supplier or the location of the Products prior to providing such Products. Proof of such permits, certificates, or licenses shall be submitted to Buyer. This requirement is also applicable to all subcontractors of Supplier.

32. **Inspection and Audit Rights.** Supplier agrees to retain all books, records, certifications, reports and other documents and data related to the Contract, Supplier's performance under the Contract and all Products under the Contract for a period equal to the longer of (a) the life of the applicable Product, and (b) three (3) years after receiving final payment from Buyer under the Contract. Supplier shall make all such items available for inspection by Buyer and, when requested by Buyer, furnish Buyer with copies of any such documents or data. Buyer shall have the right to inspect and audit Supplier's books, records, operations and facilities, including Supplier's quality system, to insure Supplier's compliance with the terms of the Contract. Supplier shall maintain all records necessary to support amounts charged to Buyer under the Contract. Buyer and its representatives may audit Supplier's records of transactions to the extent needed to verify the quantities shipped and that the prices charged match the Contract prices. Supplier shall provide Buyer and its Customer with reasonable access to its facilities and otherwise cooperate and facilitate any such inspections and/or audits by Buyer. Notwithstanding the foregoing, no inspection or failure to inspect by Buyer shall alter Supplier's obligations under the Contract. Supplier will ensure that any sub-supplier of Supplier with respect to the Products will comply with all of the requirements under this Section.

33. **Continued Performance During Dispute.** During the period that any matter governed by the Contract is in dispute and during all phases of any dispute resolution process, Supplier shall continue to perform its obligations under the Contract to ensure that Buyer's and its Customer's production or operations are not interrupted.

34. **Independent Contractors.** The parties are independent contractors. The Contract does not create any agency, employment, partnership, joint venture, franchise or other similar or special relationship between the Parties, and nothing contained in the Contract shall be construed to make either party an agent, partner, representative or principal of the other for any purpose. Neither party will have the right or authority to assume or create any obligations or to make any representations, warranties or commitments on behalf of the other party, whether express or implied, or to bind the other party in any respect whatsoever.

35. **Advertising.** During and after the term of the Contract, Supplier will not advertise or otherwise disclose its relationship with Buyer or Buyer's Customers without prior written consent from an authorized representative of Buyer, except as may be required to perform the Contract or as required by law.

36. **Remedies:** The rights and remedies reserved to Buyer in the Contract shall be cumulative and in addition to all other or further remedies provided at law or in equity. Without limiting the generality of the foregoing, Supplier acknowledges and agrees that money damages would not be a sufficient remedy for any actual, anticipatory or threatened breach of the Contract by Supplier with respect to its delivery of Products to Buyer and that, in addition to all other rights and remedies that Buyer may have, Buyer shall be entitled to specific performance and temporary, preliminary and permanent injunctive or other equitable relief as a remedy for any such breach, without proof of actual damages and without bond or other security being required.

37. **Assignment.** Supplier may not assign or delegate any of its rights or obligations under the Contract without prior written consent from an authorized representative of Buyer. In addition, Buyer

may terminate the Contract upon giving at least thirty (30) days written notice to Supplier, without any liability to Supplier, if Supplier or a parent company of Supplier (a) sells, or offers to sell, a material portion of its assets, or (b) sells or exchanges, or offers to sell or exchange, or causes to be sold or exchanged, or otherwise experiences a sale or exchange of a sufficient amount of its stock or other equity interests that effects a change in the control of Supplier or such parent company of Supplier, or (c) executes, or otherwise becomes subject to, a voting or other agreement or trust that effects a change in the control of Supplier or such parent company of Supplier. Buyer may assign its rights and obligations under the Contract at any time, without Supplier's prior written consent.

38. **Subcontractors.** Supplier shall not subcontract any of its duties under the Contract without prior written consent from an authorized representative of Buyer. If Buyer consents to Supplier's subcontracting of any of Supplier's duties under the Contract, Supplier will ensure that the subcontractor agrees to be bound by all of the terms and conditions of the Contract.

39. **Electronic Communication.** Supplier will comply with any method of electronic communication specified by Buyer, including requirements for electronic funds transfer, purchase order transmission, electronic signature, and communication.

40. **Waiver.** The failure of either party to enforce any right or remedy provided in the Contract or by law on a particular occasion will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy.

41. **Entire Agreement.** The Contract constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements between the parties, whether written or oral, relating to the same subject matter. No modification, amendments or supplements to this Agreement shall be effective for any purpose unless in writing, signed by each party.

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

43. **Notices.** All notices or other communications under the Contract shall be sufficiently given for all purposes under the Contract if in writing and delivered personally, sent by documented overnight delivery service or, to the extent receipt is confirmed, by facsimile or other electronic transmission service.

44. **Governing Law; Jurisdiction.** All matters arising out of or relating to the Contract and all of the transactions it contemplates, including without limitation the validity, interpretation, construction, performance, and enforcement of the Contract, shall be governed by and construed in accordance with the laws of the country or state where Buyer has its principal place of business. The following are excluded from the Contract: (a) conflicts of laws rules, (b) the United Nations' Convention on Contracts for the International Sale of Goods, and (c) the Unidroit Principles of International Commercial Contracts. Any dispute between the parties relating to the validity, performance, interpretation or construction of the Contract that cannot be resolved amicably between the parties shall be submitted to the exclusive jurisdiction of the state or federal courts located where Buyer has its principal place of business. Each party to this Agreement irrevocably submits to the personal jurisdiction of such courts for the resolution of all such disputes and agrees that venue shall be proper in such courts. Buyer may, in its sole discretion, file any action against Supplier in any other statutory

place of jurisdiction. SUPPLIER HEREBY WAIVES ANY RIGHT SUPPLIER MAY HAVE TO A JURY TRIAL ARISING FROM ANY DISPUTES RELATED IN ANY WAY TO THE CONTRACT.

45. **Survival:** The obligations of Supplier to Buyer under the Contract shall survive expiration or termination of the Contract, except as otherwise expressly stated in the Contract.

46. **Language:** Any part of the Contract may be translated into various languages, except that the English language version shall be the original and controlling version and all other language versions are translations for information purposes only.