

## **CITATION CORPORATION**

### **TERMS AND CONDITIONS FOR PURCHASE ORDERS**

**(Effective September 1, 2008)**

#### **1. AGREEMENT.**

- A. Citation Corporation or its applicable affiliate, the company issuing these Terms and Conditions ("Terms & Conditions") shall be referred to as the "Buyer" and the company supplying materials, goods or services (collectively, "Product") to Buyer shall be referred to as the "Seller". These Terms & Conditions (as currently written and as hereinafter amended or revised), together with Buyer's purchase order incorporating these Terms & Conditions ("Purchase Order") is an offer by Buyer to Seller to enter into the agreement it describes and shall be the complete and exclusive statement of such agreement ("Agreement") between Buyer and Seller. Any additions or modifications proposed by Seller are expressly rejected by Buyer and are not part of this Agreement in the absence of an agreement in writing signed by an authorized representative of Buyer. In no event shall a Purchase Order constitute an acceptance of any offer or proposal made by Seller.
- B. This Agreement shall begin when accepted by Seller via a formal written acknowledgment to Buyer or by commencement by Seller of any of the work stated in any Purchase Order, and the Agreement shall remain effective unless terminated sooner by Buyer in accordance with Section 4 of the Terms & Conditions. Acceptance is expressly limited to these Terms & Conditions and such other terms and conditions as are expressly referenced on the face of a Purchase Order.
- C. Seller may not assign any of its duties and responsibilities as required under this Agreement. Buyer may freely assign its duties and responsibilities under this Agreement. Any sale or other transfer of stock or other securities of Seller that would result in a change in control of Seller shall be deemed an assignment under this Agreement.
- D. If any of the provisions of the Terms & Conditions are found to be invalid or unenforceable, the remaining portions of said document shall not be affected and shall be considered valid and enforceable to the fullest extent permitted by law.

#### **2. PERFORMANCE.**

- A. Time and quantity of delivery are of the essence in this Agreement. Seller shall deliver Products to Buyer in accordance with the firm quantities and at the times and locations specified on Buyer's delivery schedules issued in connection with any Purchase Order at the prices specified on such Purchase Order for so long as such Purchase Order remains in effect in order to ensure an uninterrupted supply of Products to maintain production at Buyer's facilities.
- B. Buyer shall have no liability for payment for Product delivered to Buyer that is in excess of the firm quantities specified in the delivery schedule nor shall Buyer have liability for the temporary suspension of scheduled shipments.
- C. From time to time, Buyer may provide Seller with, and Buyer's delivery schedules may contain, estimates, forecasts or projections of Buyer's future volume or quantity requirements for Products and/or the term of a program to which such Products relate. Such estimates, forecasts and projections are not binding on Buyer and Buyer makes no representation, warranty, guaranty or commitment of any kind or nature, express or implied, regarding any such estimate, forecast or projection provided to Seller.

- D. Acceptance by Buyer of late delivery of either the whole or part of an order shall not constitute a waiver of any claim for damages that Buyer may have arising from and out of any late delivery. Any Product shipped to Buyer in advance of any delivery schedule, without express written consent of an authorized representative of Buyer, may be returned by Buyer to Seller at Seller's expense.
- E. No Product shall be shipped or service performed under this Agreement until a Purchase Order has been provided by Buyer to Seller and a delivery date and location specified. All Product shall be delivered via a common carrier selected and/or approved by and at such times as designated by Buyer's receiving facility.

### **3. CUSTOMER TERMS**

- A. Seller acknowledges that Products covered by this Agreement may be sold, or incorporated into products 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, Seller shall take such steps, provide such disclosure, comply with such requirements and do all other things as Buyer deems necessary or desirable and within Seller'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.
- B. While Buyer may, from time to time, provide Seller with information regarding the applicable Customer Terms, it is Seller's responsibility to ascertain the Customer Terms that may affect Seller's obligations under this Agreement.

### **4. PRICES**

- A. Prices for Products listed on a Purchase Order are complete and no surcharges, premiums or other additional charges of any type shall be added, without the prior written consent of an authorized representative of Buyer. Seller expressly assumes the risk of any event or cause (whether or not foreseen) affecting such prices, including any foreign exchange rate changes, increases in raw materials costs, inflation, increases in labor and other manufacturing costs.
- B. Seller shall ensure that the price charged to Buyer for Products is and remains not less favorable to Buyer than the prices currently extended to any other customer of Seller for the same or substantially similar goods or services in the same or substantially similar quantities and delivery requirements. If Seller reduces the prices of such same or substantially similar goods or services during the term of this Agreement, Seller shall reduce the prices of the Products correspondingly.
- C. Seller shall ensure that the price charged to Buyer for Products is and remains competitive with the price for similar goods available to Buyer from other sellers.

### **5. PACKING AND SHIPPING.**

- A. Seller shall be responsible for invoicing Buyer after each shipment of Product.
- B. All invoices and shipping notices for Product shipped pursuant to any Purchase Order and these Terms & Conditions must reference: the Purchase Order number and/or any amendment or release number; Buyer's part number; Seller's part number (where applicable); quantity of pieces in shipment; number of cartons or containers in shipment; Seller's name and number; and bill of lading number, before any payment will be made for Product by Buyer. No invoice or other Seller document may reference any terms and conditions additional to or different from those specified in this Agreement. Buyer reserves the right to return all invoices or related documents submitted

incorrectly and payment terms will be determined as of the date the latest correct invoice and/or shipping notice is received. Any unnecessary expense resulting from miss-routed shipments shall be charged to Seller.

- C. All Products will be shipped in accordance with sound commercial practice and in accordance with any other information furnished by Buyer to Seller. Seller will comply with Buyer's packaging, labeling, shipping notification, packing list, and freight requirements. Unless otherwise specified in this Agreement, all charges for packing, crating, handling, storage or transportation are included in the purchase price, inclusive of applicable taxes, excises, duties, quotation fees or any other governmental impositions on or related to the production, storage, sale or transportation of the Products, ceiling or other limitation of price established by any governmental authority, and subject to increase only with prior written consent of an authorized representative of Buyer. Seller shall bear all risk of loss for the Products until such Products are delivered and fully unloaded at Buyer's designated location.
- D. Premium shipping expenses and/or any other related expenses necessary to meet Buyer's scheduled delivery dates shall be Seller's sole responsibility and this cost may not be passed through to Buyer.

## **6. TERMINATION.**

- A. Upon written notice to Seller, Buyer may immediately terminate all or any part of this Agreement, without any financial or other liability of Buyer to Seller, (1) if Seller (a) repudiates, breaches, or threatens to breach any of the terms of this Agreement, including Seller's warranties, (b) fails to deliver or threatens not to deliver Products in accordance with this Agreement; or (c) fails to provide Buyer with adequate and reasonable assurance of Seller's ability to perform timely any of Seller's obligations under this Agreement, including, without limitation, delivery of Products; or (2) if Buyer terminates for breach any other Purchase Order issued by Buyer to Seller in accordance with the terms of such other Purchase Order (whether or not such other Purchase Order is related to this Agreement).
- B. In addition to any other rights of Buyer to terminate this Agreement, Buyer may, at Buyer's sole option, immediately terminate all or any part of this Agreement at any time and for any reason by providing Seller written notice sent to whatever address Buyer has for Seller. Such notice shall state the extent and effective date of such termination.
- C. Upon receipt of Buyer's notice of termination under Section 6(B), Seller, unless otherwise directed in writing by Buyer, shall (1) terminate immediately all work under this Agreement in accordance with such notice; (2) transfer title and deliver to Buyer the usable and merchantable finished Products, work in process, and parts and materials that Seller produced or acquired in accordance with the firm quantities specified in Buyer's delivery schedules as of the date of termination and which Seller cannot use in producing goods for itself or for others; (3) settle all claims by subcontractors approved by Buyer, if any, for reasonable actual costs that are rendered unrecoverable by such termination; (4) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest and (5) upon Buyer's request, cooperate with Buyer in effecting the re-sourcing of the Products covered by this Agreement to an alternative supplier designated by Buyer.
- D. Upon termination by Buyer of all or any portion of this Agreement under Section 6(B), Buyer shall pay to Seller the following amounts without duplication:
  - (1) The Purchase Order price for all finished Products that conform to the requirements of this Agreement and which Products have not been previously paid for by Buyer;

- (2) Seller's reasonable actual cost of the work-in-process and parts and materials transferred to Buyer in accordance with Paragraph 6(C);
- (3) Seller's reasonable actual cost of settling the claims of the obligation Seller would have had to the subcontractors in the absence of termination by Buyer; and
- (4) Seller's reasonable actual cost of carrying out its obligations under Sections 6(C)(4) and (5).

The foregoing amounts shall be Seller's sole and exclusive recovery from Buyer (without regard to the legal theory which is the basis for any claim by Seller) on account of such termination. In no event will Buyer be required to pay for finished goods, work-in-process or raw materials that Seller fabricates or procures in amounts that exceed the firm quantities authorized by Buyer in its delivery schedules, nor will Buyer be required to pay for any goods or materials that are in Seller's standard stock or that are readily marketable. Additionally, Buyer shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller'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 this Agreement, or otherwise. Notwithstanding anything to the contrary, Buyer's obligation to Seller upon termination shall not exceed the obligation Buyer would have had to Seller in the absence of termination.

- E. Within twenty (20) days after the effective date of termination of all or any portion of this Agreement, Seller shall furnish to Buyer its termination claim, together with all supporting data, which shall consist exclusively of the items of Buyer's obligation to Seller that are listed in Section 6(D). Buyer may audit Seller's records before or after payment to verify amounts requested in Seller's termination claim. Seller's failure to submit its termination claim within twenty (20) days shall absolve Buyer of any and all liability under this Section 6.
- F. Upon the expiration or earlier termination of all or any portion of this Agreement for whatever reason, Seller agrees to promptly comply with all of its obligations under this Agreement 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 Seller to any alternative seller chosen by Buyer will proceed smoothly.
- G. Seller shall have no right to terminate this Agreement without the written consent of an authorized representative of Buyer.

## **7. INSPECTION; NONCONFORMING PRODUCTS.**

- A. All Product shall be received by Buyer subject to Buyer's inspection and acceptance or rejection. Buyer, at its option, may reject and return at Seller's risk and expense, or retain and correct, Products that fail to conform to the requirements of this Agreement, regardless of when the nonconformity becomes apparent to Buyer.
- B. Seller shall replace nonconforming Products with conforming Products unless otherwise notified in writing by Buyer. Nonconforming Products will be held by Buyer for disposition in accordance with Seller's written instructions at Seller's risk. Seller's failure to provide written instructions within ten (10) days (or such shorter period as may be commercially reasonable under the circumstances) after notice of nonconformity shall entitle Buyer, at Buyer's option, to charge Seller for storage and handling, or to dispose of the Products without any liability of Buyer to Seller.

- C. In addition to any and all other rights or remedies available to Buyer, Seller shall reimburse Buyer for (1) any amounts paid by Buyer on account of the purchase price of any rejected nonconforming Products, and (2) any costs incurred by Buyer in connection with the nonconforming Products, including, but not limited to inspection, sorting, testing, evaluations, storage or rework.
- D. 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 Seller's responsibility for latent defects.

**8. WARRANTIES.**

- A. Seller warrants that all Products, including material and work, furnished pursuant to this Agreement shall be:
  - (1) free of infringements of intellectual property rights of third parties;
  - (2) free of defects in workmanship and material;
  - (3) of the highest grade and quality unless otherwise specified by Buyer in writing;
  - (4) merchantable and fit for the particular purpose(s) intended by Buyer, which purpose(s) Seller acknowledges are known to Seller;
  - (5) in conformance with all specifications, drawings, descriptions or standards or samples published or otherwise furnished by Buyer; and
  - (6) in conformance with all Customer warranties that relate to the Products or products into which the Products are incorporated.
- B. Seller warrants that all Products will comply with all industry standards and guidelines and all applicable laws, statutes, regulations, and orders in force in countries where Products and products equipped with such Products are to be used and/or sold and shall be in compliance with all other standards and agreements incorporated and made a part of this Agreement, including, without limitation, Buyer's Supplier Quality Manual. Seller further warrants that for all Products under this Agreement, Seller shall convey good title to Buyer, free and clear of all liens, claims or other encumbrances.
- C. All warranties granted by Seller under this Agreement shall extend to Buyer and Buyer's affiliates, successors, subsidiaries, Customers and any other users of the Products or products equipped with such Products and shall remain in effect for the longer of (1) the period provided by applicable law, or (2) the warranty period provided by Buyer to its Customer. Notwithstanding the expiration of any warranty period, Seller shall remain liable for costs and damages associated with the conduct of (and the determination of whether to conduct) any recall campaign or other customer satisfaction or corrective service action initiated by Buyer or its Customer (whether voluntarily or pursuant to a government mandate) to the extent such recall campaign or other customer satisfaction or corrective service action is based upon the failure of any Products to conform to the warranties set forth in this Agreement.
- D. In addition to the other warranties stated herein, Seller warrants that any services to be performed by Seller under this Agreement shall be performed by Seller, as an independent contractor, in a good and workmanlike manner.
- E. Seller warrants and guarantees that all equipment furnished by Seller in performance of this Agreement shall fully comply with the Federal Occupational and Safety Health Act, as amended,

and all federal, state and local laws and regulations approved under such Act to the extent applicable to such equipment, and Seller agrees to indemnify Buyer and Buyer's Customers from and against any claims, loss or liability arising from the failure of such equipment to comply with any of said laws as warranted.

**9. CHANGES.**

- A. Buyer reserves the right at any time to make written changes under this Agreement, including, but not limited to, changes in any of the following:
- (1) design, specifications, drawings and data prescribed under this Agreement;
  - (2) methods of processing;
  - (3) methods of shipment or packing;
  - (4) place of delivery;
  - (5) time of delivery;
  - (6) manner of delivery; and
  - (7) requested quantities.
- B. Seller agrees to promptly make any such change. Any such change shall be deemed not to affect time for performance or cost unless Seller notifies Buyer in writing of an adjustment claim (accompanied by all supporting documentation) within ten (10) calendar days after Seller receives notice of such change. Buyer, after auditing such claim, determines that an adjustment is appropriate, and the adjustment is approved by an authorized representative of Buyer in writing. Price increases shall not be binding on Buyer unless evidenced by a Purchase Order amendment issued and signed by an authorized representative of Buyer. Nothing in this Section 9 shall excuse Seller from proceeding with the Agreement as changed.
- C. Seller may not make any changes to this Agreement or the Products covered by this Agreement without the express prior written approval of an authorized representative of Buyer, including, but not limited to, any change to (1) any third party supplier to Seller of services, raw materials or goods used by Seller in connection with its performance under this Agreement, (2) the facility from which Seller or such supplier operates, (3) the nature, type or quality of any services, raw materials or goods used by Seller or its suppliers in connection with this Agreement; or (4) the production method, or any process used in the production or provision of any Products under this Agreement.

**10. EQUIPMENT AND PERSONNEL.**

- A. For the purpose of supplying any Product to Buyer, Seller shall provide, at its own expense, adequate facilities, properly maintained equipment, effectively trained employees and professional personnel. Seller and its employees shall engage in safe production without violating any current safety laws or regulations.
- B. Seller shall have sole responsibility for the direction and control of its facilities, equipment, employees and/or agents. All personnel assigned by Seller will be employees of Seller and Seller shall pay all salaries and expenses of and all federal, social security, federal and state unemployment taxes, and any other payroll taxes relating to such employees. Seller will be considered, for all purposes, an independent contractor and Seller will not, directly or indirectly,

act as an agent, servant or employee of Buyer, or make any commitments or incur any liabilities on behalf of Buyer without the prior written consent of an authorized representative of Buyer.

**11. CONFIDENTIALITY AND/OR PROPRIETARY INFORMATION.**

- A. Seller acknowledges and agrees that during the term of the Agreement, Seller will have access to certain Confidential and/or Proprietary Information (as defined in Section 11(B)). Seller acknowledges and agrees that it will not, without the prior written consent of an authorized representative of Buyer, directly or indirectly disclose any Confidential and/or Proprietary Information to any third party, or directly or indirectly use, exploit, copy or summarize any Confidential and/or Proprietary Information in any way except as necessary in performing Seller's duties and obligations as required by this Agreement. If requested by Buyer, Seller shall require its employees to execute confidentiality agreements prohibiting use or disclosure of Confidential and/or Proprietary Information.
- B. "Confidential and/or Proprietary Information" means all information (regardless of medium) that is disclosed or otherwise made available to Seller by Buyer or its representatives or subcontractors either before, during or after the termination of this Agreement and that concerns Buyer, its Customers, or the business, programs and Products covered by this Agreement, including without limitation, pricing and other terms of any Purchase Order; software programs; computer codes; software documentation; methodology documentation; design concepts, blueprints, specifications, and engineering data; manufacturing, packaging and shipping processes and technology; reference manuals; any knowledge, data, or records concerning the operations, policies, procedures, personnel matters, finances, business and marketing plans, strategic and/or operational plans, company contracts or any other information relating to the ownership or operation of Buyer and any of its affiliates or subsidiaries; and any and all information, knowledge, data or records concerning any officer, director, owner, shareholder, employee, agent, representative, consultant, client or customer of Buyer.
- C. Confidential and/or Proprietary Information does not include information that: is now or subsequently becomes generally available to the public through no fault of Seller; Seller can demonstrate was rightfully in its possession prior to disclosure by Seller; is independently developed by Seller without the use of any Confidential and/or Proprietary Information; Seller rightfully obtained from a third party who had the right to disclose the information; or is required to be disclosed pursuant to any law, regulation or court or regulatory agency order, but then only to the extent such disclosure is so required. Confidential and/or Proprietary Information is, and shall remain, the property of Buyer. At the conclusion of Seller's duties and responsibilities as required by this Agreement, Seller shall return and/or destroy, at Buyer's option, all originals and any copies of any Confidential and/or Proprietary Information in any medium.

**12. INSURANCE.**

- A. During the term of this Agreement, Seller agrees to procure and maintain in force, at Seller's sole expense, insurance coverage as is customary in Seller's industry and as otherwise required by law in such amounts and with such insurance carriers as are reasonably acceptable to Buyer, including, without limitation, policies for Worker's Compensation, Occupational Disease, Comprehensive General Liability, and Automobile Public Liability coverage in accordance with the laws of the State(s) in which the work is to be performed and Employer's liability insurance of not less than one million (\$1,000,000.) dollars for all of Seller's employees who enter Buyer's facilities.

**13. RECORDS.**

- A. Seller agrees to retain all books, records, certifications, reports and other documents and data related to this Agreement, Seller's performance under this Agreement and all Products under this Agreement for a period equal to the longer of (1) the life of the applicable Product, and (2) three (3) years after receiving final payment from Buyer under this Agreement. Seller 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.

- B. Buyer shall have the right to inspect and audit Seller's books, records, operations and facilities, including Seller's quality system, to insure Seller's compliance with the terms of this Agreement. Seller shall maintain all records necessary to support amounts charged to Buyer under this Agreement. Buyer and its representatives may audit Seller's records of transactions to the extent needed to verify the quantities shipped and that the prices charged match the Agreement prices. Seller shall provide Buyer 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 Seller's obligations under this Agreement.
- C. Orders for Tooling: Buyer shall have access to Seller's premises and records during usual business hours, prior or subsequent to payment by Buyer, to inspect work performed and to verify charges submitted by Seller against the Purchase Order and any other order or document. The price set forth in the Purchase Order shall be adjusted so as to credit Buyer in the amount, if any, by which such price exceeds Seller's actual cost as verified.

**14. EQUAL EMPLOYMENT OPPORTUNITY.**

- A. Seller is on notice that Buyer may utilize the Products specified in this Agreement in the transaction of business with the United States Government. Seller is therefore deemed to have assumed the obligation of compliance with Executive Order 11246 and, unless otherwise exempt under the rules, regulations and orders of the Secretary of Labor or pursuant to Federal Procurement Regulations (FPR 1-12.804) or the Armed Services Procurement Regulations (ASPR 12-802), this Agreement is subject to the requirements of the Equal Employment Opportunity clause as set forth in FPR 1-12.803.2 and ASPR 12-802(a), said clauses being incorporated into this Agreement by reference. Seller agrees to furnish Buyer with a "Non-Segregated Facilities Certification" as required by 41 C.F.R. 60-1.8(b).

**15. COMPLIANCE WITH LAWS.**

- A. Seller acknowledges and agrees to comply with all federal, state and local laws, Executive Orders, rules, regulations and ordinances that may be applicable to Seller's performance of its obligations and duties required by this Agreement, and this Agreement shall include and incorporate by reference all the clauses required by the provisions of said laws, orders and regulations. Seller agrees that it will perform its duties and obligations under the Agreement so as to satisfy current government and safety constraints on restricted, toxic and hazardous materials as well as environmental, electrical and electromagnetic considerations, in each case as applicable to the country of manufacture and sale. Seller shall certify to Buyer that any hazardous substances furnished pursuant to this Agreement have been properly labeled and that proper information of the substances has been provided to Buyer pursuant to any federal, state or local laws and regulations. Seller agrees that it will perform its duties and obligations under this Agreement so as to protect the environment, prevent pollution and waste, obey environmental legislation and regulations and continually improve Seller's policies to further protect the environment.

**16. BUYER'S PROPERTY.**

- A. All supplies, materials, molds, machinery, equipment, patterns, tools, dies, jigs, fixtures, blueprints, designs, specifications, drawings, photographic negatives and positives, art work, copy layout, consigned material for production or repair and other items furnished by Buyer, either directly or indirectly, to Seller or to any sub-supplier of Seller in connection with or related to this Agreement, or for which Seller has been reimbursed by Buyer (collectively, "Buyer's Property"), shall be and remain the property of Buyer and be held by Seller on a bailment at-will basis. Buyer's Property shall be used by Seller only to complete Purchase Orders for Buyer under this Agreement and shall be returned by Seller to Buyer when no longer required under this



Agreement, when this Agreement is completed, or upon demand by Buyer, whichever comes first. Seller shall be responsible for all personal property taxes and other charges or levies imposed on Buyer's Property while in Seller's possession.

- B. Seller shall bear the risk of loss of and damage to Buyer's Property and Seller, at its own expense, shall keep Buyer's Property insured for the benefit of Buyer. Buyer's Property shall at all times be properly housed and maintained by Seller; shall not be used by Seller for any purpose other than the performance of this Agreement; shall be deemed to be personalty; shall be conspicuously marked by Seller to identify same as the property of Buyer and indicate Buyer's name and address; shall not be commingled with the property of Seller or with that of any third person and shall not be moved from Seller's premises without prior written approval of an authorized representative of Buyer. Seller, at its expense, shall maintain, repair and refurbish Buyer's Property in first class condition. All replacement parts, additions, improvements and accessories for such Buyer's Property shall automatically become Buyer's Property upon their incorporation into or attachment to Buyer's Property.
- C. Seller 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 Buyer's Property, without the necessity of obtaining a court order. Upon the request of Buyer, Buyer's Property shall be immediately released to Buyer or delivered to Buyer by Seller, either FOB transport equipment at Seller's plant, properly packaged and marked in accordance with the requirements of the carrier selected by Buyer to transport such Buyer's Property, or in any location designated by Buyer, in which event Buyer shall pay to Seller the reasonable cost of delivering such Buyer's Property to such location. Buyer shall have the right to enter onto Seller's property and premises at all reasonable times to inspect Buyer's Property and Seller's records with respect to Buyer's Property.
- D. Seller shall keep a true record of all Buyer's Property in its possession under bailment, 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 Buyer's Property, and shall permit representatives of Buyer to perform their own inventory of Buyer's Property in Seller's possession.
- E. When permitted by law, Seller waives any lien or other rights that Seller might otherwise have on any Buyer's Property for work performed on such property, for the purchase price of any goods or services or otherwise. Seller's failure to deliver any item of Buyer's Property to Buyer (or its agent) at the end of the bailment, as directed by Buyer, will (1) be a breach of this Agreement, and (2) subject Seller to liability for, among other things, conversion and responsibility for all costs and expenses, including actual attorneys' fees, incurred by Buyer to recover such Buyer's Property.

**17. ADVERTISING/PUBLICATIONS.**

- A. Seller shall not, without first obtaining the written consent of an authorized representative of Buyer, in any manner (1) advertise, publish, or convey by word of mouth that Seller has contracted with Buyer to furnish Buyer the Products covered by this Agreement or (2) reproduce or otherwise use Buyer's trademarks or trade names.

**18. FORCE MAJEURE.**

- A. Any delay or failure of Seller or Buyer to perform its obligations under this Agreement will be excused if, and only to the extent that, the party is unable to perform specifically due to an event or occurrence beyond its reasonable control and without its fault or negligence, such as: acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority; embargoes; fires; explosions; natural disasters; riots; wars; sabotage; or inability to obtain power. Force majeure does not include lockout, strikes or labor disputes, shortage of labor, lack of or inability to obtain raw materials, fuel or supplies or any other

industrial disturbance. The nonperforming party shall notify the other party in writing of the cause and anticipated duration of any such delay promptly and in any event within one full business day after the occurrence of the event giving rise to the delay. If Seller is unable to perform for any reason, Buyer may purchase Products from other sources and reduce its purchases from Seller accordingly without any liability of Buyer to Seller.

- B. Before any of Seller's labor contracts expire and as soon as Seller anticipates or learns of any impending strike, labor dispute, work stoppage or other disruption at Seller's facilities that might affect the delivery of Products to Buyer, Seller 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. Within three (3) business days after written request by Buyer, Seller shall provide adequate assurances that Seller's non-performance will not exceed thirty (30) days. If Seller does not provide those assurances, or if Seller's non-performance exceeds thirty (30) days, Buyer may terminate this Agreement without liability of Buyer to Seller.
- C. Seller acknowledges and agrees that the change in cost or availability of materials, components or services based on market conditions, supplier actions or contract disputes will not excuse performance by Seller under theories of force majeure, commercial impracticability or otherwise and Seller expressly assumes these risks.

#### **19. INDEMNIFICATION.**

- A. Seller agrees to indemnify, defend and hold harmless Buyer and its affiliates and their respective directors, officers, employees and agents from and against any and all lawsuits, actions, claims, demands, judgments, fines, costs, losses, liabilities and damages, including any special, incidental, consequential, punitive and exemplary damages and costs (including reasonable attorney fees) (collectively, "Damages") that Buyer may suffer or sustain or be in any way subjected to on account of (1) Seller's performance of or failure to perform obligations under this Agreement, including, without limitation, claims based on Seller's breach or alleged breach of warranty (whether or not the Products have been incorporated into Buyer's products and/or resold by Buyer) or (2) injury to, or death of, any persons, or damage to or loss of property arising out of performance of this Agreement by Seller, its employees, agents, contractors or sub-contractors or representatives, or the use or sale of any Product by Buyer or Buyer's Customers. Seller shall carry and maintain insurance coverage sufficient to cover the above, and, upon Buyer's request, shall furnish Buyer with satisfactory evidence of such insurance; provided, that any such insurance shall not otherwise limit Seller's obligations under this Section 19.
- B. If Seller performs any work on Buyer's premises or utilizes the property of Buyer, whether on or off Buyer's premises, Seller shall indemnify, defend and hold harmless Buyer and its affiliates and their respective directors, officers, employees and agents from and against any and all Damages on account of any damages to the property of or injuries (including death) to Seller, its employees or any other person arising from or in connection with Seller's performance of work or use of Buyer's property except for such liability claim, or demands arising out of the sole negligence of Buyer.
- C. Seller agrees to indemnify, defend and hold harmless Buyer and its affiliates and their respective directors, officers, employees and agents from and against any and all Damages arising out of any 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, use or sale of any Product, goods or services ordered under this Agreement, including infringement arising out of compliance with specifications furnished by Buyer or for actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from Seller's actions. Seller agrees to waive any claim against Buyer, including claims arising out of compliance with specifications furnished by Buyer.

**20. REMEDIES.**

- A. All rights and remedies reserved to Buyer under this Agreement shall be cumulative with, and additional to, all other or further remedies provided in law or equity. Without limiting the generality of the foregoing, Seller acknowledges and agrees that money damages would not be a sufficient remedy for any actual, anticipatory or threatened breach of this Agreement by Seller 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. In no event shall Buyer be liable to Seller under this Agreement for anticipated profits or for special, incidental or consequential, punitive or exemplary damages.

**21. PROPRIETARY RIGHTS.**

- A. Seller acknowledges that any Product and/or other deliverables provided to Buyer under this Agreement shall be original to Seller and shall not incorporate any intellectual property rights (including copyright, patent, trade secret, mask work or trademark rights) of any third party.
- B. Any Product and/or other deliverables are owned by Buyer and not by Seller. Such Product and/or deliverables include copyrightable works of original authorship (including but not limited to computer programs, technical specifications, documentation and manuals, ideas, inventions (whether patentable, patented or not), know-how, processes, compilations of information, trademarks, and other intellectual property. Seller agrees that all works of original authorship created by Seller in connection with this Agreement are “works made for hire” as that term is used in connection with the United States Copyright Act. To the extent that, by operation of law, Seller owns any intellectual property rights in any of the Product and/or other deliverables, Seller hereby assigns to Buyer all rights, title and interest, including copyrights and patent rights in such Product and/or deliverables.
- C. Seller grants to Buyer a worldwide, nonexclusive royalty-free, irrevocable license to repair and have repaired, to reconstruct and have reconstructed, to make or have made the Products ordered under this Agreement. Seller assigns to Buyer all right, title and interest in and to all trademarks, copyrights and industrial design rights in any material created for Buyer under this Agreement. Seller agrees that technical information and data furnished to Buyer in connection with this Agreement are disclosed on a nonconfidential basis.
- D. Seller agrees to ensure that any subcontractors to Seller shall have contracts or agreements with Seller in writing consistent with the terms of this subsection.

**22. CUSTOMS DRAWBACK DOCUMENTS.**

- A. Upon request, Seller shall promptly furnish all documents and other information required for customs drawback purposes, properly completed in accordance with government regulations applicable thereto. Unless otherwise stated in this Agreement or any related document, all customs drawback will be reserved and retained for, or credited to, Buyer.
- B. Export licenses or authorizations necessary for the export of the Products shall be the responsibility of Seller unless otherwise expressly agreed to in writing by Buyer, in which case Seller shall provide such information as may be necessary to enable Buyer to obtain such licenses or authorizations. Seller shall undertake such arrangements as necessary for the Products to be covered by any duty deferral or free trade zone programs of the country of import.
- C. Seller is responsible for any incorrect information provided by Seller or any non-compliance with the U.S. Customs Regulations by Seller that results in penalties and/or additional duties for Buyer.

Seller agrees to adhere to all security procedures required by the Customs-Trade Partnership Against Terrorism (C-TPAT). Seller shall share with Buyer any audit or inspection information related to C-TPAT inspection and/or validation at Seller's location.

**23. NAFTA PROVISIONS/CERTIFICATES.**

- A. Upon request, Seller shall promptly furnish NAFTA certificates of origin and all other certificates of origin or domestic value-added and all other information relating to the costs and places of origin of the Products and the materials contained therein or used in the performance thereof, as may be required by Buyer to comply fully with all customs, tariffs and other applicable governmental regulations. Seller is responsible for any errors or omissions contained in such certificates and any non-compliance by Seller with such regulations.

**24. SETOFF AND RECOUPMENT.**

- A. In addition to any right of setoff or recoupment provided or allowed by law, all amounts due Seller or any of its direct or indirect affiliates shall be considered net of indebtedness or obligations of Seller or any of its direct or indirect affiliates to Buyer or any of its direct or indirect affiliates, and Buyer or any of its direct or indirect affiliates may, without notice, setoff against or recoup from any amounts due or to become due from Seller or any of its direct or indirect affiliates to Buyer or any of its direct or indirect affiliates, however and whenever arising. In the event that Buyer or any of its direct or indirect affiliates reasonably feels itself at risk, Buyer or any of its direct or indirect affiliates may withhold and recoup a corresponding amount due Seller or any of its direct or indirect affiliates to protect against such risk.
- B. If an obligation of Seller or any of its direct or indirect affiliates to Buyer or any of its direct or indirect affiliates is disputed, contingent or unliquidated, Buyer or any of its direct or indirect affiliates may defer payment of all or any portion of the amount due until such obligation is resolved. Without limiting the generality of the foregoing and by way of example only, in the event of a bankruptcy of Seller, if all of the Purchase Orders between Buyer and Seller have not been assumed, then Buyer may defer payment to Seller, via an administrative hold or otherwise, for Products against potential rejection and other damages.

**25. SERVICE AND REPLACEMENT PARTS.**

- A. If requested by Buyer, Seller will sell to Buyer all Products necessary for Buyer to fulfill Buyer's and its Customers' service and replacement parts requirements for the current model year at the then current production prices under this Agreement plus the actual net cost differential for required unique packaging. If the Products are systems, modules or assemblies, Seller will sell the components or parts of such systems, modules or assemblies at prices that will not in the aggregate exceed the then current production price under this Agreement for the system, module or assembly plus the actual net cost differential for required unique packaging, less the costs of labor involved in connection with the system, module or assembly.
- B. After the current model production of the vehicle involved, Seller will sell to Buyer all Products necessary for Buyer to fulfill Buyer's and its Customers' service and replacement parts requirements for past model years at the prices specified in the last Purchase Order for current model production plus the actual net cost differential for required unique packaging for the first five (5) years of past model service. For the following ten (10) years of past model service or such longer period as Buyer's Customer requires, the prices shall be as specified in the last Purchase Order for current model production plus the actual net cost differential for required unique packaging, plus any actual net cost differential for manufacturing costs as negotiated by Seller and Buyer.

**26. PAYMENT TERMS**

- A. Unless otherwise specified on the face of a Purchase Order, payment terms for Products under this Agreement shall be net sixty (60) days. Buyer may, at its option, upon notice to Seller, revise its payment terms for Products to take into account any change in the payment terms of Buyer's Customer applicable to the Products under this Agreement.

**27. SUBCONTRACTING.**

- A. Seller shall not subcontract any of its duties or obligations under this Agreement without prior written approval by an authorized representative of Buyer. Seller shall be responsible to ensure that any subcontractor so approved shall comply with all obligations of Seller under this Agreement.

**28. GOVERNING LAW; JURISDICTION; ARBITRATION.**

- A. This Agreement shall be governed by the laws of the State of Michigan without regard to any applicable conflict of laws provisions. The United Nations Convention on the International Sale of Goods is expressly excluded.
- B. Subject to the arbitration requirements below, Seller consents to the exclusive jurisdiction of the appropriate federal court in the U.S. District Court for the Eastern District of Michigan, Southern Division or of the state courts in Oakland County, Michigan for any legal or equitable action or proceeding arising out of, or in connection with, this Agreement. Seller specifically waives any and all objections to venue in such courts.
- C. All disputes arising under or in connection with this Agreement shall be finally and exclusively settled by arbitration before the American Arbitration Association ("AAA"), Southfield Michigan, pursuant to the AAA commercial arbitration rules then in effect; provided, however, that discovery shall be permitted in accordance with the United States Federal Rules of Civil Procedure. All arbitration proceedings shall be confidential. Each of Seller and Buyer shall pay its own expenses and each of Seller and Buyer shall pay one-half of the costs and expenses of the arbitrator and the AAA. The decision of the arbitrator shall be final and binding upon Buyer and Seller, shall not be appealable and judgment on the award rendered may be entered in any court of competent jurisdiction. Notwithstanding the foregoing, Buyer shall have the right, without waiving any remedy under this Agreement, to seek from any court of competent jurisdiction (1) equitable relief and (2) any interim or provisional relief that is necessary to protect the rights or property of Buyer.

**29. LIMITATION OF ACTION.**

- A. Buyer and Seller agree that the period of commencement on any action, suit or legal proceedings by Seller related to this Agreement or to any default or alleged default hereunder, must be commenced by Seller within two (2) years from the date of the event giving rise to the claim.

**30. SELLER'S FINANCIAL CONDITION**

- A. Upon Buyer's request, Seller shall permit Buyer and its representatives to review Seller's books and records concerning Seller's overall financial condition and continued ability to perform under this Agreement and agrees to provide Buyer with full and complete access to all such books and records for such purpose. Buyer will protect all financial information so disclosed by Seller by using the same degree of care, but no less than a reasonable degree of care, to prevent the dissemination to third parties or publication of the financial information as Buyer uses to protect its own confidential information of a like nature. Seller represents and warrants to Buyer that all financial information concerning Seller provided to Buyer will be true and accurate, will fairly represent Seller's financial condition, and will be prepared in accordance with generally accepted accounting principles, uniformly and consistently applied.

**31. INSOLVENCY.**

- A. Buyer may immediately cancel this Agreement and any order placed hereunder without any liability to Seller in the event of the happening of any of the following or any other comparable event: the insolvency of Seller; the filing of a voluntary petition in bankruptcy by Seller; the filing of an involuntary petition in bankruptcy against Seller; the appointment of a receiver or trustee for Seller; the execution of an assignment for the benefit of creditors of Seller, provided that such petition, appointment or assignment if made or filed involuntarily against Seller is not vacated or nullified within fifteen (15) calendar days of such an event.

**32. NOTICES.**

- A. All notices required by this Agreement shall be in writing. Notices in writing shall be sufficient if mailed by Buyer to Seller at whatever address Buyer has for Seller.

**33. ENTIRE AGREEMENT; MODIFICATION**

- A. This Agreement constitutes the entire agreement between Seller and Buyer with respect to the matters contained in this Agreement and supersedes all prior oral or written representations and agreements.
- B. Buyer may modify these Terms & Conditions, at any time, by posting notice of such modified Terms & Conditions on Buyer's internet website as specified on the face of Buyer's Purchase Order. Such revised Terms & Conditions shall apply to all Purchase Orders and Purchase Order amendments issued on or after the effective date thereof. Seller shall review Buyer's internet website and the Terms & Conditions periodically.

**34. MISCELLANEOUS.**

- A. Section headings are for reference purposes only and shall not affect the interpretation or meaning of any Section or subsection of this Agreement.
- B. The obligations of Seller to Buyer under this Agreement shall survive termination of this Agreement, except as otherwise expressly stated in this Agreement.