



**GENERAL TERMS AND CONDITIONS
OF PURCHASE ORDER AND
SUPPLY AND DELIVERY OF PRODUCTS
TO SHW PUMPS & ENGINE COMPONENTS INC.**

Effective Date: February 8, 2016

1. OFFER AND ACCEPTANCE OF GENERAL TERMS AND CONDITIONS OF PURCHASE ORDER AND SUPPLY AND DELIVERY OF PRODUCTS TO SHW PUMPS & ENGINE COMPONENTS INC.

- (a) The parties (“**Parties**”) hereto acknowledge, covenant and agree to following general terms and conditions of sale and delivery which are applicable to all purchases by SHW Pumps & Engine Components Inc., an Ontario corporation (“**Buyer**”).
- (b) Each purchase order and purchase order revision issued by Buyer an offer to a seller (“**Seller**”) for the purchase of goods and/or services, whether transmitted to Seller via Buyer’s electronic data interchange system or delivered in a paper format and includes and is governed by the express terms contained on the face of the purchase order, the following purchase order terms and conditions, and the terms contained in any addendum or supplement to the purchase order, any supplier manual provided by Buyer to Seller, and other document incorporated by reference in the purchase order or in these purchase order terms and conditions (collectively, the “**Purchase Terms**”) which taken together, including any schedules attached, shall constitute the entire agreement between Buyer and the Seller regarding the Products or Services (“**Agreement**”).
- (c) Any expression of acceptance of these Purchase Terms by Seller, including Seller’s commencement of (i) work on the goods subject to these Purchase Terms (“**Goods**”) or shipment of the Goods, whichever occurs first, or (ii) performance of all or any portion of the services subject to the Purchase Terms (“**Services**”), shall constitute an acceptance of Buyer’s Purchase Terms. Any acceptance of a purchase order is limited to and conditional upon Seller’s acceptance of the Purchase Terms. Any proposal for additional or different terms or any attempt by Seller to vary any of the Purchase Terms, whether in Seller’s quotation form, acknowledgement form, invoice, correspondence or otherwise, shall be deemed material and is hereby objected to and rejected by Buyer, but any such proposal or attempted variance shall not operate as a rejection of the purchase order if Seller accepts Buyer’s offer by commencement of work, shipment of the Goods or performance of the Services, or by other means acceptable to Buyer, in which case the Purchase Terms shall be deemed accepted by Seller without any additional or different terms or variations whatsoever.
- (d) The Buyer’s purchase order does not constitute an acceptance of any prior offer or proposal by Seller, and any reference in the Buyer’s purchase order to any such prior offer or proposal is solely to incorporate the description or specifications of the Goods and the Services in such offer or proposal, but only to the extent that such description or specifications are not directly in conflict with the description and specifications in the Buyer’s purchase order. If the Buyer’s purchase order is found to be an acceptance of any prior offer or proposal by Seller, such acceptance shall be limited to the Buyer’s Purchase Terms set out in such Buyer’s purchase order and in these general terms and conditions of purchase and sale and delivery as are applicable to all purchases by the Buyer.
- (e) Any additional or different terms in such prior offer or proposal shall be deemed material and are hereby objected to and rejected by Buyer. Buyer may cancel all or any part of the purchase order at any time prior to Buyer’s actual knowledge of acceptance by Seller.
- (f) The Purchase Terms contain the entire agreement between Buyer and Seller and, except as otherwise expressly stated in the Purchase Terms, supersede all prior agreements, orders, quotations, proposals and other communications relating to the subject matter hereof and there are no other understandings or agreements, verbal or otherwise, in relation hereto that exist between Buyer and Seller.
- (g) In the event of any conflict between the a purchase order and a purchase order revision issued by Buyer, and these terms and conditions of purchase and sale and delivery as are applicable to all purchases by the Buyer, the terms of the purchase order issued by Buyer and accepted by Seller or a purchase order revision issued pursuant thereto shall govern.



- (h) Seller shall bear all costs associated with the cancellation or modification of the Purchase Terms.

2. TIME PERIOD OF PURCHASE ORDER

- (a) Subject to Buyer's termination rights, including, without limitation, such rights set out in Articles 24, 25 and 26 ("**Buyer's Termination Rights**"), this Agreement is binding on Buyer and Seller for the length of the production life of the applicable original equipment manufacturer ("**OEM**") vehicle program for which Buyer intends to incorporate the Goods or Services. Seller acknowledges and assumes the risk of the vehicle program production life being cancelled or extended by the OEM. Notwithstanding the foregoing, if an expiration date or time period is specified in this Agreement, this Agreement is binding until such expiration date or end of such time period, subject to Buyer's Termination Rights.
- (b) If the Goods or Services are not directly or indirectly associated with a specific OEM vehicle program production life, then, subject to Buyer's Termination Rights, this Agreement is binding on Buyer and Seller for one (1) year from the date this Agreement is transmitted to Seller and will automatically renew for successive one (1) year periods after the initial term, unless Seller provides written notice to Buyer, no less than three hundred and sixty five (365) days prior to the end of the current term, of Seller's desire that this Agreement not be renewed, provided that, Buyer may extend the term of this Agreement for such period of time beyond the initial or current term as Buyer determines is necessary, acting reasonably and in good faith, to procure an alternate source of supply for the Goods or the Services that is acceptable to Buyer and to ensure an orderly transition of supply.

3. CUSTOMER REQUIREMENTS

- (a) Where the Goods or Services under this Agreement are or will be sold, or incorporated into goods or services that are or will be sold, by Buyer to an OEM of vehicles, whether directly or indirectly through an upper tier supplier, or any other third party customer (collectively "**Customer**"), 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, including: delivery, packaging and labeling requirements; warranties and warranty periods; intellectual property rights; indemnification; confidentiality; access to facilities and records; and replacement and service parts. Buyer may, from time to time, in its sole discretion, provide Seller with information regarding the applicable Customer Terms and Seller shall be responsible for ascertaining the Customer Terms that may affect Seller's obligations hereunder.
- (b) If there is any conflict between the provisions of the Customer Terms and any provisions of this Agreement, Buyer shall have the right to have the provisions of the Customer Terms prevail to the extent necessary or desirable to resolve such conflict.
- (c) In the event that the Customer directly suffers an Insolvency Event (as such term is defined in subparagraph 26(a)) and, in the course of any proceedings relating to such Insolvency Event and in connection with actual or threatened termination by the Customer of its contract(s) with Buyer (by rejection or otherwise), Buyer permits a reduction in the prices paid to Buyer for products incorporating the Goods and/or the Services, then the prices paid to Seller for the Goods and/or the Services from and after the date of such reduction will be automatically adjusted proportionally by the same percentage as the price paid to Buyer by the Customer, and this Agreement will otherwise remain in effect without modification.
- (d) In the event Customer fails to pay Buyer for products incorporating the Goods and/or Services supplied by Seller, Buyer reserves the right to assign Seller the right to collect such amounts from the Customer, in whole or in part, and Seller agrees to accept such assignment as payment for any invoices due from Buyer to Seller on a dollar for dollar basis.
- (e) If the Customer directed, recommended or requested that Seller be the source from whom Buyer is to obtain the Goods and/or the Services (Customer Directed Buy): (i) Buyer will pay Seller for the Goods and/or Services only after and to the extent of, and in proportion to, Buyer's actual receipt of payment from the Customer for those goods into which the Goods and/or the Services are incorporated; (ii) any lengthening of the Customer's payment terms to Buyer for those goods into which the Goods and/or Services are incorporated will automatically lengthen the payment terms as between Buyer and Seller by the same amount of time; and (iii) within three (3) business days of any change in price, specifications or other terms negotiated or proposed between Seller and the Customer, Seller shall notify Buyer in writing and immediately adjust its invoices to reflect any price reduction, provided that no change will be binding on Buyer without Buyer's specific written consent.



- (f) CUSTOMER DIRECTED BUY purchase agreements are subjected to the conditions below in addition to this complete agreement:
1. Seller agrees that all costs associated to failure to deliver the correct number of parts at the specified quality level (meeting all drawing specification) will be fully reimbursed to the Buyer within a maximum of 30 days period from date of notification from Buyer.
 2. Seller agrees that all associated warranty claims cost that the Buyer receives from customer will be fully reimbursed to the Buyer within a maximum of 30 days period from date of notification from Buyer.
 3. Seller agrees that all associated product liability claims cost that the Buyer receives from customer will be fully reimbursed to the Buyer within a maximum of 30 days period from date of notification from Buyer.
 4. Seller agrees that all associated costs associated with testing and validation of the Goods, consisting of but limited to omissions or deletions resulting in design and production decisions that influence the costs associated with the lifetime use of the Goods, which the Buyer receives from customer, will be fully reimbursed to the Buyer within a maximum of 30 days period from date of notification from Buyer.
 5. Seller agrees that APQP will be used to manage all phase of the Goods development and production and that the Buyer will have full access to any and all data including but not limited to PPAP documentation, observing the run-at-rate, etc.

4. LABELING, PACKING AND SHIPMENT

- (a) The Goods are to be suitably prepared for shipment and must be labeled, packed and shipped in accordance with Buyer's specifications, as specified in this Agreement and/or in any written directions and/or instructions as may be provided by Buyer to Seller from time to time. If the Goods are not shipped in accordance with Buyer's specifications, Seller shall pay or reimburse Buyer for any excess costs occasioned thereby.
- (b) Unless otherwise expressly stated in this Agreement, Seller shall not charge Buyer for labeling, packing, boxing or crating.

5. DELIVERY AND PRODUCTION VOLUMES

- (a) Time is of the essence of this Agreement. Seller shall deliver the Goods in the quantities and on the delivery dates and times specified in this Agreement as Releases quantities and schedules. Seller shall immediately notify Buyer in writing if Seller is unable to deliver the Goods in the quantities and on the delivery dates and times specified in this Agreement. Goods delivered in excess of the quantities or in advance of delivery dates or times specified in this Agreement shall be at Seller's risk and may be returned to Seller by Buyer, and all transportation charges both to and from the original destination shall be paid by Seller. Buyer shall not be required to make payment for any Goods delivered to Buyer that are in excess of the quantities specified in this Agreement. Unless otherwise expressly stated in this Agreement or authorized in writing by Buyer, Seller shall not make any commitments for raw materials or other inventory or manufacture any Goods in advance of the time necessary to permit shipments on the delivery dates. Buyer may on notice to Seller 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 the Goods or the Services covered by this Agreement.
- (b) If the face of this Agreement does not specify the quantities, or specifies the quantities as "blanket order", "as released", "as scheduled", "as directed", "subject to Buyer's production releases" or in another similar fashion, then, in consideration for ten U.S. dollars (U.S.\$10.00), the payment of which shall be made by Buyer upon the termination or non-renewal of this Agreement, Seller grants to Buyer an irrevocable option during the term of this Agreement to purchase the Goods in such quantities and on such delivery dates and times as indicated in the firm delivery or shipping releases, authorizations, manifests, broadcasts or similar written instructions issued or transmitted by Buyer to Seller from time to time in reference to this Agreement (each a "**Release**"), and Seller shall deliver such quantities on such dates and times, at the price and on the other terms specified in this Agreement; provided that Buyer shall purchase no less than one piece or unit of each of the Goods or the Services and no more than one hundred percent (100%) of Buyer's requirements for the Goods or the Services, as applicable. All references herein to "this Agreement" shall include any Releases.
- (c) Seller warrants that any representation made in a quote or otherwise regarding its production capacity shall be considered a warranty that Seller can manufacture or produce the stated quantity of the Goods or the Services without the imposition of overtime charges or other surcharges. Seller acknowledges that any estimates or forecasts of production volumes or length of program, whether from Buyer or the Customer, are subject to change from time to time, with or without notice to Seller, and shall not be binding upon Buyer. Unless otherwise expressly stated in this Agreement, Buyer makes no representation, warranty, guarantee or commitment of any kind or nature, whether express or implied to Seller in respect of Buyer's



quantitative requirements for the Goods or the Services or the term of supply of the Goods or the Services.

- (d) Unless otherwise expressly stated in this Agreement, Buyer shall not be required to purchase the Goods or the Services exclusively from Seller.
- (e) When deliveries are specified to be in accordance with Buyer's written releases, Seller will not fabricate or assemble any goods, nor procure required materials, nor ship any supplies, except to the extent authorized by such written releases or provisions of this Agreement specifying minimum fabrication or delivery quantities.

6. DELAYS IN DELIVERY OR ACCEPTANCE

- (a) If Seller fails or refuses to proceed with this Agreement or fails to deliver the Goods or perform the Services within the delivery dates and times specified in this Agreement, Buyer may, without limiting or affecting its other rights or remedies available hereunder or at law, cancel the then remaining balance of this Agreement, unless the delay is an excusable delay (as defined in subparagraph 6(b)). In addition, if Seller fails to meet the delivery dates or times of the Goods, other than by reason of an excusable delay, Buyer may, without limiting or affecting its other rights or remedies available hereunder or at law, direct expedited shipment and/or incur premium freight or transportation costs, and Seller shall pay upon demand all excess costs incurred thereby, including additional handling charges and other expenses (whether related or not) resulting therefrom. Seller shall be responsible for all other direct, consequential, and incidental damages incurred by Buyer as a result of Seller's failure to meet the delivery dates or times, other than by reason of an excusable delay, including the cost of any line shutdown or any other expenses incurred by the Buyer in order to maintain Customer delivery schedules and quantities and the cost of obtaining goods from an alternate source. Buyer's actions in obtaining substitute or replacement products shall not limit the rights and remedies available hereunder or at law.
- (b) The term "excusable delay" means any delay in making or accepting deliveries or performance which results without fault or negligence on the part of the party involved and which is due to causes beyond its reasonable control, such as acts of God or of a public enemy, any preference, priority or allocation order issued by government or any other act of government, fires, floods, epidemics, quarantine restrictions, freight embargoes, unusually severe weather, explosions, riots, war, terrorism and delays of a supplier due to such causes. The term "excusable delay" shall not, however, mean or include any delay arising from or as a result of any event in the reasonable control of the Seller, including but not limited to: (i) Seller's financial difficulties; (ii) a change in cost or availability of materials or components based on market conditions or supplier actions affecting Seller; or (iii) any labor strike or other labor disruption applicable to Seller or to any of its subcontractors or suppliers that are engaged in manufacturing or providing goods or services to Seller in connection with Seller's obligations under this Agreement.
- (c) An excusable delay shall not constitute a default hereunder, provided that if Seller is subject to one or more excusable delays that persist for more than thirty (30) days in the aggregate, Buyer may cancel the then remaining balance of this Agreement, without limiting or otherwise affecting its other rights or remedies available hereunder or at law.
- (d) Seller, at its expense, shall use its best efforts to mitigate any adverse effects or costs to Buyer due to any actual or potential delay, including: (i) the implementation of a production contingency plan; and (ii) upon Buyer's express written authorization, increasing Seller's inventory of finished Goods to a level sufficient to sustain deliveries during such delay.
- (e) Whenever any actual or potential delay threatens to delay deliveries or Seller's performance under this Agreement, Seller shall immediately give written notice thereof to Buyer. Such notice shall include all relevant information with respect to such delay, including the anticipated duration and impact of such delay. In addition, Seller will notify Buyer in writing: (i) at least sixty (60) days prior to the expiration of any labor contract or collective agreement; and (ii) as soon as Seller becomes aware of any actual or threatened labor strike or other labor disruption; in each case as may be applicable to Seller or to any of its subcontractors or suppliers that are engaged in manufacturing or providing goods or services to Seller in connection with Seller's obligations under this Agreement.
- (f) Buyer may delay acceptance of delivery of the Goods or performance of the Services by reason of an excusable delay, in which case Seller shall hold the Goods and/or delay performance of the Services, at Buyer's direction, until the cause of the excusable delay has been removed.
- (g) If, under the terms of this Agreement, Buyer grants Seller exclusive or "single source" rights to supply the Goods or the Services to Buyer, such rights shall not restrict Buyer's right to procure goods or services similar to the Goods or the Services in substitution therefor in the event of any delay.
- (h) Without limiting Seller's obligations hereunder, in the event of any supply allocation by Seller, including as a result of an excusable delay, Seller shall give preference to Buyer for all of the Goods and the Services ordered under this Agreement.

7. TRANSPORTATION CHARGES, CUSTOMS DUTIES AND TAXES



- (a) Unless otherwise expressly stated in this Agreement, all Goods shall be delivered by Seller “DDP – Buyer’s plant” (as defined in Incoterms 2010), in which case: (i) all transportation charges (including terminal switching charges) shall be at Seller’s expense; and (ii) Buyer shall not be liable for any insurance, storage, parking or detention charges.
- (b) Unless otherwise expressly stated in this Agreement, prices include customs duties and expenses, tariffs and all federal, provincial, state and local taxes (including all import taxes, excise taxes and sales taxes) applicable to the manufacture, sale or provision of the Goods or the Services.
- (c) Any reduction in Seller’s cost resulting from a reduction in transportation charges, customs duties, import taxes, excise taxes and/or sales taxes from those in effect on the date of this Agreement shall be paid to Buyer by Seller as a reduction of the price.

8. CUSTOMS DRAWBACK DOCUMENTS AND EXPORT CONTROLS

- (a) Upon request, Seller shall promptly furnish to Buyer all documents and other information required for customs drawback purposes, properly completed in accordance with applicable governmental regulations. Unless otherwise expressly stated in this Agreement, all customs drawback shall be reserved and retained for, or credited to, Buyer.
- (b) Export licenses or authorizations necessary for the export of the Goods shall be the responsibility of Seller unless otherwise expressly stated in this Agreement, 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 Goods to be covered by any duty deferral or free trade zone programs of the country of import.
- (c) To the extent that any Goods covered by this Agreement are to be imported into the United States of America, Seller shall, upon Buyer’s request, comply with all applicable recommendations or requirements of the United States Bureau of Customs and Border Protection’s Customs-Trade Partnership against Terrorism initiative or any successor or replacement initiative or program. To the extent that any Goods covered by this Agreement are to be imported into Canada, Seller shall, upon Buyer’s request, participate in the Canada Border Services Agency’s Partners in Protection program or any successor or replacement initiative or program. Upon request, Seller shall certify in writing its compliance with the foregoing. Seller shall indemnify and hold Buyer harmless from and against all liabilities, demands, claims, losses, costs, damages and expenses of any nature or kind (including legal and other professional fees) arising from or relating to Seller’s non-compliance with the foregoing.

9. CERTIFICATES OF ORIGIN

Upon request, Seller shall promptly furnish to Buyer all certificates of origin or domestic value-added and all other information relating to the costs and places of origin of the Goods or the Services 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 shall comply with all such regulations. Seller shall indemnify and hold Buyer, its subsidiaries and affiliates, their respective successors, assigns, representatives, employees and agents, and the Customer harmless from and against all liabilities, demands, claims, losses, costs, damages and expenses of any nature or kind (including fines and penalties) arising from or as a result of: (i) Seller’s delay in furnishing such certificates or other information to Buyer; (ii) any errors or omissions contained in such certificates; and (iii) any non-compliance by Seller with such regulations.

10. PAYMENT

- (a) Except as otherwise expressly stated in this Agreement, and subject to subparagraphs 3(c), (d) and I, Buyer shall pay net invoices (subject to applicable withholding taxes, if any) by the later of: (i) sixty (60) days after the end of the month during which the Goods were delivered and/or the Services performed, as the case may be; or (ii) sixty (60) days after the invoice date.
- (b) Notwithstanding the foregoing, where Buyer is entitled to receive reimbursement or other payment from the Customer for the Goods and/or the Services to be provided by Seller to Buyer under this Agreement that constitute Tooling (as such term is defined in subparagraph 17(b)), Seller shall be entitled to receive payment under this Agreement for such Tooling only after receiving full PPAP approval from Buyer and successful completion of tooling audit.

11. SET-OFF, RECOUPMENT

In addition to any right of set-off or recoupment provided by law, all amounts due to Seller and its subsidiaries and affiliates shall be considered net of indebtedness or obligations of Seller and its subsidiaries and affiliates to Buyer and its subsidiaries and affiliates, and Buyer and its subsidiaries and affiliates may set-off against or recoup from any amounts due or to become due from Seller and its subsidiaries and affiliates to Buyer and its subsidiaries and affiliates however and whenever arising. Buyer may do so without notice to Seller or its subsidiaries or affiliates. If any obligations of Seller or its subsidiaries or



affiliates to Buyer or its subsidiaries or affiliates are disputed, contingent or unliquidated, Buyer may defer payment of amounts due until such obligations are resolved.

12. CHANGES

- (a) Buyer reserves the right to make changes, or to cause the Seller to make changes, to the drawings, specifications, sub-suppliers, sub-contractors, and other provisions of this Agreement. If any such change results in an increase or a decrease in the cost of, or the time required for, manufacturing or delivering the Goods or performing the Services, an equitable adjustment may be made in the price or delivery schedule, or both, and this Agreement shall, subject to the agreement of Buyer and Seller, be modified in writing accordingly. No claim under this paragraph 12 shall be asserted by Seller after fourteen (14) days following the notification of the change by Buyer.
- (b) After receiving full PPAP approval from the Buyer, Seller shall not, without Buyer's prior written authorization, make any changes to specifications, designs, materials or part numbers (or other types of identification), any changes in processes or procedures, or any changes in the location of the facilities used by Seller for the performance of its obligations under this Agreement.

13. PRICE WARRANTIES AND COMPETITIVENESS

- (a) Seller warrants that the prices for the Goods and the Services are, and shall ensure that such prices remain, 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 Goods and the Services correspondingly.
- (b) Seller warrants that the prices in this Agreement shall be complete, and no surcharges, premiums or other additional charges of any type shall be added, without Buyer's prior written consent. 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.
- (c) Seller shall ensure that the Goods and the Services remain competitive, in terms of price, technology and quality, with substantially similar goods and services available to Buyer from other suppliers.

14. WARRANTIES REGARDING THE GOODS AND THE SERVICES

- (a) Seller expressly warrants that the Goods and the Services, including any special tools, dies, jigs, fixtures, patterns, machinery and equipment, that are obtained at Buyer's expense for the performance of this Agreement and/or are or become the property of Buyer (including the Buyer's Property, as such term is defined in subparagraph 17(b)) shall: (i) conform to all drawings, specifications, samples and other descriptions furnished, specified or adopted by Buyer; (ii) comply with all applicable laws, regulations, rules, codes and standards of the jurisdictions in which the Goods or the Services, and the products containing the Goods and Services, are to be sold; (iii) be merchantable; (iv) be free from any defects in design, to the extent furnished by Seller or any of its subcontractors or suppliers, even if the design has been approved by Buyer; (v) be free from any defects in materials and workmanship; (vi) be fit, sufficient and suitable for the particular purpose for which Buyer intends to use the Goods or the Services, including the specified performance in the component, system, subsystem and vehicle location and the environment in which they are or may reasonably be expected to perform; and (vii) be free of all liens, claims and encumbrances whatsoever. For the purposes of clause (vi) above, Seller acknowledges that Seller knows the particular purpose for which Buyer intends to use the Goods or the Services. Seller further expressly warrants that, unless otherwise expressly stated in this Agreement, the Goods are manufactured entirely with new materials and none of the Goods is, in whole or any part, governmental or commercial surplus or used, remanufactured, reconditioned or of such age or condition so as to impair its fitness, usefulness or safety. The warranties in this subparagraph 14(a) are referred to in this Agreement as the "**Seller's Warranties**".
- (b) The Seller's Warranties are available to, and for the benefit of, Buyer, its subsidiaries and affiliates, their respective successors and assigns, the Customer and users of products containing the Goods or the Services. The warranty period shall be that provided by applicable law, except that if Buyer is obligated to provide a longer warranty period to the Customer pursuant to the Customer Terms, such longer period shall apply. The Seller's Warranties shall be in addition to all other warranties available under applicable law.
- (c) Seller shall indemnify and hold Buyer and the Customer, and their respective representatives, employees, agents, customers, invitees, subsidiaries, affiliates, successors and assigns, harmless from and against all liabilities, claims, demands, losses, costs, damages and expenses of any nature or kind (including consequential and special damages, personal injury, property damages, lost profits, recall or other Customer field service action costs, production interruption costs, inspection, handling and reworking charges, professional and other legal fees, and other costs associated with Buyer's administrative time, labor and materials) arising from or as a result of: (i) any breach of the Seller's Warranties; and (ii) any other acts, omissions or negligence of Seller or of any of its subcontractors or suppliers in connection with Seller's



performance of its obligations under this Agreement. No limitations on Buyer's rights or remedies in any of Seller's documents shall operate to reduce or exclude such indemnification.

- (d) Seller acknowledges that Buyer may defend any claim brought by the Customer that the Goods or Services are in breach of the Seller Warranties or are otherwise defective and do not meet the contractual requirements of this Agreement. Seller agrees that Buyer's action to defend such claims is in the interest of both Buyer and Seller and is done to mitigate damages. Seller waives the right to argue that Buyer's defense of such claims in any way limits Buyer's right to seek indemnity from Seller or assert a claim against Seller that Seller has breached the Seller's Warranties or otherwise failed to meet the legal and contractual requirements of this Agreement.
- (e) During the time period this Agreement remains in effect, Seller warrants that it will not supply the Goods or Services directly to the Customer for the OEM vehicle program for which Buyer intends to incorporate the Goods or Services without Buyer's prior written consent.

15. DEFECTIVE OR NON-CONFORMING GOODS OR SERVICES

- (a) If any of the Goods or the Services fail to meet the Seller's Warranties or Buyer's complete specifications in their entirety, Seller shall, upon notice thereof from Buyer at any time, promptly repair, replace or otherwise satisfactorily deal with the same in a manner acceptable to Buyer, all at Seller's expense and without limiting or affecting Buyer's other rights or remedies available hereunder or at law. The Seller's Warranties shall also apply to such repaired, replaced or otherwise satisfactorily dealt with the Goods or the Services.
- (b) If Seller fails to repair, replace or otherwise deal with any defective or non-conforming Goods or Services in a manner acceptable to Buyer, Buyer may, without limiting or affecting Buyer's other rights or remedies available hereunder or at law, cancel this Agreement as to the particular Goods or Services and/or cancel the then remaining balance of this Agreement.
- (c) After notice to Seller, all defective or non-conforming Goods shall be held at Seller's risk. Buyer may, and at Seller's direction shall, return such defective or non-conforming Goods to Seller at Seller's risk, and Seller shall promptly pay, upon Buyer's demand, all transportation and other applicable charges, both to and from the original destination.
- (d) Any payment made by Buyer for defective or non-conforming Goods or Services shall be refunded by Seller, except to the extent that Seller promptly replaces or corrects the same at Seller's expense.
- (e) None of Buyer, its subsidiaries or affiliates, or their respective successors, assigns, representatives, employees, agents or customers shall be liable for, or be obligated to indemnify or hold any of Seller, its subsidiaries or affiliates, or their respective successors, assigns, representatives, employees, agents, subcontractors or suppliers harmless from and against, any liabilities, claims, demands, costs, damages or expenses of any kind or nature (including personal injury, property damage, consequential or special damages) arising from or as a result of the improper, unsafe or defective materials, workmanship or design of the Goods or the Services.

16. INSPECTION AND QUALITY CONTROL

- (a) Buyer has the right to inspect any and all of the Goods, both prior to and after making payment therefor. Seller acknowledges and agrees that Buyer may choose not to perform incoming inspections with respect to the Goods, without prejudice to any rights or remedies available to Buyer hereunder or at law, and Seller waives any rights to require Buyer to conduct such inspections.
- (b) Buyer also has the right to inspect or test all materials and workmanship utilized by Seller in the performance of this Agreement, and Seller shall permit such inspection or testing by Buyer and/or the Customer to the extent practicable at all times and places, including during the period of manufacture. If any such inspection or testing is made on Seller's premises, Seller shall provide, without additional charge, all reasonable facilities and assistance. Inspection and approval at Seller's premises does not preclude rejection or other relief for any defects subsequently discovered. Seller shall provide and maintain, without additional charge, a testing and inspection system (which shall include documented quality control and reliability procedures) acceptable to Buyer covering the materials and workmanship utilized in the performance of this Agreement.
- (c) At Buyer's option, Buyer and/or the Customer may from time to time review and inspect Seller's testing, inspection, quality control and reliability procedures, as well as the records and data supporting the same. Seller shall comply with Buyer's most recently adopted quality control specifications, inspection standards and quality assurance manuals as may be supplied by Buyer to Seller directly, or as may be posted on Buyer's Website from time to time. Seller shall, if requested by Buyer, furnish certificates indicating such compliance.
- (d) Buyer's payment for and/or acceptance of the Goods or the Services shall not relieve Seller from any of its obligations and/or warranties under this Agreement. Subject to Buyer's rights under subparagraph 17(b) respecting Buyer's title to the Goods upon payment therefor, in no event shall payment for the Goods or the Services be deemed to constitute acceptance by or on behalf of Buyer for any other purposes hereunder or at



law.

- (e) Seller will conform to the quality control standards and inspection systems, as well as related standards, policies and systems, which are established or required by Buyer and, to the extent directed by Buyer, the Customer. Seller agrees to meet the full requirements of industry Production Part Approval Processes (PPAP) as specified by Buyer and the Customer, as applicable, and agrees to present this information to Buyer upon request, at the level requested, unless otherwise specifically agreed by Buyer in writing.

17. MATERIALS, EQUIPMENT, TOOLS AND FACILITIES

- (a) Unless otherwise expressly stated in this Agreement, Seller shall supply at its own expense all materials, equipment, tools, jigs, dies, fixtures, patterns, drawings, specifications, samples and facilities required to perform this Agreement (“**Seller’s Property**”). Seller grants Buyer an irrevocable option to take possession of and title to the Seller’s Property that is special for the production of the Goods, upon payment to Seller of its net book value less any amounts that Buyer has previously paid to Seller for the cost of such items; provided, however, that this option shall not apply if the Seller’s Property is used to produce goods that are the standard stock of Seller or if a substantial quantity of similar goods are being sold by Seller to others.
- (b) Notwithstanding any other provision in this Agreement, Seller expressly acknowledges and agrees that: (i) all materials, parts, components, assemblies, equipment, tools, jigs, dies, fixtures, patterns, drawings, specifications, samples and facilities, including any replacements thereof, any materials affixed or attached thereto and any special tooling produced by Seller for the performance of its obligations under this Agreement (“**Tooling**”), that are furnished to Seller or specifically paid for, in whole or in part, by Buyer (including pursuant to subparagraph 17(a)) or by the Customer; and (ii) all of the Goods that have been paid for, in whole or in part, by Buyer, whether or not Buyer has exercised its rights of inspection in respect thereof (all items in clauses (i) and (ii) above, collectively the “**Buyer’s Property**”), shall be held by Seller on a bailment basis and remain the property of, with both title and the right of possession in, Buyer and without limitation to any rights and remedies available hereunder or at law.
- (c) Notwithstanding any other provision in this Agreement, Seller expressly acknowledges and agrees that Tooling shall never be used to produce or distribute or sell any of the Goods to any other third party as this is expressly forbidden without a written authorization from Buyer.
- (d) The Buyer’s Property, while in Seller’s custody or control and while in the custody or control of Seller’s suppliers, contractors or agents, shall be held at Seller’s risk, shall be kept insured by Seller at Seller’s expense against loss or damage in an amount equal to the replacement cost thereof, and shall be subject to removal at Buyer’s written request. Seller shall promptly notify Buyer of the location of the Buyer’s Property, if any are located at any place other than Seller’s facility. Unless otherwise expressly stated in this Agreement, Seller shall maintain accounting and property control records for the Buyer’s Property in accordance with sound industrial practices. Seller shall, at Seller’s expense, maintain the Buyer’s Property in good condition and repair, and shall replace any of the Buyer’s Property if, as and when necessary or reasonably required. Buyer does not provide any warranties with respect to the Buyer’s Property. Upon completion or termination of this Agreement, Seller shall retain on a bailment basis for Buyer, as aforesaid, the Buyer’s Property still then in the physical possession of Seller, at Seller’s expense, until disposition directions are received from Buyer. Upon receipt of Buyer’s demand or disposition directions, Seller shall, at Seller’s expense, prepare the Buyer’s Property for shipment and shall deliver it to such locations as may be specified by Buyer. The Buyer’s Property shall be in no less than the same condition as originally received by Seller, reasonable wear and tear excepted. If Buyer or Seller defaults under this Agreement, Seller shall upon Buyer’s demand immediately deliver the Buyer’s Property to Buyer and, if Buyer so requests, grant Buyer access to Seller’s premises for the purpose of removing the Buyer’s Property.
- (e) All materials, supplies and services to be manufactured, produced or provided in conjunction with this Agreement must be in strict accordance with the specifications set forth in this Agreement or as otherwise specified by Buyer to Seller.
- (f) Seller shall use the Buyer’s Property referenced in clause 17(b)(i) solely for the purpose of performing its obligations under this Agreement.
- (g) Seller hereby grants to the Buyer a first priority security interest in the Buyer’s Property and such interest shall remain in force until the Buyer’s Property is no longer in the control or possession of the Seller.
- (h) If so requested by Buyer, Seller shall deliver to Seller, in form and substance satisfactory to Buyer, and duly executed as required by Buyer, financing statements and other security interest perfection documentation in form and substance satisfactory to Buyer, duly filed under the applicable person property security legislation in all jurisdictions as may be necessary, or in Buyer’s opinion, desirable, to perfect Buyer’s security interest and lien in the Buyer’s Property, in order to establish, perfect, preserve and protect Buyer’s security interest as a legal, valid and enforceable security interest and lien, and all property or documents of title, in cases in which possession is required for the perfection of Buyer’s security interest.

18. INTELLECTUAL PROPERTY

- (a) APPLICABILITY - This Section will apply where the Parties have not entered into a separate written



agreement signed by their respective authorized representatives prior to or contemporaneous with the effective date of this Agreement with respect to the Parties' Intellectual Property Rights (defined below) that expressly prevails over this Agreement.

- (b) DEFINITIONS - "Intellectual Property Rights" means any patent, patented articles, patent applications, designs, industrial designs, copyrights, software, source code, database rights, moral rights, inventions whether or not capable of protection by patent or registration, techniques, technical data, trade secrets, know-how, and any other proprietary right, whether registered or unregistered, including applications and registrations thereof, all related and continuing rights, and all similar or equivalent forms of protection anywhere in the world. Intellectual Property Rights excludes all brands, trademarks, trade names, slogans and logos of Seller and Buyer unless specifically identified as a deliverable or work product of Seller pursuant to this Agreement.
- (c) "Background Intellectual Property Rights" means any Intellectual Property Rights of either Buyer or Seller relating to the goods or services contracted (i) existing prior to the effective date of this Agreement or prior to the date Buyer and Seller began any technical cooperation relating to the goods or services contracted, whichever is earlier, or (ii) that each party acquires or develops after these dates but in a strictly independent manner and entirely outside of any work conducted under this Agreement.
- (d) "Foreground Intellectual Property Rights" means any Intellectual Property Rights, except Background Intellectual Property Rights, (i) that are developed in whole or in part by Buyer alone, by Buyer and Seller jointly or by Seller alone, in connection with this Agreement or (ii) relating to the goods or services contracted.
- (e) FOREGROUND INTELLECTUAL PROPERTY RIGHTS - Buyer and Seller will each retain ownership of any Foreground Intellectual Property Rights that are solely created or made by their respective employees, agents or subcontractors ("Personnel"). Buyer and Seller will jointly own any Foreground Intellectual Property Rights that are jointly created or made by Personnel of both Buyer and Seller with the ability to grant licenses without consultation and no duty of accounting to each other for any use or purpose. For clarity, unless an express written period of exclusivity has been promised to Buyer, Foreground Intellectual Property Rights owned or controlled by Seller may be immediately exploited by Seller in connection with its business with its other customers and will not be exclusive to Seller's performance of this Agreement. Seller hereby grants to Buyer and causes its affiliates and Personnel to grant to Buyer, an irrevocable, worldwide, nonexclusive, perpetual to the maximum extent permitted by law, royalty free, fully paid-up license, with right to sublicense, to all Foreground Intellectual Property Rights to make, have made, use, reproduce, modify, improve, prepare derivative works of, distribute, display, perform, offer to sell, sell and import, without limitation.
- (f) BACKGROUND INTELLECTUAL PROPERTY RIGHTS - Buyer and Seller will each retain ownership of their respective Background Intellectual Property Rights.
- (g) Seller hereby grants to Buyer and causes its affiliates and Personnel to grant to Buyer, an irrevocable, worldwide, nonexclusive, royalty free, fully paid-up license, with right to sublicense to Buyer's affiliates, to all Background Intellectual Property Rights to make, have made, use, reproduce, modify, improve, prepare derivative works of, distribute, display, perform, offer to sell, sell and import the goods or services that are the subject of this Agreement (the "**Limited License**"), provided that Buyer or its affiliates will only use this Limited License in the event that (i) Seller breaches or repudiates its obligations by being unable or unwilling to deliver goods or services under this Agreement, or (ii) in the event Seller is unable to supply goods or services under this Agreement as a result of a force majeure event, but in such event only for the duration of Seller's inability to supply. In no event will the term of the Limited License extend beyond the expiration date of this Agreement.
- (h) COPYRIGHTS - To the extent that this Agreement is issued for the creation of copyrightable works, the works will be considered "works made for hire" for Buyer except to the extent that the works do not qualify as "works made for hire" for Buyer in which case Seller hereby assigns to Buyer all right, title and interest in all copyrights and if lawfully permitted waives all moral rights therein.
- (i) RIGHT TO REPAIR - For the avoidance of doubt, Buyer its Customer, and its subcontractors have the right to repair, reconstruct, remanufacture, refresh, or rebuild the specific goods delivered under this Agreement without payment of any royalty to Seller.
- (j) MISCELLANEOUS - Goods manufactured based on Buyer's drawings, designs, and/or specifications as well as any software code or models provided by Buyer may not be used for Seller's own use or sold to third parties without Buyer's express written authorization.
- (k) Nothing in this Agreement is an admission by Buyer of the validity of any Intellectual Property Rights claimed by Seller, including an admission that any license is required by Buyer to manufacture the goods or continue the services contracted. Seller will claim and acquire all rights and waivers of Seller's personnel required to enable Seller to grant Buyer the rights and licenses in this Agreement. Seller assumes full and sole responsibility for compensating Seller's personnel for such rights and waivers, including the remuneration of employees.
- (l) Seller, on behalf of itself and Buyer and its Customer will comply with all obligations with respect to



software that forms any part of the goods or services contracted, including obligations under any licenses.

- (m) Seller shall not manufacture or provide, or offer to manufacture or provide, any goods or services that are based in whole or in part upon Buyer's intellectual property and/or the drawings or specifications in respect of the Goods or the Services, or any derivative thereof, whether for its own purposes (other than to satisfy its obligations under this Agreement), for the Customer or any other third parties, without Buyer's prior written consent. The foregoing restriction shall not apply in respect of "off-the-shelf" or "catalogue" goods or services that have been routinely manufactured or provided by Seller and developed by Seller, in each case prior to this Agreement and independently of its relationship with Buyer.
- (n) **INTELLECTUAL PROPERTY INDEMNIFICATION** - Seller will investigate, defend, hold harmless and indemnify Buyer, its Customer against any actual or alleged claims of infringement or other assertions of proprietary rights violations (including patent, trademark, copyright, industrial design right, or other proprietary right, misuse, or misappropriation of trade secret) and resulting damages and expenses (including attorney's and other professional fees) arising in any way in relation to the goods or services contracted, including such claims where Seller has provided only part of the goods or services (collectively "**IP claims**"). Seller expressly waives any claim against Buyer that any such IP Claims arose out of compliance with Buyer's or its Customer's specification or direction.

19. CONFIDENTIALITY AND NON-DISCLOSURE

- (a) Seller shall consider and treat all Information, as defined in subparagraph 18(b) or as agreed by the Parties in separate confidentiality and non-disclosure agreement, the terms of which are incorporated into this Agreement, as confidential and shall not disclose any Information to any other person, or use any Information itself for any purpose other than pursuant to and as required by this Agreement, without Buyer's prior written consent. Buyer retains all rights with respect to the Information, and Seller shall not acquire, nor attempt to obtain, any patent, trademark, copyright, license or other rights in respect of the Information. Seller shall not allow any Information to be reproduced, communicated or in any way used, in whole or in part, in connection with services or goods furnished to others, without Buyer's prior written consent.
- (b) For the purposes of this Agreement, "**Information**" means all 2D or 3D drawings, reproductions, specifications, designs, engineering instructions, photographs, reproducible copy, parts lists, plans, reports, working papers, computations and other information furnished by Buyer whether in writing or orally or any other form of transmission and shall include all terms and conditions and any other information relating to this Agreement.
- (c) Seller shall not advertise or otherwise disclose the fact that Buyer has contracted to purchase the Goods or the Services from Seller, without Buyer's prior written consent.
- (d) Seller will not, without first obtaining the written consent of Buyer, in any manner (a) advertise or publish the fact that Seller has contracted to furnish Buyer the goods or services covered by this Contract; (b) use Buyer's trademarks, trade names or confidential information in Seller's advertising or promotional.
- (e) All drawings and samples shall be treated confidentially by Seller, remain the property of the Buyer, and must be returned to Buyer after usage.

20. DISCLOSURE TO BUYER

Unless otherwise expressly stated in this Agreement and except as may be agreed in a prior written agreement between Buyer and Seller, no commercial, financial or technical information furnished or disclosed in any manner or at any time by Seller to Buyer shall be deemed to be secret or confidential, and Seller shall have no rights against Buyer or the Customer with respect to any use or disclosure of such information.

21. COMPLIANCE WITH LAWS

- (a) A Seller's performance of its obligations under this Agreement shall be in compliance with all federal, provincial, state and local laws, ordinances, rules, codes, standards and regulations that are applicable to this Agreement, including but not limited to the United States Foreign Corrupt Practices Act, the Arms Export Control Act, the International Traffic in Arms Regulations, the Export Administration Act and the Export Administration Regulations, including the requirement for obtaining any export license or agreement, if applicable (collectively, "**Laws**"). Seller shall furnish Buyer with certificates of compliance, where required under such applicable Laws or when requested by Buyer. Each invoice rendered to Buyer under this Agreement shall constitute written assurance by Seller that Seller has fully complied with all applicable Laws.
- (b) Seller shall package, label and transport the Goods and their containers, in particular those which constitute a health, poison, fire, explosion, environmental, transportation or other hazard, in compliance with all applicable Laws in effect in the place to which the Goods are shipped or as otherwise specified by Buyer. Upon request, Seller shall furnish Buyer with information regarding the ingredients of the Goods.
- (c) Seller represents that: (i) neither it nor any of its subcontractors or suppliers will either engage in or permit substandard working conditions in the supply of the Goods or the Services under this Agreement, (ii) child



labor or underage labor, as defined by applicable law, will not be utilized, (iii) it will not allow any form of forced or compulsory labor, (iv) workers, without fear of reprisal, intimidation or harassment, shall have the right to associate freely and join labor unions and workers' councils or to otherwise refrain from joining such organizations as they so choose, in accordance with applicable laws, (v) workers shall be protected against any form of harassment and discrimination in any form, including but not limited to gender, age, religion, disability and political beliefs, (vi) workers shall have a safe and healthy workplace that meets or exceeds all applicable standards for occupational health and safety, (vii) workers shall be compensated with wages and benefits that comply with applicable law, including minimum wages, overtime hours and legally mandated benefits and (viii) working hours shall comply with all applicable laws regulating hours of work.

- (d) Seller shall indemnify and hold Buyer, its subsidiaries and affiliates, their respective successors, assigns, representatives, employees and agents, and the Customer harmless from and against all liabilities, claims, demands, losses, costs, damages and expenses of any kind and nature (including personal injury, property damage, consequential and special damages) arising from or as a result of Seller's failure to comply with this paragraph 21.

22. SELLER'S ENTRY UPON BUYER'S OR CUSTOMER'S PREMISES

If Seller or any of its representatives, employees, agents, subcontractors or suppliers (collectively, "Seller Parties") enter upon the premises owned or controlled by Buyer or its subsidiaries or affiliates (the "Buyer's Premises") or upon the Customer's premises, in each case in connection with Seller's performance of its obligations under this Agreement, Seller shall: (i) indemnify and hold Buyer and the Customer, and their respective representatives, employees, agents, customers, invitees, subsidiaries, affiliates, successors and assigns, harmless from and against all liabilities, demands, claims, losses, costs, damages and expenses of any kind or nature (including legal and other professional fees) by reason or on account of property damage, death and/or personal injury, arising from or as a result of Seller's performance of its obligations under this Agreement, which is or are occasioned by Seller Parties' actions, omissions or negligence; and (ii) ensure that Seller Parties are in compliance with all requirements of any workers' compensation legislation of the jurisdictions in which the Buyer's Premises or the Customer's premises are located.

23. INSURANCE

- (a) Seller shall maintain and carry: (i) property and general liability insurance, including public liability, property damage liability, product liability and contractual liability coverages; and (ii) workers' compensation and employers' liability insurance covering all employees engaged in the performance of this Agreement; in each case in such amounts and with such limits (subject to subparagraph 23(c)) and with such insurers that are reasonably acceptable to Buyer.
- (b) Unless otherwise expressly stated in this Agreement, Seller's liability insurance policies shall have combined single limits of no less than five million U.S. dollars (U.S.\$5,000,000) per occurrence and in the aggregate; provided that such limits shall not limit Seller's liability under this Agreement. Seller's property insurance policies shall be written on a "replacement cost" basis and Seller's workers' compensation policies shall be in compliance with applicable statutory requirements and limits.
- (c) Seller shall furnish Buyer with certificates or other satisfactory proof of insurance confirming the foregoing insurance coverages within ten (10) days of Buyer's request. Any such certificate shall provide for terms and conditions satisfactory to Buyer whereby, among other things: (i) the interest of Buyer in such insurance coverage has been recognized, whether by way of designating Buyer as loss payee or otherwise, as may be requested by Buyer from time to time; and (ii) Buyer will receive not less than thirty (30) days prior written notice from the insurer before any termination or reduction in the amount or scope of coverage can occur, with Buyer having the right, but not the obligation, to maintain such insurance coverage prior to the expiration of such notice. The receipt or review of such certificates or other proof of insurance coverage at any time by Buyer shall not relieve Seller from its insurance obligations hereunder or reduce or modify such insurance obligations.

24. TERMINATION FOR CONVENIENCE UPON NOTICE

- (a) In addition to any other rights of Buyer to terminate this Agreement, Buyer may, in its sole discretion, upon thirty (30) days prior written notice to Seller or, if applicable, such shorter period as may be required by the Customer, terminate this Agreement for convenience or any other reason, in whole or in part (other than the minimum quantities specified in subparagraph 5(b)) at any time, and notwithstanding the existence of any excusable delay or other events or circumstances affecting Seller. Buyer's notice to Seller may be given by facsimile, e-mail or other form of electronic transmission, and shall state the extent and effective date of termination. Seller may not terminate this Agreement for convenience or any other reason, except as otherwise expressly provided in this Agreement.
- (b) Upon receipt of notice of termination from Buyer, Seller shall, to the extent directed by Buyer or its



representatives: (i) stop work under this Agreement and any other orders related to work terminated by such notice; and (ii) protect all property in Seller's possession or control in which Buyer has or may acquire an interest, including the Buyer's Property. Seller shall promptly submit to Buyer any claims relating to such termination, and in any event within twenty one (21) days (unless Buyer agrees otherwise) from the effective date of such termination. Seller hereby grants Buyer the right to audit and inspect its books, records and other documents relating to any termination claims.

- (c) Buyer shall, in addition to making payment of the price specified in this Agreement for the Goods and the Services delivered or performed and accepted by Buyer prior to the effective date of termination, pay to Seller the following amounts, without duplication: (i) the price specified in this Agreement for the Goods and the Services manufactured or provided in accordance with the terms of this Agreement but not previously paid for; and (ii) the actual costs of work-in-process and parts and raw materials incurred by Seller in performing its obligations under this Agreement, to the extent such costs are reasonable in amount and are properly allocated or apportioned under Canadian generally accepted accounting principles (Canadian GAAP) to the terminated portion of this Agreement.
- (d) Buyer shall not be obligated to make any payment for: (x) the Goods, the Services, or work-in-process or parts or raw materials inventory that are manufactured, provided or procured by Seller in amounts in excess of those authorized in any Release, that are damaged or destroyed or that are not merchantable or useable; (y) any undelivered Goods that are in Seller's standard stock or that are readily marketable; or (z) work-in-process or parts or raw materials inventory that can be returned to Seller's suppliers or subcontractors for credit. Payments made in connection with a termination of this Agreement under subparagraph 24(a) shall not exceed the aggregate price for the Goods or Services that would be manufactured or provided by Seller under any Release outstanding at the effective date of termination. Except as provided in this subparagraph 24(c), Buyer shall not be liable for and shall not be required to make payments to Seller, directly or indirectly (whether on account of claims by Seller's subcontractors or otherwise), for any loss arising from or attributable to failure to realize anticipated revenue, savings or profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation cost or general and administrative burden charges from a termination of this Agreement. In the event of a termination of this Agreement by Buyer as a result of Buyer ceasing to be a supplier to the Customer for the vehicle program in respect of which Buyer issued this Agreement, Buyer shall only be obligated to compensate Seller for any costs under this paragraph if, when and to the extent that the Customer reimburses Buyer for such costs.
- (e) Subject only to subparagraph 17(b), Seller may, with Buyer's prior written consent, retain or sell at an agreed price any of the Goods, the Services, work in process or raw materials inventory, the cost of which is allocated or apportioned to this Agreement under clause 24(c)(ii), and shall credit or pay the amounts so agreed or received as Buyer directs, with an appropriate adjustment for any delivery cost savings. Seller shall, if directed by Buyer, transfer title to and make delivery of any Goods, work in process or raw materials inventory not so retained or sold.
- (f) Seller may choose to terminate this Agreement upon giving Buyer a minimum 36 months' notice and agreeing to cover Buyer's costs such as, but not limited to, tooling costs, re-validation costs, etc..

25. TERMINATION UPON SELLER'S DEFAULT OR CHANGE OF CONTROL

- (a) Buyer may terminate this Agreement, in whole or in part, for default occasioned by Seller's: (i) breach of any terms of this Agreement; (ii) failure to perform in accordance with the requirements of this Agreement; or (iii) failure to make progress so as to endanger timely and proper delivery of the Goods or completion of the Services and, in each such case, Seller does not correct such breach or failure within ten (10) days (or such shorter period of time as Buyer may determine, if commercially reasonable under the circumstances) after receipt of written notice from Buyer specifying such breach or failure. Seller shall be liable for all costs, damages and expenses caused by or resulting from its default under this Agreement.
- (b) Buyer may terminate this Agreement, in whole or in part, in the event of a change of control of Seller. For the purposes of this Agreement, a "change of control" includes: (i) any sale, lease or exchange of a substantial portion of Seller's assets used in connection with Seller's performance of its obligations under this Agreement; (ii) any sale or exchange of a sufficient number of shares of Seller, or of any affiliate that controls Seller, to effect a change in management of Seller; or (iii) the execution of a voting or other agreement of control in respect of Seller, or of any affiliate that controls Seller. Seller shall notify Buyer in writing within ten (10) days of any change of control of Seller, and Buyer may terminate this Agreement by giving written notice to Seller at any time up to sixty (60) days after Buyer's receipt of Seller's notice of change of control.
- (c) Any termination under this paragraph 25 shall be without liability to Buyer, except for the Goods delivered or the Services performed by Seller and accepted by Buyer.

26. TERMINATION UPON INSOLVENCY, BANKRUPTCY, ETC.



- (a) Either party may terminate this Agreement, without liability to the other party: (i) in the event of the insolvency, bankruptcy, reorganization, arrangement, receivership or liquidation by or against the other party; (ii) in the event that the other party makes an assignment for the benefit of its creditors or ceases to carry on business in the ordinary course; or (iii) if a receiver is appointed in respect of the other party or all or part of its property (collectively, an “Insolvency Event”). In the event of such termination, the other party shall be liable for all costs, damages and expenses suffered by the party that terminates this Agreement. Any such termination shall not affect the entitlement of Buyer with respect to the Buyer’s Property, including pursuant to subparagraph 17(b).
- (b) In the event that Buyer does not terminate this Agreement upon the occurrence of an event in subparagraph 26(a) in respect of Seller, Buyer may make such equitable adjustments in the price and/or delivery requirements under this Agreement as Buyer deems appropriate to address the change in Seller’s circumstances, including Seller’s on-going liability to perform its obligations regarding warranty, defective Goods or Services or other requirements under this Agreement.

27. TRANSITION OF SUPPLY

- (a) In connection with Buyer’s termination or non-renewal of this Agreement, or Buyer’s other decision to source the Goods and/or the Services from any alternate supplier(s), Seller will cooperate with Buyer in the transition of supply of the Goods and/or the Services, including the following: (i) Seller will continue production and delivery of all Goods and/or Services as ordered by Buyer, at the prices and other terms stated in this Agreement, without premium or other condition, during the entire period reasonably needed by Buyer to complete the transition to the alternate supplier(s), such that Seller’s action or inaction causes no interruption in Buyer’s ability to obtain the Goods and/or Services as needed; (ii) at no cost to Buyer, Seller will promptly provide all requested information and documentation regarding and access to Seller’s manufacturing process, including on-site inspections, bill-of-material data, tooling and process detail and samples of the Goods and/or Services and components; and (iii) subject to Seller’s reasonable capacity constraints, Seller shall provide special overtime production, storage and/or management of extra inventory of the Goods, extraordinary packaging and transportation and other special services (collectively, “Transition Support”) as expressly requested by Buyer in writing.
- (b) If the transition of supply occurs for reasons other than Buyer’s termination of this Agreement pursuant to paragraphs 25 or 26, Buyer shall, at the end of the transition period, pay the reasonable, actual cost of Transition Support as requested by Buyer and incurred by Seller, provided that Buyer has approved Seller’s estimate of such costs prior to Seller incurring such amounts.

28. SERVICE AND REPLACEMENT PARTS

- (a) Except as otherwise expressly agreed in writing, for fifteen (15) years after a vehicle design or specific part concludes production:
 - 1. Seller shall supply Buyer’s written “service parts” orders for the same Goods, component parts and materials, at the prices set forth in this Agreement plus any actual cost differential for special packaging. If the Goods are systems or modules, Seller shall sell each component or part at a price that does not, in the aggregate, exceed the system or module price specified in this Agreement, less assembly costs, plus any actual cost differential for packaging. Seller’s obligation with respect to service or replacement parts shall survive the termination or expiration of this Agreement.
 - 2. For the remainder of this period, the price(s) for goods will be as agreed to by the parties.
- (b) At Buyer’s request, Seller shall make service literature and other materials available at no additional charge to support Buyer’s service part sales activities.

29. RIGHT TO AUDIT AND FINANCIAL REVIEW

- (a) Seller grants to Buyer and to Buyer’s authorized agents and representatives access to all pertinent information, including electronic accounting data, books, records, payroll data, receipts, correspondence and other documents, for the purpose of auditing Seller’s charges under this Agreement, during the term of this Agreement and for an additional two (2) years after the final payment under this Agreement. Seller shall preserve such information for such period (or longer, if required by applicable law). In addition, all work, materials, inventories and other items provided for under this Agreement must at all times be accessible to Buyer and to Buyer’s authorized agents and representatives, including parts, tools, fixtures, gauges and models. Seller shall segregate its records and otherwise co-operate with Buyer so as to facilitate any such audit.
- (b) If such audit shows any price discrepancy or Seller’s non-compliance, Seller shall reimburse Buyer for such discrepancy or other loss caused by its non-compliance with this Agreement, together with interest at an annual rate of twelve percent (12%) (or such maximum rate allowed by applicable law, if lower), plus the cost of such audit.
- (c) Buyer, or a third party designated by and acting on behalf of Buyer, may at any time review the financial condition of Seller and its affiliates, and Seller shall fully co-operate in such review and shall make its



financial managers available for discussions during reasonable business hours. Buyer and any such designated third party shall keep confidential any non-public information about Seller and its affiliates obtained in such financial review and shall use such information only for purposes of such financial review, except as otherwise needed to enforce this Agreement.

30. BUYER'S WEBSITE

- (a) Buyer's internet website (or such other website as may be directed through links available on such website) as specified on the face of this Agreement ("Buyer's Website") may contain specific additional requirements for certain items covered by this Agreement, including labeling, packaging, shipping, delivery and quality specifications, procedures, directions and/or instructions. Any such requirements shall be deemed to form part of the Terms and this Agreement. Buyer may periodically update such requirements by posting revisions thereto on Buyer's Website. In the event of any inconsistency between this Agreement and Buyer's Website, the terms of this Agreement shall prevail, unless the requirements specified on Buyer's Website expressly provide otherwise.
- (b) Buyer may modify these purchase order terms and conditions from time to time by posting revised purchase order terms and conditions to Buyer's Website. Such revised purchase order terms and conditions shall apply to all purchase orders and purchase order revisions issued on or after the effective date thereof. Seller shall review Buyer's Website periodically.

31. SUBCONTRACTS

Seller will ensure that the terms of its contracts with its sub-suppliers and sub-contractors provide Buyer and the Customer with all of the rights specified in this Agreement, including but not limited to those set forth in subparagraph 3(a).

32. ASSIGNMENT

- (a) Seller shall not assign this Agreement or any portion hereof or work hereunder or any interest herein, except that Seller may, with Buyer's prior written consent, make an assignment of monies due or which may become due hereunder to a bank or other financing institution; provided that any such assignment by Seller shall be subject to set-off, deduction, recoupment or any other lawful means of enforcing any present or future claims that Buyer may have against Seller, and provided further that any such assignment shall not be made to more than a single assignee. In the event of any such assignment, Seller shall provide to Buyer, in addition to written notice of the assignment, a true copy of the instrument of assignment for Buyer's information only and, notwithstanding such receipt by Buyer, such notice of assignment and/or instrument of assignment shall not be deemed to vary or waive the provisions of this paragraph.
- (b) Buyer shall have the right to assign this Agreement or its interest herein, without Seller's consent, to any of its affiliates or to any purchaser or successor to Buyer's business.

33. RIGHT OF BUYER TO PERFORM

If Seller fails to perform any of its obligations under this Agreement, Buyer and its agents may, without limiting or affecting its other rights and remedies available hereunder or at law, but shall not be obligated to, perform such obligations without waiving or releasing Seller from such obligations. Where applicable, Buyer and its agents shall be entitled to enter upon Seller's premises to perform, or to remove the Tooling and all materials necessary to perform, such obligations. All costs, damages and expenses incurred directly or indirectly by Buyer in connection with the foregoing, including legal and other professional fees and Buyer's administrative time, labor and materials, shall be paid by Seller to Buyer on demand or, at Buyer's sole option, may be set off against and deducted from any amounts then owing by Buyer to Seller.

34. REMEDIES

- (a) The remedies reserved in this Agreement shall be cumulative and not alternative and may be exercised separately or together, in any order or combination, and are in addition to any other remedies provided for or allowed by law, at equity or otherwise.
- (b) Seller expressly acknowledges and agrees that any failure of Seller to deliver the Goods on the delivery dates and times as specified in this Agreement will cause irreparable harm to Buyer and that Buyer shall be entitled to equitable relief, including injunction, in such event.
- (c) Any proceeding or action initiated by Seller for breach of contract or any other act or omission (including tort) arising from or in any way related to this Agreement must be commenced within one (1) year from the date the breach, act or omission giving rise to Seller's claim occurs, regardless of Seller's knowledge of such breach, act or omission or of its consequences.

35. WAIVER

Either party's failure to insist on the performance by the other party of any Term or failure to exercise any right



or remedy reserved in this Agreement, or either party's waiver of any breach or default hereunder by the other party shall not, thereafter, waive any other terms, conditions, rights, remedies, breaches or defaults, whether of the same or a similar type or not.

36. MODIFICATIONS

No modification of this Agreement, including any waiver of or addition to any of the Terms, shall be binding upon Buyer, unless made in writing and signed by Buyer's authorized representative.

37. TORT OBLIGATIONS

Buyer's rights and Supplier's obligations under this Agreement shall not limit in any way whatsoever Seller's common-law tort obligations or Buyer's right to sue in tort in addition, or as an alternative, to suing in contract. Seller hereby waives the right to sue in tort in respect of any matter that is addressed, in whole or in part, by the terms and conditions of this Agreement.

38. RELATIONSHIP OF THE PARTIES

Seller and Buyer are independent contracting parties and nothing in this Agreement shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does this Agreement grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. None of the persons engaged by Seller in the performance of its obligations under this Agreement shall be considered as employees of Buyer.

39. ELECTRONIC COMMUNICATION

40. SEVERABILITY

If any provision of this Agreement is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such provision 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 this Agreement shall remain in full force and effect.

41. NOTICES

- (a) Except as otherwise expressly stated in this Agreement, any notice given or other communication sent under this Agreement shall be in writing and shall be properly delivered to its addressee by hand, prepaid courier, registered mail, e-mail (receipt confirmed) or facsimile (receipt confirmed) at the applicable address noted on the face of this Agreement. Any notice or communication given as provided herein shall be deemed to have been received at the time of its delivery if delivered by hand, on the business day following its dispatch if transmitted by courier, e-mail or facsimile or on the third business day following its mailing if transmitted by registered mail. Either party may notify the other party, in the manner provided for herein, of any change of address, for the purpose of giving notices or sending communications under this Agreement.
- (b) Seller's failure to provide any notice, claim or other communication to Buyer in the manner and within the time periods specified in this Agreement 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.

42. SURVIVAL

The obligations of Seller to Buyer shall survive termination of this Agreement, except as otherwise expressly stated in this Agreement.

43. NATURE OF RELATIONSHIP

For the purposes of this Agreement, the Parties are deemed to be independent contractors. It is expressly agreed that this Agreement and the relationship between the Parties hereby established do not constitute a partnership, joint venture, agency or contract of employment. Neither Party shall have the authority to make any statements, representations or make commitments of any kind, or to take any action, which shall be binding on the other, except as authorized in writing by the Party to be bound. Neither Party shall bind nor attempt to bind the other to any contract or to the performance of any obligation, nor represent to third parties that it has any right to enter into any obligation on the other's behalf.

44. COMMUNICATION

Buyer will prescribe the methods of communication between Seller and Seller agrees to follow Buyer's prescriptions.

45. WAIVERS

Either Party's (i) waiver of any performance by the other, (ii) waiver of any condition of this Agreement, or



(iii) consent to any breach of this Agreement by the other, shall (a) be effective only if expressly set forth in a writing signed by the Party alleged to have waived or consented, and (b) not constitute or require an ongoing waiver of such performance or condition, or consent to any previous, different or subsequent breach, regardless of whether such performance, condition or breach is similar, identical or related, and regardless of the course of dealing which develops or has developed between the Parties.

46. SIGNATURES; COUNTERPARTS

This Agreement and any related amendments or other documents or instruments between or among any two or more of its Parties shall be binding if signed by the Parties thereto, regardless whether their signatures appear together on the same document or separately on one or more counterparts. Counterparts separately signed by one or more Parties shall, when taken together, constitute a single fully-signed original.

47. GOVERNING LAW AND JURISDICTION

- (a) If the location of Buyer from which this Agreement issued is in The Greater Area of Toronto, Ontario, Canada, this Agreement shall be interpreted and enforced in accordance with the local, domestic laws of the Province of Ontario and of Canada, exclusive of the choice of law rules thereof. Except as otherwise expressly stated in this Agreement, if the location of Buyer from which this Agreement issued is other than as set forth above and is not in Europe, this Agreement shall be interpreted and enforced in accordance with the local, domestic laws of the Province of Ontario and of Canada, exclusive of the choice of law rules thereof. For greater certainty, the *United Nations Convention on Contracts for the International Sale of Goods* to the extent it may be deemed to apply, shall not, pursuant to Article 6 thereof apply to this Agreement.
- (b) Any litigation on contractual claims arising from this Agreement may be brought by Buyer in any court having jurisdiction over Seller or, at Buyer's option, in any court having jurisdiction over any Buyer's locations specified in this Agreement, in which event Seller consents to jurisdiction and service of process in accordance with applicable procedures. Any claim or proceeding by Seller against Buyer may be brought by Seller only in the court having jurisdiction over the location of Buyer from which this Agreement issued.
- (c) Seller irrevocably waives and agrees not to raise any objection it might now or hereafter have to any such claim or proceeding in any such court, including any objection that the place where such court is located in an inconvenient forum or that there is any other claim or proceeding in any other place relating in whole or in part to the same subject matter.
- (d) The obligations established under this Agreement, and any dispute or court action or arbitration arising from or related to this Agreement, shall be governed by the laws of the Province of Ontario and any relevant Canadian federal law without reference to "conflict of laws" principles or provisions.
- (e) The provincial courts within the Province of Ontario shall have exclusive jurisdiction to adjudicate any dispute arising out of this Agreement. In any legal action to enforce or arising out of a sale subject to this Agreement, the prevailing Party shall be awarded all court costs and reasonable legal fees and disbursements incurred.



ARBITRATION

In the event any dispute arises between the Parties hereto, then the Parties hereto agree to use their best efforts to settle the dispute in a conciliatory manner through arbitration. This applies particularly in relation to disputes arising from the interpretation of the Agreement, the completion or breach of a contractual provision or any other matter in relation to this Agreement or the exercise of a right or proper completion of a contractual obligation or any other obligation arising out of the legal relationship between the parties.

If any dispute or controversy shall occur between the parties hereto relating to the interpretation or implementation of any of the provisions of this Agreement, such dispute shall be resolved by arbitration. Such arbitration shall be conducted in English and by a single arbitrator.

The arbitrator shall be appointed by agreement between the parties or, in default of agreement, such arbitrator shall be appointed by a Judge of the Ontario Court of Justice (General Division) sitting in the Judicial District of York, upon the application of any of the said parties and a Judge of the Ontario Court of Justice (General Division) sitting in the Judicial District of York shall be entitled to act as such arbitrator, if he so desires. The arbitration shall be held in the Municipality of Metropolitan Toronto. The procedure to be followed shall be agreed by the parties or, in default of agreement determined by the arbitrator. The arbitration shall proceed in accordance with the provisions of the *Arbitrations Act* (Ontario). The arbitrator shall have the power to proceed with the arbitration and to deliver his award notwithstanding the default by any party in respect of any procedural order made by the arbitrator. It is further agreed that such arbitration shall be a condition precedent to the commencement of any action at law. The decision arrived at by the board of arbitration, howsoever constituted, shall be final and binding and no appeal shall lie therefrom. The decision arrived at by the board of arbitration, howsoever constituted, shall be final and binding and no appeal shall lie therefrom. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.



PO NUMBER:

SELLER NAME:

SELLER ADDRESS:

Seller hereby acknowledges receipt of a copy of this purchase order and the terms and conditions attached as a schedule thereto and that the Seller is in agreement with the Purchase Terms as such term is defined therein. The Purchase Terms as stated are expressly acknowledged and agreed upon by the Seller upon completion of this Agreement and shall form part of this Agreement.

SELLER SIGNING OFFICER NAME:

SELLER SIGNING OFFICER SIGNATURE:

DATE: