

## **PURCHASE ORDER TERMS AND CONDITIONS**

**REVISED: 9-14-08**

### **1. OFFER/ACCEPTANCE.**

A. Each purchase order, together with these Terms and Conditions and any documents specifically referenced herein and releases issued thereto (collectively, "Purchase Order") is an offer by the entity identified on the Purchase Orders as the "Buyer" ("Buyer") to the party to whom such Purchase Order is addressed and such party's applicable affiliates and subsidiaries ("Seller") to purchase the goods and/or services (collectively, "Supplies") described therein, and it shall be the complete and exclusive statement of such offer and agreement. A Purchase Order does not constitute an acceptance by Buyer of any offer or proposal by Seller, whether in Seller's quotation, acknowledgement, invoice or otherwise. In the event that any Seller 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 Purchase Order.

B. A contract is formed on the date that Seller accepts the offer of Buyer. Each Purchase Order shall be deemed accepted upon the terms and conditions of such Purchase Order by Seller by shipment of goods, performance of services, commencement of work on goods, written acknowledgement, or any other conduct of Seller that recognizes the existence of a contract pertaining to the subject matter hereof. Additionally, each Purchase Order shall be deemed accepted five business days after Buyer delivers the Purchase Order to Seller, if Seller fails to object to the Purchase Order. Acceptance is expressly limited to these Terms and Conditions and such terms and conditions as are otherwise expressly referenced on the face of the Purchase Order. No purported acceptance of any Purchase Order on terms and conditions which modify, supersede, supplement or otherwise alter these Terms and Conditions shall be binding upon Buyer and such terms and conditions shall be deemed rejected and replaced by these Terms and conditions unless Seller's proffered terms or conditions are accepted in a physically signed writing by an authorized representative of Buyer's purchasing department (a "Signed Writing"), notwithstanding Buyer's acceptance of or payment for any shipment of goods or similar act of Buyer. In the event of a conflict between the Purchase Order and any prior or contemporaneous agreement or document exchanged between Buyer and Seller, the Purchase Order governs. In order to be valid against the Buyer, all Purchase Orders must be issued on Buyer's official purchase order form and bear a purchase order number.

C. Henniges Automotive may from time to time administer purchasing for its affiliates and subsidiaries and issue Purchase Orders containing the Henniges Automotive logo, but identifying a different Buyer. Seller acknowledges and agrees that no such Purchase Order shall constitute or be interpreted to represent a Purchase Order of Henniges Automotive or a guaranty by Henniges Automotive of any obligations or liabilities of the Buyer identified on the Order.

## 2. **ENTIRE AGREEMENT.**

A. The Purchase Order, together with these Terms and Conditions and the attachments, manuals, guidelines, requirements, exhibits and supplements specifically referenced in the Purchase Order or on the Buyer's website at [www.hennigesautomotive.com](http://www.hennigesautomotive.com), constitutes the entire agreement between Seller and Buyer with respect to the matters contained in the Purchase Order and supersede all prior oral or written representations or agreements. For Purchase Orders that relate to non-production Supplies, the following provisions of these Terms and Conditions are not applicable: Section 3 (Quantity and Duration); Section 4 (Volume and Duration Projections); Section 6.B (regarding capacity planning volumes); and Section 9 (Customer Requirements and Service Parts)

B. Seller periodically shall review the Henniges Automotive website at [www.hennigesautomotive.com](http://www.hennigesautomotive.com) and the manuals located therein. Seller's continued performance under the Purchase Order without providing written notice to Buyer detailing Seller's objection to any modified or new supplier manual prior to the effective date of such modified or new manual will constitute Seller's acceptance of such modified or new manual.

C. Buyer may modify the Terms and Conditions from time to time by posting notice of such modified Terms and Conditions through links provided on the Henniges Automotive website at [www.hennigesautomotive.com](http://www.hennigesautomotive.com) at least ten (10) days prior to the modified Terms and Conditions becoming effective. Seller periodically shall review the Henniges Automotive website and the Terms and Conditions. Seller's continued performance under the Purchase Order without providing written notice to Buyer detailing Seller's objection to any modified Terms and Conditions prior to the effective date of such modified Terms and Conditions will be subject to and will constitute Seller's acceptance of such modified Terms and Conditions. Except as provided in the preceding sentences or as otherwise provided in these Terms and Conditions, the Purchase Order may only be modified by a Signed Writing.

## 3. **QUANTITY AND DURATION.**

A. The quantity applicable to each Purchase Order is specified on the face of the Purchase Order. The quantity specified may be for up to one hundred percent (100%) of Buyer's requirements for the Supplies. Seller further acknowledges and agrees that Seller is obligated to provide Supplies to Buyer in the quantity specified in any release issued by Buyer ("Release"). A Release will specify a firm quantity of Supplies and/or a firm quantity of raw materials/components that Buyer will be responsible for in the event of termination. Releases may include Projections (defined below), but Releases are only binding upon Buyer for, and Buyer will have no obligation or liability beyond, the firm quantity specified in the Release. Seller acknowledges and agrees to accept the risk associated with the lead times of the various components if they are beyond the firm Release quantities provided by Buyer.

B. Unless stated otherwise on the face of the Purchase Order, the duration of each Purchase Order shall be the life of the program(s) into which the Supplies ultimately are incorporated, plus applicable service and replacement parts requirements. Buyer and Seller acknowledge, however, that this Section 3.B does not affect or otherwise change Buyer's rights of termination set forth herein.

C. Upon the expiration of any Purchase Order, Seller shall cooperate with Buyer and provide all reasonably requested support and information required by Buyer to facilitate Buyer's sourcing of the Goods to a replacement supplier.

#### **4. VOLUME AND DURATION PROJECTIONS.**

From time to time and in connection with quotations, requisitions, and Purchase Orders, Buyer may provide Seller with estimates, forecasts or projections of its future volume or quantity requirements for the Supplies and/or the term of a program ("Projections"). Projections, unlike a Release for a firm quantity, are not binding on Buyer. They also are not a commitment to a requirements contract. Seller acknowledges that Projections, like any other forward-looking estimates, are based on a number of economic and business factors, variables and assumptions, some or all of which may change over time, and may or may not be accurate at the time they were made or at any later time. Buyer makes no representation, warranty, guaranty or commitment of any kind or nature, express or implied, regarding any Projections or other estimate, forecast or projection provided to Seller, including as to its accuracy or completeness. Seller accepts that Projections may not be accurate and that actual volume or duration could be less than or greater than the projections. Seller expressly accepts this risk and possible reward.

#### **5. WARRANTY.**

A. "Warranty Period" shall mean, for each of the Supplies provided, the time period beginning on the day of first use of the Supplies by Buyer or acceptance by Buyer, and continuing until the later of: (i) 18 months; (ii) the period provided under applicable law; or (iii)(a) if the Supplies are utilized for new vehicles, the same period as the new vehicle warranty period offered to retail buyers in the country in which the vehicle incorporating the Supplies is sold; or (iii)(b) if the Supplies are service or replacement parts (I) the later of the date on which the warranty provided by the vehicle manufacturer for the Supplies ends, or (II) the date on which the period remaining under the new vehicle warranty covering the Supplies expires. Seller may contact Buyer's representative for information regarding those countries in which vehicles incorporating the Supplies will be sold.

B. In the event that Buyer or its customer voluntarily or pursuant to a government mandate, makes an offer to owners of vehicles (or other finished products) on which the Supplies, or any parts, components or systems incorporating the Supplies, are installed to provide remedial action to address a defect or condition that relates to motor vehicle safety or reliability or the failure of the vehicle to comply with any applicable law, safety standard or guideline, whether in connection with a recall campaign or other customer satisfaction or corrective service action (a "Remedial Action"), the Warranty Period shall

continue for such time period as may be dictated by Buyer's customer or the federal, state, local or foreign government where the Supplies are used or provided and Seller shall fully comply with the requirements of this Purchase Order.

C. Notwithstanding the expiration of the Warranty Period, Seller shall nonetheless be liable for cost and damages associated with any Remedial Action to the extent that such Remedial Action is based upon a reasonable determination (including by use of statistical analysis or other sampling methodology) that the Supplies fail to conform to the warranties set forth in the Purchase Order. Where applicable, Seller shall pay all reasonable expenses associated with determining whether a Remedial Action involving the Supplies is necessary. Buyer and Seller agree that any Remedial Action involving the Supplies shall be treated separately and distinctly from similar Remedial Actions of other goods of Seller; provided that such separate and distinct treatment is lawful and Seller shall in no event fail to provide at least the same protection to Buyer on such Supplies as Seller provides to its other customers in connection with such similar Remedial Actions.

D. Notwithstanding the foregoing, Seller agrees to waive the expiration of the Warranty Period in the event there are failures or defects discovered after the Warranty Period of a significant nature or in a significant portion of the Supplies, or a defect is discovered which, in Buyer's reasonable opinion, constitutes a threat of damage to property or to the health and safety of any person.

E. In addition to Seller's customer warranties, any express warranties set forth in this Purchase Order, any statutory warranties or any warranties implied by law, Seller expressly warrants that all of the Supplies provided under this Purchase Order and all other Purchase Orders: (i) do not, and are not claimed to, violate any patent, trademark or copyright, and may be properly imported into the United States or any other country; (ii) shall strictly conform with all specifications, drawings, statements on containers or labels, descriptions and samples furnished to or by Buyer, or referred to in the Purchase Order, and all industry standards, laws and regulations in force in countries where such Supplies or vehicles equipped with such Supplies are to be sold; (iii) shall be free from defects in design, material and workmanship and shall be new and of the highest quality; (iv) shall be free and clear of all liens, claims or other encumbrances, and that Seller is conveying good title to Buyer; (v) shall be merchantable, of good material and workmanship, free from defects, and safe, fit and sufficient for the particular purposes intended by Buyer, which purposes Seller acknowledges are known to it; (vi) shall be adequately contained, packaged, marked and labeled; (vii) in the case of services, all services performed on behalf of Buyer shall be performed in a competent, workmanlike manner; (viii) the Supplies shall be manufactured in accordance with all applicable federal, state, and local laws, regulations, industry standards or other standards, labeling, transporting, licensing approval or certification requirements in the United States or any other country where the Supplies will be sold or used; and (ix) Seller has complied with QS 9000, ISO 14001, TS 16949, PPAP, APQP, and the various OEM End of Life Vehicle ("ELV") reporting and other requirements, as well as international softwood standards, including USDA Regulations on Wood Packaging Material Imports, if applicable, in fulfilling this

Purchase Order and all other Purchase Orders. These warranties shall survive inspection, test, delivery, acceptance, use and payment by Buyer and shall inure to the benefit of Buyer, its successors, assigns, customers, and the users of Buyer's goods and services. These warranties may not be limited or disclaimed. Seller waives any claim against Buyer and its customers, including any hold-harmless or similar claim, whether known or unknown, contingent or latent, in any way related to a claim asserted against Seller or Buyer for breach of warranty infringement of any patent, trademark, copyright or other proprietary right, including claims arising out of compliance with specifications furnished by Buyer.

F. If Buyer experiences any breaches of the foregoing warranties, Buyer shall have the right, in addition to exercising all other rights Buyer may have under the Uniform Commercial Code and any other applicable statutes or law, to take the following actions, at Buyer's option: (i) retain the defective Supplies in whole or in part with an appropriate adjustment in the price for the goods; (ii) require Seller to repair or replace the defective Supplies in whole or in part at Seller's sole expense, including all shipping, transportation, and installation costs; (iii) correct or replace the defective Supplies with similar items and recover the total cost relating thereto from Seller, including the cost of product recalls; or (iv) reject the defective Supplies.

G. Without limiting the generality of the foregoing, should any Supplies fail to conform to the warranties set forth herein, Buyer shall notify Seller and Seller shall, if requested by Buyer, reimburse Buyer for any special, incidental and consequential damages caused by nonconforming Supplies, including, but not limited to, costs, expenses and losses incurred by Buyer (i) in inspecting, sorting, testing, repairing or replacing such nonconforming Supplies; (ii) resulting from production interruptions, (iii) in conducting Remedial Actions, and (iv) in connection with claims for personal injury (including death) or property damage caused by such nonconforming Supplies. If requested by Buyer, Seller shall, without charge to Buyer, administer and process warranty charge-backs for nonconforming Supplies in accordance with Buyer's directions.

## **6. QUALITY.**

A. Seller agrees to participate in Buyer's quality and development program(s) and to comply with all quality requirements and procedures specified by Buyer, as revised from time to time. Based on Buyer's assessment of responsibility, Seller may be held responsible for any and all costs associated with quality issue investigation, containment and Remedial Actions on account of Supplies provided by Seller to Buyer (including third party activities identified and initiated by Buyer). Seller is obligated to provide all reasonable support requested by Buyer to address immediately and correct concerns regarding the quality of Supplies provided. Seller shall provide additional resources, as necessary and as identified by Buyer, to support product development, process development, validation, production launch, or any issue that may jeopardize the success of the manufacture or assembly of any Supplies or of the program.

B. Seller warrants that its overall equipment (shared and specific) and plant capacity are adequate to meet Buyer's needs. Ongoing capacity analysis must account for at least: scrap variation, downtime, maintenance, and other customer requirements. Each production process must successfully complete a The Supplies must meet an approved PPAP process as specified in Buyer's Quality Manual posted on Buyer's website at [www.hennigesautomotive.com](http://www.hennigesautomotive.com). Buyer is not obligated to pay Seller any incremental costs as long as the Release quantities do not exceed Seller's CPV. The requirement for capacity and the CPV is not a volume, program or other commitment by Buyer.

C. Seller is responsible for all sub-tier providers of goods or services. Seller must maintain adequate development, validation, launch, and ongoing supervision to assure all Supplies provided to Buyer conform to all specifications, standards, drawings, samples and descriptions, including, without limitation, as to quality, performance, fit, form, function and appearance, under the Purchase Order.

D. All tooling supplied by Seller must meet an approved PPAP process as specified in Buyer's Quality Manual posted on Buyer's website at [www.hennigesautomotive.com](http://www.hennigesautomotive.com).

## **7. INSPECTION, WORK PROGRESS, AND REJECTIONS.**

Buyer shall have the right (but not the obligation) to inspect, to review work progress and to test all Supplies, special tooling, materials and workmanship to the extent practicable at all times and places during the period of manufacture. If any Supplies are defective in material or workmanship or otherwise not in conformity with the requirements of any Purchase Order, Buyer shall have the right, notwithstanding payment, any prior inspection or test, custom or usage of trade, either to reject them or to require their correction by and/or at the expense of Seller promptly after notice.

## **8. DELIVERY.**

A. Deliveries shall be made both in quantities and at times specified on the Purchase Order or on Releases furnished by Buyer. Time and quantity of delivery are of the essence. Seller shall adhere to shipping directions specified on the Purchase Order or Releases. Buyer shall not be required to make payment for Supplies delivered to Buyer that are in excess of firm quantities and delivery schedules specified in Releases. Seller shall not procure, produce or ship any Supplies unless authorized in writing by Buyer or as necessary to meet specific delivery dates. Shipments in excess of those authorized by Buyer may be returned to Seller at Seller's expense, and Buyer may debit Seller for the cost of such returns. Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which shall entitle Seller to a modification of the price of Supplies covered by any Purchase Order. With each delivery, Seller shall be deemed to have made the representations, warranties and covenants with respect to its financial and operating condition provided herein.

B. Premium shipping expenses and/or other related expenses necessary to meet delivery schedules set forth in Releases shall be Seller's sole responsibility, unless the delay or expense was solely the result of Buyer's negligence and Seller provides Buyer with notice of any claim against Buyer within ten (10) days after the occurrence of the alleged negligent action of Buyer giving rise to such claim.

C. Notwithstanding any agreement concerning payment of freight expenses, delivery shall not have occurred and the risk of loss shall not have shifted to Buyer until the Supplies have been delivered to Buyer's facility and have been accepted at that facility, except as provided in Section 16.

**9. CUSTOMER REQUIREMENTS; SERVICE PARTS.**

A. Seller shall sell to Buyer all Supplies necessary for Buyer to fulfill Buyer's and its customer's service and replacement parts requirements for its current model year at the then-current production prices plus any actual net cost differential for required unique packaging. If the Supplies are systems, modules or assemblies, Seller shall sell the component or parts of such systems, modules or assemblies at prices that will not in the aggregate exceed the then current production price of the system, module or assembly less the costs of labor involved in connection with the system, module or assembly plus any actual net cost differential for required unique packaging.

B. Unless otherwise specified in the Purchase Order, for 15 years after termination of the current model production of the vehicle involved, Seller shall sell to Buyer quantities of Supplies sufficient to fulfill 100% of Buyer's and its customers' service and replacement parts requirements for past model years. For the first five (5) years of past model service, the prices shall be as specified in the last Purchase Order for current model production plus any actual net cost differential for required unique packaging. For the next ten (10) years of past model service or such longer period as Buyer's customer requires service parts, the prices shall be as specified in the last Purchase Order for current model production plus any actual net cost differential for required unique packaging, plus any actual net cost differential for manufacturing costs as mutually agreed between Buyer and Seller. If a dispute arises between Seller and Buyer regarding the price of service or replacement parts under this Section 9, Seller shall continue to supply Buyer's requirements for service and replacement parts at the production prices set forth in the Purchase Order pending resolution of such dispute.

**10. COST.**

A. Prices charged for Supplies listed on the Purchase Order are not subject to increase, including specifically any increase based upon currency fluctuations, changes in raw material or component pricing, labor or overhead, unless specifically agreed to by Buyer in a Signed Writing.

B. Seller represents that the price charged to Buyer for Supplies is at least as low as the price charged by Seller to Buyers of a class similar to Buyer under conditions similar to those specified in the Purchase Order and that all prices comply with all applicable governmental laws and regulations in effect at the time of quotation, sale and delivery. Seller agrees that any price reduction implemented by Seller for any Supplies or related charges will apply to all shipments of such Supplies under the Purchase Order or any Purchase Order amendment from and after Seller's implementation of the price reduction. If Seller offers a lower price for the same or similar goods or services to any other customer during the term of a Purchase Order, then to the extent permitted by law, Seller will immediately offer Buyer the same price for the Supplies on the same terms and conditions as was offered to the other customer. Seller shall ensure that the price charged to Buyer for Supplies remains competitive with the price for similar goods or services available to Buyer from other sellers.

C. Seller agrees to participate in Buyer's cost savings and productivity programs and initiatives and to implement Seller's own cost savings and productivity programs and initiatives to reduce Seller's costs. Buyer shall also receive the full benefit of all discounts, premiums and other favorable terms of payment customarily offered by Seller to its customers. In the event Seller reduces its price for similar goods and services during the term of this Purchase Order, Seller agrees to reduce the prices of the Supplies to Buyer correspondingly. Seller warrants that the prices in this Purchase Order shall be complete, and no additional charges of any type shall be added without Buyer's express written consent.

**11. TAXES.**

Unless prohibited by law, the Seller shall pay all federal, state or local tax, transportation tax, or other tax, including but not limited to customs duties and tariffs, which is required to be imposed upon the Supplies ordered, or by reason of their sale or delivery. All Purchase Order prices shall be deemed to have included all such taxes.

**12. INVOICES.**

All invoices for Supplies provided pursuant to each Purchase Order must reference the Purchase Order number, Purchase Order amendment or Release number, Buyer's part number, Seller's part number where applicable, quantity of pieces in shipment, number of cartons or containers, Seller's name and number, and bill of lading number, before any payment will be made for Supplies by Buyer. In addition, no invoice may reference any term separate from or different than these Terms and Conditions or the terms that appear on the face of the Purchase Order. Buyer reserves the right to return all invoices or related documents submitted incorrectly. Payment terms will commence upon the receipt of an invoice, after the receipt of the corresponding Supplies. Any payment by Buyer of a nonconforming invoice is not an acceptance of any non-conforming elements or terms on such invoice. Where applicable, Buyer may request proof of delivery to support corresponding invoices prior to payment.



**13. PAYMENT TERMS.**

A. Payment terms will be set for Seller on Buyer's payables system if Seller is included in Buyer's payables system. If Seller is not included in Buyer's payables system, payment terms are net 60 from the date of receipt of the Supplies or Buyer's specified delivery date, whichever occurs later. If a payment date falls on a non-business day, payment will occur on the following business day.

B. Notwithstanding the particular payment terms applicable to a Purchase Order, (i) in no event will Seller have a right to payment for tooling before Buyer is paid by its customer for such tooling, unless otherwise agreed in writing between Buyer and Seller, (ii) in no event will a Seller who is a directed supplier have a right to receive payment from Buyer until Buyer is fully paid by Buyer's customer for the related Supplies or, as applicable, the goods into which such Supplies are incorporated, and (iii) in no event will Supplier have a right to payment for tooling until such tooling meets the applicable approved PPAP process.

**14. SETOFF AND RECOUPMENT.**

A. In addition to any right of setoff or recoupment allowed by law, all amounts due Seller, or any of its subsidiaries or affiliates shall be considered net of indebtedness or obligations of Seller, or any of its subsidiaries or affiliates to Buyer or any of its subsidiaries or affiliates, and Buyer may setoff against or recoup from any amounts due or to become due from Seller, or any of its subsidiaries or affiliates to Buyer or any of its subsidiaries or affiliates however and whenever arising, including but not limited to the Buyer's attorneys' fees and costs of enforcement. In the event that Buyer or any of its subsidiaries or affiliates reasonably feels at risk, Buyer may withhold and recoup a corresponding amount due Seller or any of its subsidiaries or affiliates to protect against such risk.

B. If an obligation of Seller or any of its subsidiaries or affiliates to Buyer or any of its subsidiaries or affiliates is disputed, contingent or unliquidated, Buyer or any of its subsidiaries or 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 Supplies against potential rejection and other damages.

**15. DOCUMENTATION.**

Packing slips (which shall accompany the Supplies), shipping documents and memos, ASN (Advanced Shipping Notice) documents, and bills of lading shall show the Purchase Order number, vendor, and item and reference numbers. Shipping documents shall be mailed on the shipment date and must include the ASN, SID, Bill of Lading or Packing Slip numbers relating

to each shipment. Value of the Supplies shall not be declared on shipments F.O.B. point of origin. For each international shipment, Seller shall include a customs valuation invoice (using the value set forth in the Purchase Order), with a master packing slip and shall furnish all other required export/import documents. Export and trade credits shall belong to Buyer. Seller shall furnish (i) all documents required to obtain export credits and customs drawbacks; (ii) certificates of origin of the materials and Supplies provided and the value added in each country; (iii) all NAFTA, AALA and other related documents; (iv) all required export licenses or authorizations; and (v) any other documents requested by Buyer or any of its customers. Seller warrants that the contents of such documents shall be true and accurate. Seller shall indemnify Buyer for any damages, including but not limited to duties, interest and penalties, arising from a false or inaccurate statement.

## **16. TRANSPORTATION.**

The Supplies provided by Seller shall be properly packed, marked, loaded and shipped as required by this Purchase Order and by the transporting carrier. Unless Buyer instructs otherwise, the Supplies shall be shipped FOB Buyer's location (Incoterms 2000 "DDL"), and shall be shipped in a manner that permits the lowest transportation rates to apply and adequately protects the quality of the Supplies. Seller shall reimburse Buyer for all expenses, including damage to the Supplies, incurred due to improper packing, marking, loading or routing. The risk of loss or damage in transit shall be upon Seller, except where shipment is by Buyer's vehicle, in which case the risk of loss or damage shall pass to Buyer upon completion of loading. Upon submission of proper invoices, Buyer shall process such invoices for payment. All cash discounts shall be computed from the date of receipt by Buyer of a final invoice or receipt of the Supplies, whichever occurs later. Cash discounts shall be based on the full amount of invoice, less freight charges and taxes if itemized separately on the invoice.

## **17. TECHNOLOGY AND LICENSES.**

A. All Supplies, including, but not limited to, any idea, invention, concept, design, prototype, product configuration, process, technique, procedure, system, plan, model, program, software or code, data, specification, drawings, diagram, flow chart, documentation, or the like that are created in the course of performing any Purchase Order and any associated intellectual property rights therein are the sole and exclusive property of Buyer. Seller agrees that all works of authorship created by Seller in connection with each Purchase Order are "works made for hire" on behalf of Buyer as that term is used in connection with the U.S. Copyright Act. The term "intellectual property" as used herein means all patents, patent applications, patentable subject matter, copyrights, copyrightable subject matter, work of authorship, derivative works, trademark, trade name, trade dress, trade secrets, know-how, and any other subject matter, material, or information that is considered by Buyer to be proprietary or confidential and/or that otherwise qualifies for protection under any law providing or creating intellectual property rights, including the Uniform Trade Secrets Act.

B. Seller hereby assigns to Buyer ownership of all right, title, and interest in the Supplies and any associated intellectual property created therein, and further agrees to cooperate with Buyer and to assist in the preparation and execution of all documents relating to any effort by or on behalf of Buyer to apply for, obtain, maintain, transfer, or enforce any intellectual property right related to the Supplies at the request and expense of Buyer. Seller expressly warrants that the Supplies shall not incorporate any intellectual property (including copyright, patent, trade secret, mask work, or trademark rights) of any third party, and further agrees that Seller shall not disclose to Buyer any confidential information, including any trade secrets, of any third party. Seller grants to Buyer an irrevocable, non-exclusive, royalty-free, worldwide license with the right to grant sublicenses to affiliates to use any technical information, know how, copyrights, and patents, or other intellectual property owned or controlled by Seller or its affiliates to make, have made, use, sell, and import any Supplies provided by Seller under a Purchase Order. Such license shall be effective from the first delivery under a Purchase Order.

C. Seller expressly warrants that all Supplies will not and do not infringe any patent, trademark, copyright or other intellectual property of any third party. Seller (i) agrees to defend, hold harmless and indemnify Buyer and its customers against all claims, demands, losses, suits, damages, liability and expenses (including actual fees for attorneys, experts and consultants, settlement costs and judgments) arising out of any suit, claim or action for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright or other proprietary right by reason of the manufacture, use or sale of the Supplies, 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; and (ii) waives any claim against Buyer and its customers, including any hold-harmless or similar claim, whether known or unknown, contingent or latent, in any way related to a claim asserted against Seller or Buyer for infringement of any patent, trademark, copyright or other proprietary right, including claims arising out of compliance with specifications furnished by Buyer.

D. Seller shall ensure that any subcontractors to Seller have contracts with Seller in writing consistent with the terms of this Section 17 to ensure that the protections required by Buyer from Seller are also received from subcontractors for the benefit of Buyer and Seller.

**18. CONFIDENTIALITY.**

A. Seller acknowledges and agrees that it will be obligated to maintain the secrecy and confidentiality of all information disclosed by Buyer to Seller during the course of work under any Purchase Order ("Confidential Information"), including, but not limited to, any information regarding Buyer or its business or its customers, the existence and terms of any Request for Quotation or Purchase Order, and any drawings, specifications, or other documents prepared by either party in connection with any Request for Quotation or Purchase Order, and the features of all parts, equipment, tools, gauges,

patterns, and other items furnished or disclosed to Seller by Buyer. Seller agrees that it will not disclose Confidential Information to or use Confidential Information with or for the benefit of itself or any third party without prior written authorization from Buyer. Seller also agrees to adopt measures to protect the secrecy and confidentiality of Confidential Information that are reasonable under the circumstances. Notwithstanding the foregoing, Seller may disclose portions of the Confidential Information to third parties if it is required for Seller to fulfill its obligations under a Purchase Order and if such third parties have agreed to conditions of confidentiality at least as stringent as those contained herein. Confidential Information shall not include any information that (a) was in the possession of Seller before receipt from Buyer; (b) is or becomes available to the public through no fault of Seller; or (c) is received by Seller in good faith from a third party having no duty of confidentiality to Buyer.

B. The obligations of Seller with respect to Confidential Information shall remain in effect during the time that any Confidential Information is considered by Buyer to be secret or confidential or otherwise qualify for protection under the Uniform Trade Secrets Act. At the request of Buyer, Seller will return to Buyer all materials (in any form) that include, incorporate, or otherwise contain Confidential Information of Buyer.

C. Unless otherwise agreed in a Signed Writing, all information provided by Seller to Buyer in connection with each Purchase Order shall be disclosed on a non-confidential basis, and Buyer shall have no duty to maintain the secrecy or confidentiality of such information.

D. Seller shall not sell or dispose of, as scrap or otherwise, any completed or partially completed or defective Supplies manufactured hereunder without defacing or rendering them unsuitable for use.

## **19. CHANGES.**

A. Buyer reserves the right at any time to direct changes, or cause Seller to make changes, to the Supplies under any Purchase Order including, but not limited to, changes in the design (including drawings and specifications), processing, methods of packaging and shipping and the date or place of delivery of the Supplies covered by the Purchase Order or to otherwise change the scope of the work covered by the Purchase Order including work with respect to such matters as inspection, testing or quality control, and Seller agrees to promptly make such changes. Any such changes shall be deemed not to affect the time for performance or cost under the Purchase Order unless (i) Seller provides Buyer with written notice of a claim for adjustment to time for performance or cost within ten (10) days after Buyer's notice to Seller of the change and (ii) after auditing such claim, Buyer determines that an adjustment (up or down) is appropriate. Any such claim by Seller for adjustment to time for performance or cost under a Purchase Order must be solely and directly the result of the change directed by Buyer and any notice of such claim shall be effective only if accompanied by all relevant information sufficient for Buyer to verify such claim. In addition, Buyer shall have the right to audit

all relevant records, facilities, work or materials of Seller to verify any claim. Seller shall consider and advise Buyer of the impact of a design change on the system in which the Supplies covered by the Purchase Order are used. Nothing in this Section 19 shall excuse Seller from proceeding with the Purchase Order as changed.

B. Without the prior approval of Buyer on the face of a Purchase Order amendment or in a Signed Writing, Seller shall not make any changes to any Purchase Order or the Supplies covered by the Purchase Order, including, without limitation, changing (i) any third party supplier to Seller of services, raw materials or goods used by Seller in connection with its performance under the Purchase Order, (ii) the facility from which Seller or such supplier operates, (iii) the price of any of the Supplies covered by the Purchase Order, (iv) the nature, type or quality of any services, raw materials or goods used by Seller or its suppliers in connection with the Purchase Order; (v) the fit, form, function, appearance, performance of any Supplies covered by the Purchase Order; or (vi) the production method, or any process or software used in the production or provision of any Supplies under the Purchase Order. All Supplies which are changed must go through the PPAP approval process before they can be accepted by Buyer. Any changes by Seller to any Purchase Order or the Supplies covered by the Purchase Order without the prior approval by Buyer on the face of a Purchase Order amendment or in a Signed Writing shall constitute a breach of the Purchase Order.

## **20. TOOLING; CAPITAL EQUIPMENT**

### **I. PROPERTY OF BUYER.**

A. The right, title and interest to all supplies, materials, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment, designs, drawings, specifications, spare parts, trial parts, ancillary products, items owned by Buyer and other items furnished by Buyer or its customers to Seller for use in manufacturing Supplies, or for which Seller is reimbursed by Buyer or its customers (“Buyer’s Property”), shall be and remain the property of Buyer and/or its customers. Seller shall bear the risk of loss of and damage to such Buyer’s Property. Seller will (i) properly house and maintain the Buyer’s Property on Seller’s premises; (ii) not use the Buyer’s Property for any purpose other than for performance under the Purchase Order; (iii) prominently mark the Buyer’s Property as property of Buyer; (iv) refrain from commingling the Buyer’s Property with the property of Seller or with that of a third party; (v) adequately insure the Buyer’s Property against loss or damage, including but not limited to maintaining full fire and extended coverage insurance for replacement value and naming Buyer as an additional insured; (vi) take reasonable steps to ensure that the Buyer’s Property does not become subject to any liens or other claims; and (vii) not move the Buyer’s Property to another location whether owned by Seller or a third party, without the prior written consent of Buyer. Buyer will have the right to enter Seller’s premises at reasonable times to inspect the Buyer’s Property and Seller’s records pertaining thereto.

B. Seller expressly waives and releases, and agrees not to file or otherwise assert or prosecute or suffer to permit any statutory, equitable or other liens, including but not limited to equitable or other liens, including but not limited to any molder liens, tool liens, builder liens and the like, that Seller has or might have on or in connection with the Buyer's Property for all work, including but not limited to, designing, manufacturing, improving, maintaining, servicing, using, assembling, fabricating or developing the Buyer's Property.

C. Seller hereby agrees to indemnify, defend and hold harmless Buyer from and against any loss, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings, including without limitation all attorney's fees and all other cost of litigation that are in any way related to releasing, terminating or otherwise removing all such liens placed on the Buyer's Property. Seller will assign to Buyer any claims Seller has against third parties with respect to Buyer's Property. Seller shall assume all risk of death or injury to persons or damage to property arising from use of the Buyer's Property.

D. Unless otherwise agreed to in writing by Buyer, Seller at its own expense shall keep the Buyer's Property in good condition and repair, including repair necessitated by wear and tear and other usage by Seller. In the event that it becomes necessary, as determined by either Buyer or Seller, to replace the Buyer's Property due to normal use by the Seller, or otherwise, said replacement of Buyer's Property shall be at the sole expense of the Seller and said replacement Buyer's Property shall remain the property of the Buyer. Seller will pay personal property taxes for all Buyer's Property in Seller's possession or under Seller's control.

E. Seller shall not dispose of Buyer's property without written approval from an authorized representative of Buyer's purchasing department.

F. Buyer does not guarantee the accuracy of any Buyer's Property or the availability or suitability of any supplies or material furnished by it. Seller assumes sole responsibility for inspecting, testing and approving all Buyer's Property or other materials supplied by Buyer prior to any use by Seller. Seller agrees that it will comply with obligations hereunder to release Buyer's Property notwithstanding any offsetting claim that it may have against Buyer.

G. Seller acknowledges and agrees that (i) Buyer may not be the manufacturer of the Buyer's Property nor the manufacturer's agent nor a dealer therein; (ii) Buyer is bailing the Buyer's Property to Seller for Seller's benefit; and (iii) Seller has inspected the Buyer's Property and is satisfied that the Buyer's Property is suitable and fit for its purposes, and (iv) 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 THE BUYER'S PROPERTY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. Buyer shall not be liable to Seller for any loss, damage, injury or expense of any kind or nature caused, directly or indirectly, by the Buyer's

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.

H. Seller authorizes Buyer to file a UCC-1 financing statement or similar document with the appropriate filing authority to give notice of Buyer's ownership interest in the Buyer's Property. Failure to file a financing statement will not alter or amend Buyer's ownership rights to the Buyer's Property. Seller shall provide Buyer, upon Buyer's request, with a written inventory of all Buyer's Property.

## **II. PROPERTY OF SELLER**

A. To the extent that Seller is not reimbursed for tooling, equipment, jigs, dies, gauges, fixtures, molds and other items necessary for the production of the Supplies, such items shall be the property of Seller ("Seller's Property"). Seller, at its expense, shall furnish Seller's Property and shall maintain it in a condition that ensures continued production of the Supplies, and shall replace it when necessary.

B. Seller shall insure Seller's Property with full fire and extended coverage for its replacement value.

C. For Seller's Property which is specially used for the production of Supplies hereunder, Seller grants Buyer an irrevocable option to take possession of and operate Seller's Property to produce the Supplies when necessary, and to purchase Seller's Property at its net book value less any amounts that Buyer may have paid to Seller for the cost of such items. This option is not applicable, however, if Seller's Property is used to produce a reasonable quantity of products for customers other than Buyer. Seller shall not dispose of Seller's Property without the written consent of Buyer and without having offered Buyer an opportunity to exercise the option granted to Buyer hereunder.

D. If Buyer exercises its option to purchase Seller's Property hereunder, Seller shall obtain for Buyer any waivers, releases or approvals from any financing sources necessary for Buyer to exercise the rights granted hereunder.

### **21. US C-TPAT (U.S. CUSTOMS SERVICE'S CUSTOMS TRADE PARTNERSHIP AGAINST TERRORISM).**

For Seller's Supplies to be imported in the United States, Seller shall accept, implement and comply with all applicable recommendations or requirements of the United States Customs Service's Customs Trade Partnership Against Terrorism ("C-TPAT") initiative ([http://www.cbp.gov/xp/cgov/import/commercial\\_enforcement/ctpat/](http://www.cbp.gov/xp/cgov/import/commercial_enforcement/ctpat/)). At Buyer's or the Customs Service's request, Seller shall certify in writing its acceptance, implementation and

compliance with the C-TPAT and any accompanying recommendation and guidelines. Seller shall indemnify and hold Buyer harmless from and against any liability, claims, demands or expenses (including attorney's or other professional fees) arising from or relating to Seller's not accepting, implementing or complying with C-TPAT.

**22. FEDERAL CONTRACTS; FAIR LABOR STANDARDS.**

To the extent required by law, the following clauses relating to contracts with the U.S. Government are incorporated into and made applicable to all Purchase Orders: (i) the Equal Opportunity clause, 41 CFR 60-1.4; (ii) the Affirmative Action for Disabled Veterans & Veterans of the Vietnam Era clause, 41 CFR 60-250.4; (iii) the Affirmative Action for Handicapped Workers clause, 41 CFR 60-741.4; (iv) Executive Order 13201; and (v) FAR regulations. Seller hereby agrees to comply with all applicable requirements of Sections 6.7 and 12 of the Fair Labor Standards Act, 29 USC §§ 201 et seq. in the performance of work under any Purchase Order, and with all applicable regulations and orders issued under Section 14 thereof.

**23. COMPLIANCE WITH LAWS; TOXIC SUBSTANCES; OSHA.**

A. Seller shall comply with all applicable laws, rules, regulations, orders, conventions, or standards enacted by the United States of America that regulate the manufacture, labeling, transportation, licensing, approval or certification of Products or Services, including but not limited to, those relating to environmental matters, data protection and privacy, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety, and each Purchase Order shall be deemed to incorporate by reference all the clauses required by the provisions of said laws, Purchase Orders, rules, regulations and ordinances. Among other things, Seller agrees to comply with the Occupational Safety & Health Act, 29 U.S.C. §§651 et seq. and the Toxic Substance Control Act, 15 U.S.C. §§2601 et seq.

B. All purchased materials used in manufacture of the Supplies shall satisfy current governmental and safety constraints on restricted, toxic and hazardous materials as well as environmental, electrical and electromagnetic considerations applicable to the country of manufacture and sale. Prior to shipment, Seller will furnish applicable Material Safety Data Sheets as well as information on the safe use and hazards associated with use of the Supplies. Seller must be in compliance with ISO14001, TS16949 and ELV or their successors, as amended from time to time. Seller further represents and warrants that neither it nor any of its subcontractors will utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in corrupt business practices, in the supply of the Supplies under this Purchase Order. At Buyer's request, Seller shall certify in writing its compliance with the foregoing.

C. Seller shall indemnify and hold Buyer harmless from and against any liability claims, demands or expenses (including, without limitation, attorneys' or other professional fees) arising out of or in connection with Seller's non-compliance with the provisions of this Section 23.



**24. INSURANCE.**

Seller shall maintain insurance in amounts acceptable to Buyer, and covering general liability, public liability, product liability, product recall, completed operations, contractor's liability, automobile liability insurance, Worker's Compensation, and employer's liability insurance as will adequately protect Buyer against such damages, liabilities, claims, losses and expenses (including attorney's fees). Seller agrees to submit certificates of insurance, evidencing its insurance coverage when requested by Buyer.

**25. INDEMNIFICATION.**

A. Seller shall indemnify and hold harmless Buyer and its affiliated companies, their directors, officers, employees, invitees, agents and customers ("Indemnitees") from and against all liability, demands, claims, losses, costs, actions, judgments, fines, penalties, damages and expenses, including reasonable attorney's fees (collectively, "Liabilities") incurred by Buyer or its affiliated companies by reason of or on account of any breach of this Purchase Order, warranty claims, product recall claims, product liability claims, injuries to persons, including death, or damage to property caused by Seller, its employees, agents, subcontractors, or in any way attributable to the performance of Seller, its employees, agents, or invitees; provided, however, that Seller's obligation to indemnify Buyer shall not apply to any liabilities solely arising from Buyer's negligence. Seller waives the application of the doctrine of comparative negligence and other doctrines that may otherwise allocate the liability covered by Seller's indemnity. This indemnification obligation shall be in addition to Seller's warranty obligations.

B. Within a reasonable time of becoming aware of any actual or potential Liabilities, Buyer shall notify Seller. Seller, at Buyer's option and at Seller's expense, will undertake defense of such actual or potential Liabilities through counsel approved by Buyer. Provided, however, that Seller shall first obtain authorization from Buyer before settlement is made of the actual or potential Liabilities if the terms of such settlement could materially adversely affect Buyer, including any terms which admits the existence of a defect in Supplies or a failure of Buyer to fully and faithfully perform its obligations. In the alternative, Buyer may elect to undertake defense of such Liabilities to the extent it is asserted against Buyer, and Seller shall reimburse Buyer on monthly basis for all expenses, attorney fees, and other costs incurred by Buyer.

**26. SELLER FINANCIAL AND OPERATIONAL CONDITION.**

A. Seller represents and warrants to Buyer as of the date of each Purchase Order (which representations and warranties shall be deemed repeated as of the date of Seller's acceptance of each Release under the Purchase Order and at the time of each delivery under the Purchase Order) that: (i) it is not insolvent and is paying all debts as they become due; that it is in compliance with all loan covenants and other obligations; (ii) all financial information provided by Seller to Buyer concerning Seller is true and accurate; (iii) such financial information fairly represents Seller's financial condition; and (iv) all

financial statements of Seller have been prepared in accordance with generally accepted accounting principles, uniformly and consistently applied.

B. Upon Buyer's request, Seller shall provide copies of its quarterly and/or annual financial statements, Seller shall permit Buyer and its representatives to review Seller's books and records concerning compliance with each Purchase Order and Seller's overall financial condition, and Seller also shall provide Buyer with full and complete access to all such books and records for such purpose. Seller agrees that, if Seller experiences any delivery or operational problems, Buyer may, but is not required to, designate a representative to be present in Seller's applicable facility to observe Seller's operations. Seller agrees that, if Buyer provides to Seller any accommodations (financial or other, including providing designated representatives as set forth above) that are necessary for Seller to fulfill its obligations under any Purchase Order, Seller shall reimburse Buyer for all costs, including attorneys' and other professionals' fees, incurred by Buyer in connection with such accommodation and shall grant a right of access to Buyer to use Seller's premises, machinery, equipment and other property necessary for the production of Supplies covered by such Purchase Order (and a lien to secure the access right) under an access and security agreement. Additionally, Seller agrees to provide prompt written notice to Buyer of any impending or threatened insolvency of the Seller.

**27. SELLER INSOLVENCY.**

Buyer may immediately terminate each Purchase Order without any liability of Buyer to Seller upon the occurrence of any of the following or any other similar or comparable event (each, a "Seller Insolvency"): (i) insolvency of Seller; (ii) Seller's inability to promptly provide Buyer with adequate and reasonable assurance of Seller's financial capability to perform timely any of Seller's obligations under any Purchase Order; (iii) filing of a voluntary petition in bankruptcy by Seller; (iv) filing of an involuntary petition in bankruptcy against Seller; (v) appointment of a receiver or trustee for Seller; or (vi) execution of an assignment for the benefit of creditors of Seller.

**28. RIGHTS OF ENTRY, RECLAMATION, AND INSPECTION.**

Buyer shall have the right to enter Seller's facility during normal business hours or, in the event of a Seller shutdown, at reasonable times, to inspect the facility, Supplies, materials and any property of Buyer covered by each Purchase Order and, without the necessity of a Purchase Order, may enter upon Seller's property and remove property belonging to Buyer or any customer of Buyer, including, without limitation, Buyer's Property and other goods, inventory or Seller's Property that has been or is agreed to be sold to Buyer under the Purchase Order. Buyer's inspection of the Supplies, whether during manufacture, prior to delivery or within a reasonable time after delivery, shall not constitute acceptance of any work in process or finished Supplies.

**29. AUDIT RIGHTS.**

Buyer and its customers shall have the right at any reasonable time to examine all relevant documents, records, materials, equipment, tooling and Supplies in the possession or under the control of Seller relating to any of Seller's obligations under this Purchase Order or any other Purchase Order. Seller agrees to reasonably cooperate in any such audit request by the Buyer. Seller shall maintain all relevant books and records relating to a Purchase Order for a period of five years after delivery of Supplies or completion of services hereunder.

**30. TERMINATION FOR DEFAULT.**

Buyer reserves the right to terminate immediately all or any part of each Purchase Order, without any liability of Buyer to Seller, in the event of any default by Seller. The following are causes, among others, allowing Buyer to terminate the Purchase Order: (i) if Seller repudiates, breaches or threatens to breach any of the terms of the Purchase Order including, without limitation, Seller's warranties; (ii) if Seller fails to perform or deliver Supplies as specified by Buyer; (iii) if Seller fails to provide Buyer with adequate and reasonable assurance of Seller's ability to perform timely any of Seller's obligations under any Purchase Order, including, without limitation, delivery of Supplies; (iv) if Buyer terminates for breach any other Purchase Order issued by Buyer to Seller in accordance with the terms of such Purchase Order (whether or not such other Purchase Order is related to the Purchase Order); or (v) if Seller fails to remain competitive with respect to price, quality, delivery, technology, payment terms, or customer support. In the event of a termination for default, Buyer shall be entitled to recover from Seller, among other things, all costs incurred by Buyer in purchasing substitute Supplies from an alternative supplier.

**31. TERMINATION FOR CHANGE OF CONTROL.**

In addition to its other remedies, Buyer may, at its option, terminate this Purchase Order without any liability to Seller, except as specified in Section 33, for a change of control of Seller. A change of control of Seller includes: (a) the sale, lease or exchange of a substantial portion of Seller's assets used for the production of Supplies, or the entrance into an agreement by Seller regarding the same; (b) the sale or exchange of more than 20% of Seller's stock or other ownership interest (or of such other amount as would result in a change of control of Seller), or the entrance into an agreement regarding the same; (c) the execution of a voting or other agreement providing a person or entity with control of Seller or control of more than 20% of Seller's stock or other ownership interest (or of such other amount as would result in a change of control of Seller). Seller shall notify Buyer promptly in writing in the event of the earlier of (i) the entrance into an agreement, or (ii) the occurrence of an event described above in this section. In the event of a termination pursuant to this Section 31, Buyer shall give Seller written notice of the termination at least thirty (30) days prior to the effective termination date.

**32. TERMINATION FOR CONVENIENCE.**

In addition to any other right of Buyer to terminate each Purchase Order, Buyer may at its option, immediately terminate all or any part of the Purchase Order at any time and for any reason by giving written notice to Seller.

**33. TERMINATION CLAIMS.**

A. Upon receipt of notice of termination pursuant to Sections 30, 31, or 32, Seller, unless otherwise directed in writing by Buyer, shall (i) terminate immediately all work under the Purchase Order; (ii) transfer title and deliver to Buyer the usable and merchantable finished Supplies, work in process, and raw materials/components that Seller produced or acquired in accordance with firm Release amounts under the Purchase Order and which Seller cannot use in producing Supplies for itself or for others; (iii) settle all claims by subcontractors approved by Buyer on the face of a Purchase Order or Purchase Order amendment or in a Signed Writing, if any, for reasonable actual costs that are rendered unrecoverable by such termination; (iv) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest and (v) upon Buyer's request, cooperate with Buyer in effecting the resourcing of the Supplies covered by the Purchase Order to an alternative supplier designated by Buyer.

B. Upon termination of any Purchase Order by Buyer under Sections 31 or 32, Buyer shall pay to Seller the following amounts without duplication: (i) the Purchase Order price for all finished and completed Supplies that conform to the requirements of the Purchase Order and not previously paid for; (ii) Seller's reasonable actual cost of the usable and merchantable work in process and raw materials/components transferred to Buyer in accordance with subsection A hereof; (iii) Seller's reasonable actual cost of settling claims for the obligations Seller would have had to the subcontractors approved by Buyer on the face of a Purchase Order or Purchase Order amendment or in a Signed Writing in the absence of termination, and (iv) Seller's reasonable actual cost of carrying out its obligations under subsections A(iv) and A(v).

C. Upon termination pursuant to Section 30, Seller shall not be entitled to any further payments by Buyer.

D. Except as expressly set forth in this Section 33, 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, ancillary exit charges (including, but not limited to, costs of riggers, warehousing, premium manufacturing costs, loading of trucks or other standard business procedures related to transitioning production to an alternative supplier), or general and administrative burden charges resulting from termination of the Purchase Order 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 thirty (30) days after the effective date of termination under Sections 31 or 32, 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 this Purchase Order. Buyer may audit Seller's records before or after payment to verify amounts requested in Seller's termination claim.

**34. TRANSITION OF SUPPLY.**

Upon the expiration or earlier termination of any Purchase Order for whatever reason, Seller agrees to take all actions necessary in order to ensure that there is no interruption in the supply of Supplies to Buyer. Among other things, Seller agrees to take such actions as may be reasonably required by Buyer to accomplish the transition from Seller to an alternative seller, including without limitation the following: (a) Seller shall provide all notices necessary or desirable for Buyer to resource the Purchase Order to an alternative seller; (b) Seller shall provide a sufficient bank of goods covered by the Purchase Order to ensure the orderly transition to any alternative seller chosen by Buyer; and (c) Seller shall provide to Buyer all tooling and any other property furnished by or belonging to Buyer or any of Buyer's customers in as good a condition as when received by Seller, reasonable wear and tear excepted; (d) Buyer and the alternative seller reserve the right to access and actively participate during the disconnect or disassemble process for the Buyer's Property, and the location, time and date of the exit shall be mutually agreeable between the Buyer and Seller; and (e) Seller shall, at Buyer's option: (i) assign to Buyer any or all supply contracts or Purchase Orders for raw material or components relating to the Purchase Order; (ii) sell to Buyer, at Seller's cost any or all perishable tooling and Supplies inventory relating to the Purchase Order; and/or (iii) sell to Buyer any of Seller's property relating to the Purchase Order, at a price equal to the unamortized portion of the cost of such items less any amounts Buyer previously has paid to Seller for the cost of such items. Seller shall provide documentation supporting the original cost of any unamortized items. The term "alternative seller" expressly includes, but is not limited to, a Buyer-owned facility.

**35. NO TERMINATION RIGHT BY SELLER.**

Because Buyer's commitments to its customers are made in reliance on Seller's commitments under each Purchase Order, Seller has no right to terminate any Purchase Order without the written consent of Buyer.

**36. FORCE MAJEURE.**

A. Any delay or failure of either party to perform its obligations shall be excused if it is caused by an extraordinary and unforeseeable event beyond the control of the nonperforming party and without the nonperforming party's fault or negligence, such as acts of God, fires, floods, windstorms, explosions, riots, natural disasters, wars and sabotage. Written notice of such delay, including the anticipated duration of the delay,

must be given by the nonperforming party within two (2) days of the event. During the period of any delay or failure to perform by Seller, Buyer, at its option, may purchase Supplies from other sources and reduce its schedules to Seller by such quantities, without liability to Buyer, or cause Seller to provide the Supplies from other sources in quantities and at times requested by Buyer and at the price set forth in this Purchase Order. If requested by Buyer, Seller shall, within five (5) days of such request, provide adequate assurance that the delay will not exceed such period of time as Buyer deems appropriate. If the delay lasts more than the time period specified by Buyer, or Seller does not provide adequate assurance that the delay will cease within such time period, Buyer may, among its other remedies, immediately cancel this Purchase Order, and all outstanding Releases issued pursuant thereto, without liability. Additionally, Seller shall reimburse Buyer for any increase in price that Buyer is required to pay to a substitute supplier in order to obtain the Supplies.

B. If a force majeure event continues for longer than five (5) calendar days, then Buyer, at its sole option, may terminate any Purchase Order affected thereby in whole or in part without any obligation or liability except that Buyer is still responsible for payment for Supplies that have been delivered to and accepted by Buyer prior to Force Majeure notice receipt. Seller acknowledges and agrees that the following will not excuse performance by Seller under theories of force majeure, commercial impracticability or otherwise and Seller expressly assumes these risks: (i) change in cost or availability of materials, components or services based on market conditions, supplier actions or contract disputes; (ii) failure of Seller's internal business systems related to the proper processing of date information that results in any defect or failure in products or services, deliveries, or any other aspect of performance by Seller or its subcontractors.

C. Buyer may cancel any Purchase Order at any time prior to delivery or performance if its business is interrupted for reasons beyond Buyer's reasonable control. Buyer shall give prompt notice of such cancellation to Seller.

**37. LABOR DISPUTES.**

Seller shall notify Buyer in writing of any actual or potential labor dispute delaying or threatening to delay timely performance of this Purchase Order. Seller shall notify Buyer in writing 6 months in advance of the expiration of any current labor contracts. Seller shall deliver a supply of finished Supplies at least 30 days prior to the expiration of any such labor contract, in quantities and for storage at sites designated by Buyer.

**38. REMEDIES FOR BREACH BY SELLER.**

A. The rights and remedies reserved to Buyer in each Purchase Order shall be cumulative with, and additional to, all other or further remedies provided in law or equity.

B. Seller acknowledges and agrees that money damages would not be a sufficient remedy for any actual, anticipatory or threatened breach of any Purchase Order by Seller with respect to its delivery of Supplies to Buyer and that, in addition to all other rights and remedies which 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

C. Seller also acknowledges and agrees that shutting down a customer's plant creates issues for which money damages are not a sufficient remedy. While the cost of a plant shutdown may easily generate substantial costs, the damages to Buyer's relationship with Buyer's customer through potential loss of business, and other damages which are equally difficult to calculate, are far worse. Because of these risks, in the event of a breach or threatened breach by Seller of any of the representations, warranties or covenants of Seller, Buyer may, without notice to Seller, resource the production of Supplies from Seller to another supplier or dual source any of the Supplies covered hereby (i.e., have another supplier produce or be prepared to produce Supplies being produced by Seller), to protect Buyer and its customers. This process of moving business may take a considerable amount of time and Seller understands that, given the risks posed by the possible shutdown of Buyer's customer, Buyer is justified in initiating and transferring business without prior notice to Seller.

D. Notwithstanding anything to the contrary contained in any Purchase Order, Buyer does not release any claim against Seller that is based in whole or in part on any fraud or duress in connection with the Purchase Order or any breach or anticipatory breach of the Purchase Order or any other Purchase Order between Buyer and Seller (even if that Purchase Order relates to other products).

**39. NO WAIVER.**

A waiver by Buyer of any right or remedy shall not affect any rights or remedies subsequently arising under the same or similar clauses. The failure of the Buyer to insist upon the performance of any term or condition of this Purchase Order, or to exercise any right hereunder shall not be construed as a waiver of the future performance of any such term or condition or the exercise in the future of any such right.

**40. RELATIONSHIP OF PARTIES.**

Seller and Buyer are independent contracting parties and nothing in this Purchase Order shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other party.

**41. ASSIGNMENT.**

This Purchase Order is issued to the Seller in reliance upon Seller's personal performance of the duties imposed. Seller agrees not to, in whole or in part, assign this Purchase Order or delegate the performance of its duties without the written consent of Buyer. Any such assignment or delegation without the previous written consent of Buyer, at the option of Buyer, shall effect a cancellation of this Purchase Order. Any consent by Buyer to an assignment shall not be deemed to waive Buyer's right to recoupment from Seller and/or its assigns for any claim arising out of this Purchase Order. Assignment shall not relieve Seller from its obligations of confidentiality under Section 18 hereof. Buyer shall have the right to assign any benefit or obligation under this Purchase Order to any third party upon notice to Seller.

**42. LIMITATIONS ON BUYER'S LIABILITY.**

In no event shall Buyer be liable to Seller for anticipated profits or for special, incidental, or consequential damages. Buyer's liability for a claim of any kind or for any loss or damage arising out of or in connection with or resulting from each Purchase Order, the Supplies or any other agreement between Buyer and Seller shall be a termination claim, as specified in Section 33 hereof.

**43. CONSULTING.**

To the extent this is a Purchase Order which includes services or consulting services, Seller hereby assigns to Buyer all rights, title and interest in and to any and all ideas, inventions, improvements, materials, copyrightable material, drawings, documents or the like, conceived or made by Seller as a result of or relating to work done or services performed for Buyer pursuant to this Purchase Order. Such assignment includes all proprietary rights appurtenant thereto, and Seller will execute any documents necessary to confirm such assignment.

**44. SEVERABILITY.**

If any term(s) of the Purchase Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term(s) shall be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of the Purchase Order shall remain in full force and effect.

**45. NOTICES.**

All notices, claims and other communications to Buyer required or permitted under the Purchase Order shall be made in writing and sent by certified or registered mail, return receipt requested and proper postage prepaid to the following address and shall be effective only upon receipt by Buyer in the form set forth in this Section 45:

Henniges Automotive Holdings, Inc.  
36600 Corporate Drive



Farmington Hills, Michigan 48331  
Attn: Vice President, Purchasing

Seller's failure to provide any notice, claim or other communication to Buyer in the manner and within the time periods specified in the Purchase Order shall constitute a waiver by Seller of any and all rights and remedies that otherwise would have been available to Seller upon making such notice, claim or other communication.

**46. ELECTRONIC COMMUNICATIONS AND ELECTRONIC SIGNATURES.**

Seller shall comply with any method of electronic communication specified by Buyer, including requirements for electronic funds transfer, Purchase Order transmission, production Releases, electronic signature, and communication.

**47. CHOICE OF LAW/JURISDICTION.**

The construction, interpretation and performance of this Purchase Order and all transactions thereunder shall be governed by the law of the State of Michigan, without regard to principles of conflicts of law. The United Nations Convention on the International Sale of Goods is expressly excluded. Seller consents to the exclusive jurisdiction of the appropriate state court in Oakland County, Michigan or, if original jurisdiction can be established, in the federal court in the U.S. District Court for the Eastern District of Michigan, Southern Division, for any legal or equitable action or proceeding arising out of, or in connection with, each Purchase Order. Seller specifically waives any and all objections to venue in such courts.