

## Summit Polymers, Inc. Terms and Conditions of Purchase - Production

### **1. The Terms and Conditions that Apply**

- (a) Goods and Services: The Terms and Conditions apply to the purchase by the Buyer of production goods, services, and Tech Products from the Supplier including: (a) production and service parts, components, assemblies and accessories, including without limitation commercial software, developed software, and Supply Data (b) raw materials; (c) tooling; and (d) design, engineering, or other services, including without limitation any software as a service, software maintenance or support.
- (b) What is Being Purchased: The Purchase Order describes the goods, services, and Tech Products being purchased and specifies the name and address of the Buyer and the Supplier. The goods and services purchased are referred to as Goods or, in the case of Prototype Tool Order or Production Tool Order, the Tooling.
- (c) Terms and Conditions that Apply: The contract between the Buyer and the Supplier for the purchase and sale of the Goods is the Purchase Order. The Purchase Order includes the Terms and Conditions, and any other applicable documents that are issued by the Buyer, or signed by the Buyer and the Supplier, relating to the purchase and sale of the Goods. Buyer may issue Purchase Orders from time to time under the Terms and Conditions of Purchase. Supplier may not offer terms or conditions that are in addition to or different than those that make up a Purchase Order, all of such Supplier terms are deemed material and hereby rejected by Buyer. Acceptance of a Purchase Order is expressly limited to the terms set forth in such Purchase Order. The latest revision of Terms and Conditions can be found via Buyer's website portal ([www.summitpolymers.com](http://www.summitpolymers.com)) or obtained directly from Buyer.
- (d) Effective Date: The effective date is shown on the Purchase Order. It is the date on which the Purchase Order went into effect.
- (e) Binding Effect: Revisions to the Purchase Order documents that are made after the Effective Date or after the beginning of a Renewal Term.
- (f) Supplier Terms and Conditions: No terms or conditions proposed by the Supplier or any person other than the Buyer apply.

### **2. When the Contract is Formed**

- (a) Buyer's Offer: When the Buyer issues a Purchase Order, it makes an offer to purchase the Goods or Tooling from the Supplier on the terms and conditions specified in section 1.
- (b) Blanket Purchase Orders: For Blanket Purchase Orders, the offer is made when the Buyer issues a Release. The offer applies for only the quantity specified in the Release.
- (c) Supplier Acceptance: The contract is formed when the Supplier accepts the offer of the Buyer. This occurs upon the earlier of: (a) the Supplier beginning work or performance; or (b) the Supplier notifying the Buyer of its acceptance of the offer. Supplier specifically waives any requirement for signed acceptance of these general terms and conditions and of a purchase order, and Supplier and Buyer each waive any defense to the validity and enforceability of a Purchase order arising from the electronic submission of a Purchase Order to Supplier and Supplier's acceptance of the Order in accordance with these Terms and Conditions of Purchase.
- (d) Exceptions: Any exception, deviation, amendment, modification or waiver of any provision of the Terms and Conditions or any Purchase Order will be binding on Buyer only if it has been (a) in a Written Notice; and (b) approved by the Vice President of Purchasing.

### **3. Invoicing; Pricing; Taxes; Competitiveness.**

(a) The stated price of Goods or Tooling set forth in any Purchase Order includes storage, handling, packaging, freight, insurance, transportation, and all other expenses, costs and charges of Supplier, and no surcharges, premiums or other additional charges of any type shall be added without Buyer's express written consent. Prices are not subject to increase unless specifically stated in the Order and Supplier assumes the risk of any event or cause affecting prices, including without limitation, foreign exchange rate changes, increases in raw material costs, inflation, increases in labor and other production and supply costs, and any other event which impacts the price or availability of materials or supplies.

(b) All invoices under an Order must reference the purchase order number, amendment or release number, Buyer's part number, Supplier's part number where applicable, quantity of pieces in the shipment, number of cartons or containers in the shipment, Supplier's name and number, bill of lading number and other information required by Buyer. All correspondence must include the purchase order number. If requested by Buyer, all invoices under the Order must be accompanied by the Supplier's sworn statement indicating the status of payments to Supplier's subcontractors and suppliers as of the date of invoice, and, if requested by Buyer, all invoices must be accompanied by lien waivers, in form satisfactory to Buyer, executed by Supplier and Supplier's subcontractors and suppliers. No invoice may reference any term separate from or different than these Terms or the terms that appear on the face of the Order. Buyer reserves the right to return incorrect invoices or related documents.

(c) Payment will be made against correct invoices and documentation provided to Buyer in compliance with these Terms, subject to adjustments, set-offs, discrepancies and other unresolved issues.

(d) The stated price set forth in an Order (unless Buyer otherwise agrees in writing) also includes all applicable taxes, excises, duties and other governmental impositions, except for any value added tax (VAT) imposed by a non-USA jurisdiction, which must be shown separately on Supplier's invoice for each shipment, and Buyer is not liable for any business activity taxes, payroll taxes, or taxes on Supplier's income or assets. Supplier shall also be responsible for any state and local property taxes assessed on tooling. In order to fulfill its responsibility with respect to state and local property taxes on tooling, Supplier will include such tooling on its own property rendition forms and pay property taxes on such tooling as if it were owned by Supplier. Buyer will cooperate with Supplier in obtaining any necessary approvals as may be required by state or local authorities for this procedure. Supplier shall comply with all applicable valuation and reporting rules for such tooling, including the use of valid non-standard valuations as may be appropriate to accurately reflect the true value of the tooling and legally minimize property tax liabilities. Supplier shall pay all taxes assessed on such tooling directly to the appropriate authorities in a timely manner. Supplier shall be responsible for all personal property tax audits and other inquiries by the state and local taxing authorities concerning the tooling. Supplier shall perform the foregoing activities at its own cost and will indemnify Buyer for any taxes, penalties, interest, legal fees, or other costs incurred by Buyer as a result of Supplier's failure to properly perform these activities. As owner of the tooling, Buyer is entitled to all federal and state income and franchise tax credits applicable to such tooling investment.

(e) Supplier shall indemnify and hold Buyer harmless for Supplier's failure to pay any wages, benefits, taxes or other compensation or amounts owed by Supplier on account of the Supplies.

(f) Supplier represents and warrants that the prices (and related commercial terms and conditions) of Supplies are, and will assure that such prices (and related terms and conditions) remain, no less favorable to Buyer than any price (and related commercial terms and conditions) which Supplier presently, or in the future, offers to any other customer (including any Customer as defined in Section 16) for the same or similar goods and/or services for similar quantities. If Supplier offers a lower price (or other commercial terms more favorable to Supplier's customer) for the same or similar goods and/or services to any other customer during the term of an Order, then Supplier will immediately offer Buyer the same price (and related commercial terms and conditions) as offered to the other customer. Supplier also represents and warrants that the Supplies will remain competitive in terms of price and related commercial terms and conditions, as well as in terms of technology, quality and delivery, with substantially similar goods and services available to Buyer from other suppliers.

(g) Supplier represents and warrants to Buyer that Supplier will fully disclose to Buyer, and give Buyer the full and sole benefit of (unless otherwise expressly agreed by Buyer following disclosure thereof by Supplier), any and all discounts, refunds, rebates, credits, allowances or other financial or related incentives or payments of any kind to be provided or agreed to be provided by Supplier (or any affiliate thereof) to any direct or indirect customer of Buyer (or any affiliate of

such customer) and relating in any way to, and/or based on or determined, in whole or in part, with reference to Buyer's purchases of Supplies from Supplier under the Purchase Order.

#### **4. Quantities; Delivery**

(a) Quantities listed in an Order as estimated are Buyer's best estimate of the quantities of Supplies it might purchase from Supplier for the contract term specified in the Order. Supplier acknowledges that any estimates or forecasts of production volumes or program durations, whether from Buyer or the Customer, are subject to change from time to time, with or without notice to Supplier. Unless otherwise expressly stated in the Order, Buyer makes no representation, warranty, guaranty or commitment of any kind or nature, whether express or implied to Supplier in respect of Buyer's quantitative requirements for the Supplies or the term of supply of the Supplies.

(b) The Order is a requirements contract. All references herein to "the Order" shall include any related Material Authorization Releases. If the Order covers services, Buyer is required to purchase such services to the extent expressly stated in a Statement of Work signed by Buyer. Unless expressly stated on the face of the Order, Buyer is not required to purchase Supplies exclusively from Supplier. Buyer may require Supplier to participate in electronic data interchange or similar inventory management program, at Supplier's expense, for notification of Material Authorization Releases, shipping confirmations and other information. Material Authorization Releases are part of the Order and are not independent contracts. Supplier acknowledges and agrees to accept the risk associated with lead times of various raw materials and/or components if they are beyond those provided in authorized Material Authorization Releases.

(c) The risk of loss passes from Supplier to Buyer upon delivery to Buyer's designated facility, unless otherwise agreed to in writing by Buyer. Time and quantities are of the essence under an Order. Supplier agrees to 100% on-time delivery of the quantities and at the times specified by Buyer, as set forth in an Order and related Material Authorization Releases. Failure to meet agreed delivery and quantities shall be considered a breach of the Order, and Supplier shall pay to Buyer any damages or expenses imposed upon or incurred by Buyer. Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which entitles Supplier to modify the price for Supplies covered by the Order. Buyer is not obligated to accept early deliveries, late deliveries, partial deliveries or excess deliveries. Incoterms 2020 will apply to all shipments except those entirely within the USA, except as otherwise stated in an Order including these Terms.

(d) In order to assure the timely delivery of Supplies, Supplier will, upon written request by Buyer's authorized purchasing representative, manufacture goods in excess of Buyer's current Orders to serve as a reserve for shipment, at such inventory reserve level as may be set by Buyer from time to time, to meet Buyer's requirements and to meet any unforeseen delays due to any reason whatsoever. Until such item of Supplies is purchased by Buyer from Supplier, the same shall remain the property of Supplier, and shall be held by Supplier at its sole risk and expense.

(e) Supplier must assure overall equipment (shared and specific) and plant capacities are adequate to meet Buyer's needs. Ongoing capacity analysis must account for scrap variation, downtime, maintenance, and other Customer requirements.

#### **5. Premium Freight; Related Costs**

(a) Supplier pays all premium freight costs over normal freight costs if Supplier needs to use an expedited shipping method to meet agreed upon delivery dates due to its own acts or omissions. Supplier pays any costs incurred by Buyer, including costs charged by Buyer's Customer(s) to Buyer, as a result of Supplier's failure to comply with shipping or delivery requirements.

(b) Supplier shall ship all late shipments by express or priority methods of delivery at its expense as requested by Buyer.

(c) Buyer is not liable for premium freight costs, unless specifically agreed to in advance, in writing, by Buyer.

## **6. Packaging; Marking; Shipping; Disclosure; Special Warnings or Instructions**

(a) Supplier agrees to: (i) properly pack, mark and ship Supplies in accordance with the requirements of Buyer, the involved carriers and the country of destination, (ii) route the shipments in accordance with Buyer's instructions, (iii) label or tag each package according to Buyer's instructions, (iv) provide papers with each shipment showing the purchase order number, amendment or release number, Buyer's part number, Supplier's part number (where applicable), number of pieces in the shipment, number of containers in the shipment, Supplier's name and number, and the bill of lading number, and (v) promptly forward the original bill of lading or other shipment receipt for each shipment in accordance with Buyer's instructions and carrier requirements.

(b) Supplier will promptly provide Buyer with the following information in the form requested: (i) a list of all ingredients and materials in Supplies, (ii) the amount of all ingredients, and (iii) information concerning any changes in or additions to the ingredients.

(c) Before and at the time the Supplies are shipped, Supplier will give Buyer sufficient warning in writing (including appropriate labels on all Supplies, containers and packing, together with disposal and recycling instructions, material safety data sheets and certificates of analysis) of any hazardous or restricted material that is an ingredient or part of the Supplies, together with any special handling instructions that are needed to advise carriers, Buyer and their employees how to take measures to prevent bodily injury or property damage while handling, transporting, processing, using or disposing of the Supplies, containers and packing. Supplier agrees to comply with all federal, state, provincial and local laws and regulations pertaining to product content and warning labels, including without limitation the U.S. Toxic Substances Control Act and European Union Directive 2000/53/EC.

(d) Supplier will reimburse Buyer for any liabilities, expenses, and costs incurred as a result of improper packing, marking, routing, shipping, or any other noncompliance with the requirements of the Section 6.

(e) In no event will shipping documents attached to or contained in the shipment display pricing information or any of Buyer's proprietary information.

(f) In the event that no packing requirements are provided by Buyer, Supplier will pack the Supplies in accordance with the applicable AIAG packing requirement.

## **7. Inspection; Non-Conforming Goods/Services; Audit**

(a) Buyer may enter Supplier's facility to inspect the facility, Supplies, materials, and any of Buyer's property covered by an Order. Buyer's inspection of Supplies, whether during manufacture, prior to delivery or within a reasonable time after delivery, does not constitute acceptance of any work-in-process or finished goods. Buyer's acceptance, inspection or failure to inspect does not relieve Supplier of any of its responsibilities or warranties. Nothing in an Order releases Supplier from the obligation of testing, inspection and quality control. If defective Supplies are shipped to and rejected by Buyer, the quantities under the Order will be reduced unless Buyer otherwise notifies Supplier. Supplier will not replace reduced quantities without a new order or Material Authorization Release from Buyer. In addition to other remedies available to Buyer, (i) Supplier agrees to authorize return, at Supplier's risk and expense at full invoice price, plus transportation charges, within one (1) working day of Buyer's notification and to replace defective Supplies as Buyer deems necessary, and/or (ii) Buyer may have corrected at any time prior to shipment from Buyer's plant Supplies that fail to meet the requirements of an Order, and (iii) Supplier will reimburse Buyer for all reasonable expenses that result from any rejection or correction of defective Supplies. Supplier will develop and document corrective actions within a commercially reasonable period after receipt of a defective sample and will take whatever measures necessary to correct the defect. Payment for nonconforming Supplies is not an acceptance, does not limit or impair Buyer's right to assert any legal or equitable remedy, and does not relieve Supplier's responsibility for latent defects. Upon reasonable notice to Supplier, either Buyer or Buyer's Customer may conduct a routine audit at Supplier's production facility for the purpose of quality, cost or delivery verification.

(b) During the term of an Order and for at least three (3) years following the later of: the last delivery of the Supplies; the date of the final payment to Supplier under the Order; or the expiration of any applicable warranty periods for the Supplies or of any applicable governmental or industry required retention periods, Buyer has the right at any reasonable time to send authorized representatives to review/audit all pertinent documents, data, records and other materials in the

possession or under the control of Supplier relating to the Supplies, Supplier's obligations under the Order, and any payments requested by Supplier under the Order. During the foregoing period, Supplier will retain all pertinent documents, data, records and other materials pertaining to the Supplies, Supplier's obligations under the Order, and any payments requested by Supplier under the Order. If a review/audit shows Supplier's noncompliance with the Order, Supplier will reimburse Buyer for any price discrepancy or other loss caused by its noncompliance, together with interest at an annual rate of 12% (or, if less, the maximum rate permitted by law) plus the cost of the review/audit.

## **8. Payment**

Payment will be made in the local currency of the country where the Goods will be manufactured, unless the Buyer specifies otherwise in the Purchase Order. If not otherwise specified, Buyer's payment will be made Net 60 days following the latest of the following dates: (i) date of Buyer's receipt of Supplier's invoice; (ii) date of delivery of the Supplies in compliance with the terms of the Order; or (iii) date of acceptance of the Goods by Buyer. Buyer may withhold payment pending receipt of evidence, in the form and detail requested by Buyer, of the absence of any liens, encumbrances or claims on Supplies provided under the Order. Payment will be made by mailing on or before the due date unless otherwise expressly agreed by Buyer.

## **9. Changes**

(a) Buyer reserves the right at any time to direct changes, or to cause Supplier to make changes, to drawings, specifications, sub-suppliers, samples or descriptions of Supplies. Buyer also reserves the right to otherwise change the scope of the work covered by an Order, including work with respect to such matters as inspection, testing or quality control. Buyer may also direct the supply of raw materials from itself or from third parties. Supplier agrees to promptly make any requested changes. Supplier agrees to notify Buyer within ten (10) days after receiving notice of a change if Supplier expects that the change results in a difference in price or time for performance. Buyer can request additional documentation from Supplier of the need for a different price or time for performance. After receiving all requested documentation, Buyer may, at its sole discretion, equitably adjust the price or time for performance. If Supplier does not provide timely notice to Buyer that a requested change may result in a difference in price or time for performance, the parties agree that the Buyer's requested change did not affect the price or time for performance.

(b) Supplier will not make any change in the Supplies' design, specifications, materials, processing, packing, marking, shipping, or date or place of delivery except at Buyer's written instruction or with Buyer's written approval. The foregoing restriction applies, among other matters, to any proposed change in the sourcing or place or manner of manufacture or processing of raw materials or components used in the Supplies, or of any Supplies themselves. Any changes by Supplier to any Order or to the Supplies covered by the Order without the prior approval of Buyer's authorized representative shall constitute breach of the Order.

## **10. Warranties; Recalls; Field Service Actions**

(a) Supplier expressly warrants and guarantees to Buyer, to Buyer's successors, assigns and Customers, and to users of Buyer's products, that all Supplies delivered or provided to Buyer and any special tools, dies, jigs, fixtures, patterns, machinery and equipment, that are obtained at Buyer's expense for the performance of an Order and/or are or become the property of Buyer (including the Buyer's Property as defined in Section 25) will: (i) be world-class, competitive Supplies in terms of price, quality, delivery and technology, and conform to the specifications, standards, drawings, samples, descriptions and revisions as furnished specified or approved by Buyer, (ii) conform to all applicable laws, orders, regulations or standards in countries where Supplies or vehicles or other products incorporating Supplies are to be sold, including without limitation the National Traffic and Motor Vehicle Safety Act, the federal motor vehicle safety standards and the European Union Directive 2000/53/EC, (iii) be merchantable and free of defects in design (to the extent the design is furnished by Supplier or any of its subcontractors or sub-suppliers, even if the design has been approved by Buyer), materials and workmanship, (iv) be selected, designed (to the extent the design is furnished by Supplier or any of its subcontractors or sub-suppliers, even if the design has been approved by Buyer), manufactured or assembled by Supplier based upon Buyer's intended use and be fit and sufficient for the purposes intended by Buyer, and (v) be free of all liens, claims and encumbrances whatsoever. Supplier further expressly warrants that, unless otherwise expressly stated in the Order, the Supplies are manufactured entirely with new materials and none of the Supplies 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 foregoing warranties are in addition to those available to Buyer by law. For all Supplies, Supplier further

warrants that its work will be performed in a professional manner, consistent with all standards and specifications agreed on with Buyer and otherwise consistent with industry standards and that the Supplies are free from latent defects or conditions that would give rise to a defect regardless of whether the defect or condition was known or discoverable during the warranty period. Buyer's approval of any design, drawing, material, process or specifications will not relieve Supplier of these warranties. These warranties are intended to provide Buyer with protection from any and all warranty claims brought against Buyer by its Customer, including Customer-required warranties relating to the Supplies or any products into which such Supplies are incorporated. All such Customer-required warranties are incorporated herein by reference.

(b) The warranty period provided by applicable law applies, except that if Buyer or Buyer's Customer offers a longer warranty to Customers for Supplies installed on or as part of vehicles, the longer period will apply to Supplies covered by the Order, and provided further that in the event that Buyer or any direct or indirect Customer(s) 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 or to address a defect or condition that relates to motor vehicle safety or the failure of a 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 ("Remedial Action"), the warranty shall continue for such period of time as may be dictated by Buyer's direct or indirect Customer or the federal, state, local or foreign government where the Supplies are used or provided, and Supplier shall fully comply (among other matters) with the requirements under Section 13(a). The Buyer may change a new vehicle warranty or any warranty offered by it covering the Supplies. If the change is made after a production Order has been issued, the Buyer will promptly notify the Supplier of the change.

(c) For all services, Supplier further warrants that its work will be performed in a professional manner, consistent with all standards and specifications agreed on with Buyer and otherwise consistent with industry standards.

(d) Buyer's approval of any design, drawing, material, process, or specification will not relieve Supplier of these warranties.

(f) The following communications shall each constitute notice of a breach of warranty under the Order: (i) any communication specifying a defect, default, claim of defect or other problem or quality issue of the Supplies provided under the Order; (ii) any communication to Supplier claiming that the Supplies are in breach of any warranty or that Supplier is in default under the Order; and (iii) a termination notice from Buyer under Section 19. Any such claim by Buyer of breach may only be rescinded in writing by Buyer.

(g) To mitigate its damages, Buyer may fully defend any claim from any Customer that any Supplies supplied by Supplier are defective, in breach of warranty, or otherwise did not meet applicable legal or contractual requirements because such Customer may attempt to hold Buyer responsible for problems caused in whole or in part by Supplier. Supplier and Purchaser agree that this defense is in the interest of both Supplier and Buyer. Supplier hereby waives the right to argue that the fact that Buyer took any such position in any way limits Buyer's right to assert a claim against Supplier by Buyer for breach of warranty, contribution, indemnification or other claim that may arise from or be related to the subject matter of any of the foregoing.

(h) The Buyer or the Supplier, as appropriate, will inform the other about any nonconformity of the Goods as soon as reasonably practicable after it has been discovered and confirm the nonconformity in a Written Notice if requested by the other. The Buyer and the Supplier will cooperate fully with each other to identify the cause of the nonconformity and to develop a plan for the prompt remediation of it.

(i) A Field Service Action is a recall or other service action performed by the Buyer, its customer OEM dealers or other authorized repair facilities. The Buyer may initiate a Field Service Action required by a Government (either mandated or voluntarily agreed upon by the Buyer) or on its own for customer satisfaction or other reasons independent of any Government action.

(i) If the Buyer determines a Field Service Action is necessary to remedy the nonconformity, it will notify the Supplier. The Buyer will provide its rationale for conducting a Field Service Action and review information presented by the Supplier. The Buyer reserves the right to determine all aspects of a Field Service Action, including when to conduct one and its implementation.

(ii) The Supplier is liable for all costs and expenses of a Field Service Action to remedy the nonconformity in the Goods. If the Buyer has agreed to provide an extended warranty, customer incentives to increase the Field Service Action completion rate or to take other actions, the Supplier's liability will also include the costs and expenses of these actions.

(iii) Once the Field Service Action has been initiated, the Buyer and the Supplier will negotiate diligently and in good faith on the extent to which the Supplier's financial responsibility for the Field Service Action may be adjusted, if at all, taking into account the relative degree of fault of the parties.

At its option, the Buyer may debit the Supplier for the Actual Recall Costs relating to a specific Field Service Action if:

The Buyer has made a good faith determination that the Supplier is likely to be liable for some portion of the total costs of the Field Service Action, taking into account all of the relevant data available at the time, including the assessments of the Buyer and the Supplier concerning their relative fault; and

No agreement has been reached on the allocation of costs within 90 days after the Buyer has provided the Supplier with written notice of FSA.

(iv) Once the Supplier's share of the Field Service Action cost has been determined, the Buyer will credit or debit the account of the Supplier, as may be appropriate.

## **11. Supplier Quality and Development; PPAP; Parts Identification**

(a) Supplier will conform to the latest ISO9001 or IATF16949 quality control standards published or other standards and inspection systems as established by Buyer and Buyer's direct or indirect Customer(s), including without limitation in relation to quality control, quality certification, health and safety certification and environmental certification including registration. (b) Supplier will also participate in supplier quality and development programs of and/or as directed by Buyer. (c) Supplier agrees to meet the full requirements of industry Production Part Approval Processes (PPAP) as specified by Buyer and (as applicable) Buyer's Customer(s) and agrees to present this information to Buyer upon request, at the level requested. (d) All Supplies that are a completed part shall permanently bear Buyer's part number and name or code name, Supplier's part number and Supplier's date of manufacture unless otherwise agreed by Buyer in writing. (e) Supplier will use and be bound by the systems, processes, policies, and procedures of Buyer as are found in the current edition of Buyer's Supplier Requirements Manual as posted on Buyer's website ([www.summitpolymers.com](http://www.summitpolymers.com)) or may be obtained by contacting Buyer's assigned purchasing representative. Unless otherwise agreed by the parties in writing, in the event of any discrepancy between any part of the above programs or standards and an express provision of these Terms, these Terms will control.

All Suppliers will participate in the Buyer's cost savings, warranty reduction, and other efficiency initiatives, as required by Buyer; Supplier must implement its own initiatives to improve efficiencies and lower costs. If the Supplier learns of a necessary change in the Goods or Services that may reduce costs, Supplier will inform Buyer in writing of all such possible changes. Supplier will not implement any such change without Buyer's prior written approval. Supplier agrees that cost savings through participation in such Efficiency Initiatives will be passed on to the Buyer.

## **12. Remedies**

The rights and remedies reserved to Buyer in an Order shall be cumulative with and additional to all other or legal or equitable remedies. Supplier will reimburse Buyer for any incidental or consequential or other damages (including lost profits) caused or required in the reasonable judgment of Buyer or Buyer's Customer(s) by Supplier's breach or by nonconforming Supplies, including but not limited to costs, expenses and losses incurred or suffered directly or indirectly by Buyer or its Customer(s): (a) in inspecting, sorting, handling, reworking, repairing or replacing the nonconforming Supplies, (b) resulting from production interruptions, (c) conducting recall campaigns, customer field service actions or other corrective service actions, or (d) resulting from personal injury (including death) and/or property damage caused by the nonconforming Supplies. Buyer's damages include attorneys' fees and other professional fees, settlements and judgments incurred by Buyer and other costs associated with Buyer's administrative time, labor and materials. If requested by Buyer, Supplier will enter

into a separate agreement for the administration or processing of warranty charge-backs for nonconforming Supplies, and will participate in and comply with any warranty reduction or related programs of Buyer or (to the extent directed by Buyer) Buyer's Customer(s) that relate to the Supplies. In any action brought by Buyer to enforce Supplier's obligations in connection with the production and delivery of Supplies or transition support, or for possession of property, the parties agree that Buyer does not have an adequate remedy at law and Buyer is entitled to specific performance of Supplier's obligations, plus Buyer's reasonable attorneys' fees. In addition, notwithstanding the foregoing, Supplier acknowledges that interrupting production of Buyer or Buyer's customer creates issues for which money damages are not a sufficient remedy. Notwithstanding anything to the contrary contained in any Order, Buyer does not release any claim against Supplier that is based in whole or in part on any fraud or duress in connection with the Order or any breach or anticipatory breach of the Order or any other Order between Buyer and Supplier (even if that Order relates to other Supplies).

### **13. Indemnification**

(a) To the fullest extent permitted by law: (i) Supplier hereby assumes the entire, sole responsibility for any injury to person, including death, or damage to property of any kind or nature caused by, resulting from or in connection with the furnishing of Supplies or services by Supplier, its subcontractors, officers, agents, or employees; (ii) Buyer shall not be responsible for any injury to person or damage to property resulting from possession, use, misuse or failure of any apparatus furnished to Supplier by Buyer, and the use of any such apparatus by Supplier shall constitute acceptance by Supplier of all responsibility for any claims for such injury or damage; and (iii) Supplier will defend, indemnify and hold harmless Buyer, Buyer's Customers (both direct and indirect, including manufacturers of vehicles in which Supplies are incorporated), and dealers and users of the products sold by Buyer (or the vehicles in which they are incorporated), including their respective agents, customers, invitees, subsidiaries, affiliates, successors and assigns, against any and all claims, damages, losses, liabilities, and expenses (including actual attorneys' fees and other professional fees, settlements and judgments) arising out of or resulting in any way from any defective Supplies, or from any negligent or wrongful act or omission of Supplier, or Supplier's agents, employees or subcontractors, or any breach or failure by Supplier to comply with any of Supplier's representations or other terms and conditions of an Order (including any part of these Terms) – including without limitation the cost of recall campaigns, customer field service actions or other corrective service actions that, in Buyer's reasonable judgment, are required because of nonconformities in some or all of the Supplies provided by Supplier hereunder. Supplier's obligation to defend and indemnify under this Section will apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise except for claims that arise as a result of the sole negligence of Buyer. Buyer has the right to be represented by and actively participate through its own counsel in the defense and resolution of any indemnification matters, at Supplier's expense. The indemnification obligations of Supplier set forth in this Agreement, including this Section, are independent of and in addition to any insurance and warranty obligations of Supplier.

(b) If Supplier performs any work on Buyer's or Buyer's Customer's premises or utilizes the property of Buyer or Buyer's Customer, whether on or off Buyer's or Buyer's Customer's premises: (i) Supplier will examine the premises to determine whether they are safe for the requested services and will advise Buyer promptly of any situation it deems to be unsafe; (ii) Supplier's employees, contractors and agents will comply with all regulations that apply to the premises and may be removed from Buyer's premises at Buyer's discretion; (iii) Supplier's employees, contractors and agents will not possess, use, sell, transfer or be under the influence of alcohol or unauthorized, illegal or controlled drugs or substances on the premises; and (iv) to the fullest extent permitted by law, Supplier will indemnify and hold Buyer and Buyer's Customer (and their respective officers, directors, employees, agents, successors and assigns) harmless from and against any and all liability claims, demands or expenses (including actual attorney's fees and other professional fees, settlements and judgments) for damages to the property of or personal injuries to Buyer, its Customer, their respective employees or agents or any other person or entity if the claims arise from or in connection with Supplier's work on the premises or Supplier's use of Buyer's or Buyer's Customer's property, except for any liability, claim or demand arising out of the sole negligence of Buyer.

### **14. Insurance**

Supplier shall maintain insurance coverage for the Supplies with insurance companies reasonably acceptable to Buyer in amounts as may be reasonably requested by Buyer or (to the extent directed by Buyer) Buyer's Customer(s), in each case naming Buyer and its affiliates as loss payees and Customers as "additional insureds" as requested by Buyer. Supplier will furnish to Buyer a certificate showing compliance with this requirement or certified copies of all insurance policies within ten (10) days of Buyer's written request. The certificate will provide that Buyer (and, if applicable, Buyer's Customers) will receive thirty (30) days prior written notice from the insurer of any termination or reduction in the amount or scope of coverage. The existence of insurance does not release Supplier of its obligations or liabilities under an Order.



## **15. Compliance with Laws**

Supplier, and any Supplies supplied by Supplier, shall comply with all applicable laws, including rules, regulations, orders, conventions, ordinances and standards, that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval or certification of the Supplies, including laws relating to environmental matters, hiring, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health or safety, and motor vehicle safety. Each Order incorporates by reference all clauses required by these laws. All materials used by Supplier in the Supplies or in their manufacture shall satisfy current governmental and safety constraints on restricted, toxic and hazardous materials as well as environmental, electrical and electromagnetic considerations that apply to the country of manufacture, sale or destination. Supplier will indemnify Buyer against and hold Buyer harmless from any liability claims, demands or expenses (including attorney's fees and other professional fees, settlements and judgments) relating to Supplier's noncompliance.

## **16. Customer Requirements**

(a) As directed by Buyer in writing, Supplier agrees to comply with the applicable terms and conditions of any agreements ("Customer Purchase Orders") received by Buyer from a third party ("Customer"), or directly or indirectly applicable to Buyer, pursuant to which or in respect to which Buyer agrees to supply to Customer, or incorporate into goods supplied to Customer, Supplies purchased by Buyer from Supplier. The term Customer shall also include the final equipment manufacturer of goods or services into which the Supplies are or will be incorporated. Buyer may in its discretion supply Supplier with information regarding the Customer Purchase Orders, but Supplier shall be responsible for ascertaining any terms and conditions contained in Customer Purchase Orders that may affect Supplier's obligations under an Order. Supplier will do everything within its control to enable Buyer to meet the terms and conditions of the Customer Purchase Orders. If this Section conflicts with any other paragraph or Section in an Order, Buyer by written notice to Supplier has the right to have the provisions of this Section prevail.

(b) In the event that a Customer files or has filed against it a petition in bankruptcy or insolvency and, in the course of such proceeding and in connection with actual or threatened termination (by rejection or otherwise) by the Customer of its contract(s) with Buyer or contracts relating to Supplies purchased by Buyer from Supplier, Buyer permits a reduction in the price(s) paid to Buyer for products incorporating the Supplies, the price paid to Supplier for the Supplies from and after the date of such reduction will be automatically adjusted proportionally by the same percentage as the price paid to Buyer by its direct Customer and the Order will otherwise remain in effect without modification.

(c) If Buyer's direct or indirect Customer directed, recommended, requested, suggested, or otherwise identified Supplier as the source from which Buyer is to obtain the Supplies ("Directed Supply Relationship"). Directed Supply Relationships are subject to the specific terms identified in CMM.09.02. In addition the particular payment terms otherwise applicable to the Order or anything to the contrary in the Order: (i) in no event will Supplier have a right to receive payment from Buyer for the Supplies except following, and in proportion to, Buyer's actual receipt of payment from its Customer for the Supplies or, as applicable, the goods in which the Supplies are incorporated, (ii) any lengthening of Customer's payment terms to Buyer will automatically lengthen the payment terms as between Buyer and Supplier by the same amount of time, and Buyer may, at its option and on notice to Supplier, otherwise revised its payment terms for Supplies to take into account any other change in the payment terms of Buyer's Customer for the Supplies under the Order; (iii) within three (3) business days of any change in price, specifications or other terms negotiated or proposed between Supplier and Buyer's direct or indirect Customer, Supplier 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, and (iv) (without limiting any other rights and remedies of Buyer) Supplier will indemnify and hold harmless Buyer from any liabilities, claims, demands, losses, damages, costs and expenses (including without limitation attorneys' fees and other professional fees) incurred by Buyer arising from or relating to the Supplies supplied by Supplier and/or the Directed Supply Relationship, and including without limitation any charges or set-offs (including without limitation interim field service action cost recovery debits) taken by Customer against Buyer by reason of alleged defects in Supplies, even if such set-offs by Customer are before final determination of (and subject to adjustment based upon) whether and to what extent defects in Supplies were a cause of the related remedial action undertaken and related costs/damages incurred by Customer. In the event that any requirement imposed by any Order on Supplier is found to be unenforceable or a gap otherwise exists or is created in the terms applicable to any Order through operation of law, conflict in terms or otherwise, the parties agree that the corresponding requirement of Customer(s) shall be applicable to and binding on Supplier for the benefit of Buyer. Supplier acknowledges that it is familiar with the automotive industry and the applicable terms of Customer(s) that would apply in such event, and (v) Buyer will

provide customer-directed suppliers material authorization levels for finished goods, work in process (WIP) and raw materials as supplied to Buyer by the Directing customer. Buyer will not authorize any obsolescence claims for customer-directed components unless approved and paid for by directing customer in advance.

#### **17. Insolvency; Review of Financial Condition; Related Matters**

(a) Buyer, or a third party designated by and acting on behalf of Buyer, may at any time review the overall financial condition of Supplier and its affiliates, and Supplier shall fully cooperate in such review and shall make its financial managers available for discussions during reasonable business hours. Buyer and any such third party shall keep confidential any non-public information about Supplier 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 an Order.

(b) An Order may be terminated immediately by Buyer without liability to Supplier for any of the following events, or any other comparable events, and Supplier shall reimburse Buyer for all costs incurred by Buyer in connection with any of the following, including but not limited to all attorney's and other professional fees: (1) Supplier becomes insolvent (including if Supplier is unable to pay its debts as they come due in the ordinary course of business, or if Supplier's liabilities exceed its assets as fairly valued), (2) Supplier files a voluntary petition in bankruptcy, (3) an involuntary petition in bankruptcy is filed against Supplier, (4) a receiver or trustee is appointed for Supplier, (5) Supplier needs accommodations from Buyer, financial or otherwise, in order to meet its obligations under the Order, (6) Supplier executes an assignment for the benefit of creditors, or (7) Supplier is unable promptly to provide Buyer with adequate assurance of Supplier's financial capability to perform any of Supplier's obligations under the Order on a timely basis. In the event that the Order is not terminated in accordance with the immediately preceding sentence, upon the occurrence of an event described in the immediately preceding sentence, Buyer may make equitable adjustments in the price and/or delivery requirements under the Order as Buyer deems appropriate to address the change in Supplier's circumstances, including Supplier's continuing ability to perform its obligations regarding warranty, nonconforming Supplies or other requirements under this Order.

(c) Supplier agrees that if Supplier experiences any delivery or operational problems, Buyer may, but is not required to, designate a representative to be present in Supplier's applicable facility to observe Supplier's operations. Supplier agrees that if Buyer provides to Supplier any accommodations (financial or other) that are necessary for Supplier to fulfill its obligations under an Order, Supplier will reimburse Buyer for all costs, including attorneys' and other professionals' fees, incurred by Buyer in connection with such accommodation and will grant access to Buyer to use Supplier's premises and machinery, equipment, and other property necessary for the production of the Supplies covered by the Order.

#### **18. Termination for Breach or Nonperformance**

Buyer reserves the right to terminate all or any part of an Order, or any other Order or agreement between Buyer or Buyer's affiliate(s) and Supplier or Supplier's affiliate(s) without liability to Supplier and Supplier's affiliates (1) if Supplier: (a) repudiates, breaches or threatens to breach any of the terms of the Order, including without limitation Supplier's warranties, (b) fails to perform or threatens not to perform services or deliver Supplies as specified by Buyer, (c) fails to make progress or to meet reasonable quality requirements so as to endanger timely and proper completion or delivery of Supplies and does not correct the failure or breach within ten (10) days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from Buyer specifying the failure or breach, (d) sells or offers to sell a substantial portion of its assets used for the production of Supplies for Buyer, or sells or exchanges or offers to sell or exchange an amount of its stock or other equity interests that would result in a change in control of Supplier, or (e) fails to remain competitive with respect to quality, technology, delivery and pricing of the Supplies, or (2) if Supplier or Supplier's affiliate repudiates, breaches or threatens to breach any of the terms of any other Order of agreement between Buyer or Buyer's affiliate(s) and Supplier or Supplier's affiliate(s). Supplier shall notify Buyer within ten (10) days after entering into any negotiations that could lead to the situation specified in subsection (d) above; upon Supplier's request, Buyer will enter into an appropriate nondisclosure agreement related to information disclosed to Buyer in relation to such transaction.

#### **19. Termination**

(a) In addition to any other rights of Buyer to cancel or terminate an Order, Buyer may, at its option and in its sole discretion, terminate all or any part of an Order (other than the minimum quantities specified in Section 4(b)) at any time and for any reason, and notwithstanding the existence of any event of force majeure under Section 21 below, by giving at least fourteen (14) days written notice to Supplier.

(b) Upon receipt of and consistent with such notice of such termination, and unless otherwise directed by Buyer, Supplier will: (i) terminate promptly all work under the Order, (ii) transfer title and deliver to Buyer the finished Supplies, the work in process, and the parts and materials which Supplier reasonably produced or acquired according to the quantities ordered by Buyer and in accordance with the terms and conditions of the Order and which Supplier cannot use in producing goods for itself or for others, (iii) verify and settle any claims by subcontractors for actual costs incurred directly and made unrecoverable by the termination and ensure the recovery of materials in subcontractor's possession, (iv) take actions reasonably necessary to protect property in Supplier's possession in which Buyer has an interest until disposal instruction from Buyer has been received, and (v) upon Buyer's reasonable request, cooperate with Buyer in transferring the production of Supplies to a different supplier, including as described in Section 20.

(c) Upon termination by Buyer under this Section 19, Buyer will be obligated to pay Supplier only the following: (i) the Order price for all finished Supplies in the quantities ordered by Buyer that conform to the requirements of the Order and were not previously paid for, (ii) Supplier's reasonable actual cost of work-in-process and the parts and materials transferred to Buyer in accordance with subsection (b)(ii) above, (iii) Supplier's reasonable actual costs of settling claims regarding its obligations to subcontractors required under the Order, to the extent directly caused by the termination, but limited to the amount of any firm quantities of Supplies and raw materials/components specified in related Material Releases issued by Buyer and then outstanding (iv) Supplier's reasonable actual cost of carrying out its obligation under subsection (b)(iv) (v), if applicable, amounts due in connection Transition Support under Section 21 (b), and (vi) the option fee under Section 4(b) above. Notwithstanding any provision to the contrary, Buyer shall have no obligation for and shall not be required to make payments to Supplier, directly or on account of claims by Supplier's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, tooling, facilities and equipment rearrangement costs or rental, unamortized capital or depreciation costs, finished goods, work-in-process or raw materials that Supplier fabricates or procures in amounts that exceed those authorized in the Material Authorization Releases, or general administrative burden charges from termination of the Order, unless otherwise expressly agreed to in writing by Buyer in a separate Order issued by Buyer.

(d) Buyer's obligation upon termination under this Section 19 shall not exceed the obligation Buyer would have had to Supplier in the absence of termination.

(e) Supplier will furnish to Buyer, within one (1) month after the date of termination under this Section 19 (or such shorter period as may be required by Buyer's Customer), its termination claim, which shall consist exclusively of the items of Buyer's obligation to Supplier that are listed in subsection 19(c) above. Buyer may audit Supplier's records before or after payment to verify amounts requested in Supplier's termination claim.

(f) Except for Section 19 (c) (vi), Buyer will not have any obligation under subsections 19(a), (c), (d) or (e) above if Buyer terminates Buyer's obligations under the Order because of a default or breach by Supplier, and any termination shall be without prejudice to any claims which Buyer may have against Supplier.

(g) In the event of a termination of the Order by Buyer as a result of Buyer ceasing to be a supplier to a Customer for the vehicle program in respect of which Buyer issued the Order, Buyer shall only be obligated to compensate Supplier for any costs under this Section if, when and to the extent that the Customer reimburses Buyer for such costs.

## **20. Transition of Supply.**

(a) In connection with the expiration of an Order, or the termination of an Order by either party, in whole or in part, or Buyer's other decision to change to an alternate source of Supplies (including but not limited to a Buyer-owned facility) ("alternate supplier"), Supplier will cooperate in the transition of supply, including the following (collectively, "Transition Support"): (i) Supplier will continue production and delivery of all Supplies as ordered by Buyer, at the prices and other terms stated in the Order, without premium or other condition, during the entire period reasonably needed by Buyer to complete the transition to the alternative supplier(s), such that supplier's action or inaction causes no interruption in Buyer's ability to obtain Supplies as needed; (ii) at no cost to Buyer, Supplier will promptly provide all requested information and documentation regarding and access to Supplier's manufacturing process, including on-site inspections, bill-of-material data, tooling and process detail and samples of Supplies and components; and (iii) subject to Supplier's reasonable capacity constraints, Supplier will provide special overtime production, storage and/or management of extra inventory of Supplies, extraordinary packaging and transportation and other special services (collectively, "Transition Support") as expressly requested by Buyer in writing.

(b) If the transition occurs for reasons other than Supplier's termination or breach, Buyer will, at the end of the transition period, pay the reasonable, actual cost of Transition Support as requested and incurred, provided that Supplier has advised Buyer prior to incurring such amounts of its estimate of such costs. If the parties disagree on the cost of Transition Support, Buyer will pay the agreed portion to Supplier and any dispute regarding the remaining claimed amount may be resolved in accordance with the dispute resolution provisions of Section 34.

## **21. Excusable Delay.**

Any delay or failure of either party to perform its obligations shall be excused if, and to the extent, that it is caused by an event or occurrence (Excusable Event) beyond the reasonable control of the party and without its fault or negligence. Excusable Event includes acts of God, fire, flood, earthquake, and other extreme natural events, riots, civil disorders, labor problems (such as strikes, lockouts, and slowdowns regardless of their lawfulness), and war or acts of terrorism whether or not declared as such by the government. Excusable Event also includes delays or non-performance of a subcontractor, agent or supplier of a party, but only if and to the extent that the cause or event is an Excusable Event as defined in this paragraph 21. Excusable Event does not include the failure to comply with applicable law or to take actions reasonably necessary to schedule performance in anticipation of any customs, export-import, or other governmental requirement of which notice has been given. The party claiming an Excusable Event will provide the other party with written notice of its occurrence and its termination as soon as practicable and will continue to use reasonable efforts to perform to the extent possible. In the event of an Excusable Event, the Buyer may, at its option, acquire all finished Goods, work-in-process, and raw materials produced or acquired for the work under the Purchase Order. The Buyer reserves the right to acquire the Goods elsewhere during the duration of the Excusable Event and for a reasonable time after the Excusable Event. The Buyer may terminate the Purchase Order, in whole or in part, upon written notice to the Supplier of an Excusable Event resulting in a failure or delay to perform lasting for more than three consecutive months after the date of written notice.

## **22. Information Disclosed to Buyer by Supplier**

Unless otherwise agreed to in writing by the Buyer: (a) no information disclosed in any manner at any time by Supplier, or Supplier's contractors, to Buyer, or Buyer's Customers, will be treated as confidential, and (b) Supplier agrees not to assert any claim against Buyer, Buyer's Customers or their respective suppliers, with respect to any information that Supplier, or Supplier's contractors, have disclosed or may disclose to Buyer, or Buyer's Customers, in connection with the Supplies. Unless otherwise expressly agreed to in the Order or otherwise agreed to in writing by Buyer, Supplier's rights regarding information disclosed to Buyer and with respect to products or services related to an Order shall be limited to any valid copyright thereon or patent Supplier may hold covering the manufacture, use and sale of such products or services.

## **23. Technology**

(a) All Supplies, tooling (including fixtures, gauges, jigs, patterns, castings, cavity dies and molds, with all related appurtenances, accessions, and accessories), tooling designs and tooling blueprints, data, inventions (whether or not patentable), industrial designs, technical information, know-how, processes of manufacture, and information created, developed or acquired by or on behalf of Supplier, along with all intellectual property rights relating thereto, paid for or to be paid for by Buyer, are the sole and exclusive property of Buyer. Supplier will promptly disclose in an acceptable form and assign to Buyer all such deliverables, data, inventions, and information. Supplier will cause its employees to perform any act, including without limitation, executing and delivering any papers necessary to enable Buyer to obtain title to and to seek intellectual property right throughout the world. To the extent that any works of authorship (including, without limitation, software) are created by or on behalf of Supplier and are paid for or to be paid for by Buyer under the Order, such works shall be considered "work made for hire". To the extent that such works do not qualify as "works made for hire," Supplier hereby assigns to Buyer all right, title, and interest in all copyrights and moral rights therein.

(b) Supplier acknowledges and agrees that Buyer or Buyer's designee(s) (including their affiliates and subcontractors) have the worldwide, irrevocable right to repair, reconstruct or rebuild, and to have repaired, reconstructed or rebuilt, Supplies delivered under an Order without payment of any royalty or other compensation to Supplier.

(c) Supplier hereby grants Buyer, and Buyer's present and future affiliates, an irrevocable, non-exclusive, worldwide, royalty-free, paid-up, license, including the right to sublicense, under any and all proprietary rights controlled by Supplier or its affiliates, including, without limitation, any patent, copyright, moral, industrial design right, trademark,

technical information, know-how or other proprietary right)("Supplier Proprietary Rights"): (i) in the event that this Agreement is terminated by Buyer under Sections 17 or 18, and/or (ii) in the event that Supplier for any reason is unable to satisfy the quality, quantity, delivery or related requirements of Buyer for Supplies under the Order and/or additional orders (including, without limitation, in the event of force majeure, or increased demand due to volume requirements for a corrective field service action/recall, or other Remedial Actions, or by reason of Supplier's insolvency, or in the event of a required change or expansion in relation to the country(ies) of manufacture or delivery): (A) to make, have made, use, sell, offer to sell, and import the Supplies, (B) to copy, modify, use, distribute, publicly display/perform, prepare derivative works of, reproduce in the case of a mask work, and import or distribute in the case of a semiconductor chip product in which a mask work is embodied, any copyrighted or copyrightable portions of such Supplier Proprietary Rights relating in any way to Supplies, and (C) to do all other things and exercise all other rights in the Supplier Proprietary Rights necessary or useful to avoid, remedy and mitigate, as Buyer reasonably determines to be appropriate, all or any portion of any consequences to Buyer, and to any direct and indirect customers of Buyer, arising from any situation under subparagraphs (i) or (ii) above. Supplier shall also cooperate with Buyer in the exercise of such license including providing, without restriction on use, reproduction or disclosure, all information and data deemed necessary by Buyer. At no additional cost, Supplier hereby grants Buyer an irrevocable, nonexclusive, worldwide license under Supplier Proprietary Rights that is necessary or incident to the reasonably intended use or application of the Supplies. Rights under this Section 23(c) are intended to be subject to 11 USC Section 365(n), as executory agreements under which Buyer has license rights to the Supplier Proprietary Rights, and are supplementary to any other rights of Buyer under existing Orders and other agreements (if any) with Supplier.

(d) All Supplies or other deliverables provided under an Order (including, for example, computer programs, technical specifications, documentation and manuals), shall be original to Supplier and shall not incorporate, or infringe upon, any intellectual property rights (including, without limitation, copyright, patent, trade secret, mask work or trademark rights) of any third party, unless otherwise expressly agreed to in writing by Buyer. Supplier agrees: (i) to defend, hold harmless and indemnify Buyer, its successors and Customers against any suit, claim or action for actual or alleged infringement of any proprietary right (including any patent, trademark, copyright, moral, industrial design right or other proprietary right or misuse or misappropriation of trade secret) and against any resulting damages or expenses (including attorney's and other professional fees, royalties, settlements and judgments) arising in any way in relation to sale or use of Supplies covered by the Order (including without limitation their manufacture, purchase, use and/or sale), including such claims where Supplier has provided only part of Supplies and Supplier expressly waives any claim against Buyer that such infringement arose out of compliance with Buyer's specifications, (ii) to waive any claim against Buyer or Buyer's Customer(s), including any hold harmless or similar claim, in any way related to a third-party claim asserted against Supplier or Buyer or Buyer's Customer for infringement of any proprietary right (including any patent, trademark, copyright, moral, industrial design right or other proprietary right or misuse or misappropriation of trade secret), including claims arising out of specifications furnished by Buyer, and (iii) that if the sale or use of the Supplies is enjoined or, in Buyer's sole judgment, is likely to be enjoined, Supplier will, at Buyer's election and Supplier's sole expense, procure for Buyer the right to continue using the Supplies, replace the same with equivalent non-infringing goods or modify such Supplies so they become non-infringing.

#### **24. Service and Replacement Parts**

So that Buyer can satisfy the current model service and replacement parts requirements of itself or its Customers, for fifteen years after a vehicle design or specific part concludes production, unless a different period is agreed to in writing by Buyer and Supplier, Supplier agrees to supply Buyer with Supplies, component parts and materials that are the same as the Supplies, component parts and materials that Buyer purchases under the Order at the price(s) set forth in the Order plus any actual cost differential for packaging. If the Supplies are systems or modules, Supplier agrees to sell each component or part at a price that does not, in the aggregate, exceed the system or module price specified in the Order, less assembly costs, plus any actual cost differential for packaging. After Buyer completes its purchases for its Customers' current model requirements, Supplier will sell Supplies to Buyer in order to fulfill Buyer's past model service and replacement parts requirements. For the first three years of past model year service and replacement requirements, Supplier agrees to supply Buyer at the price(s) set forth in this Order plus any actual cost differential for packaging. For all remaining years of past model year service and replacement requirements, Supplier agrees to supply Buyer at price(s) based on the most recent price(s) under the Order, taking into account differences in the cost of materials, packaging and costs of production after the current model purchases have been completed, as mutually agreed-upon by the parties. At Buyer's request, Supplier will make service literature and other materials available at no additional charge to support Buyer's service part sales activities.

**25. Buyer's Property; Warranty Disclaimer; Confidentiality**

(a) All information and materials (including, for example, tooling, packaging, documents, standards, specifications, jigs, dies, returnable containers, and samples, and including whether or not such materials are in any way modified, altered or processed) furnished by Buyer, either directly or indirectly, to Supplier to perform this Order, along with any and all Supplies, tooling, deliverables, data, inventions and intellectual property rights under Section 23(a), shall be and remain the sole and exclusive property of Buyer (collectively "Buyer's Property"). Any and all goods manufactured by Supplier with the use of Buyer's Property may not be used for Supplier's own use or manufactured or provided (or offered to be manufactured or provided) to third parties without Buyer's express written authorization. Supplier acknowledges and agrees that Buyer's Property may be covered by one or more patents, patent applications or copyrights owned by Buyer.

(b) Buyer does not guarantee the accuracy of, or the availability or suitability of, Buyer's Property. Supplier agrees carefully to check and approve, for example, all tooling, dies or materials supplied by Buyer prior to using it. Supplier shall assume all risk of death or injury to persons or damage to property arising from the use of Buyer's Property. BUYER SHALL HAVE NO LIABILITY TO SUPPLIER OR TO ANYONE CLAIMING BY OR THROUGH SUPPLIER FOR ANY INCIDENTAL OR CONSEQUENTIAL OR OTHER DAMAGES OF ANY KIND WHATSOEVER RELATING TO BUYER'S PROPERTY. BUYER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE BUYER'S PROPERTY, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND SUPPLIER WAIVES, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, ALL CLAIMS OF NEGLIGENCE AND STRICT LIABILITY.

(c) Buyer's Property will be held by Supplier or by a third party, to the extent that Supplier has transferred possession of Buyer's Property to a third party, on a bailment basis, as a bailee-at-will. Supplier bears the risk of loss of and damage to Buyer's Property. Buyer's Property shall be housed, maintained, repaired and replaced by Supplier at Supplier's expense in good working condition capable of producing Supplies meeting all applicable specifications, shall not be used by Supplier for any purpose other than the performance of an Order for Buyer, shall be conspicuously marked by Supplier as the property of Buyer, shall not be commingled with the property of Supplier or with that of a third person, and shall not be moved from Supplier's premises without Buyer's approval. Any replacement of Buyer's Property will become Buyer's property. Supplier may not release or dispose Buyer's Property to any third party without the express written permission of Buyer. Supplier shall insure Buyer's Property with full fire and extended coverage insurance for its replacement value. Buyer shall have the right to enter Supplier's premises to inspect Buyer's Property and Supplier's records regarding Buyer's property. Only Buyer (or Buyer's affiliates) has any right, title or interest in Buyer's Property, except for Supplier's limited right, subject to Buyer's unfettered discretion, to use Buyer's property in the manufacture of Supplies. Buyer and its affiliates shall have the right to take immediate possession of Buyer's Property at any time without payment of any kind. Supplier agrees to cooperate with Buyer if Buyer elects to take possession of Buyer's Property. Likewise, effective immediately upon written notice to Supplier, without further notice or court hearings, Buyer has the right to enter the premises of Supplier and take possession of all of Buyer's Property. Supplier expressly waives any right to additional notice or process and agrees to provide Buyer or its nominee(s) with immediate access to Buyer's Property. Supplier grants to Buyer a limited and irrevocable power of attorney coupled with an interest, to execute and record on Supplier's behalf any notice or financing statements with respect to Buyer's Property that Buyer determines are reasonably necessary to reflect Buyer's interest in Buyer's Property. At Buyer's request, Buyer's Property shall be immediately released to Buyer or delivered by Supplier to Buyer either (i) FOB transport equipment at Supplier's plant, properly packed and marked in accordance with the requirements of Buyer's selected carrier, or (ii) to any location designated by Buyer, in which case Buyer will pay Supplier the reasonable costs of delivery. Supplier waives, to the extent permitted by law, any lien or other rights that Supplier might otherwise have on any of Buyer's Property, including but not limited to molder's and builder's liens.

(d) Supplier acknowledges that Buyer's Property includes proprietary information, regardless of whether such information is marked or identified as confidential, and is delivered to Supplier on a confidential basis for the purpose of performing the Order only. All terms of the Order are deemed proprietary information of Buyer. Supplier shall disclose Buyer's Property within Supplier's organization only to those employees who have a need to know in order to fulfill Supplier's obligations hereunder and who have agreed to keep the Buyer's Property confidential, and shall prevent any such Buyer's Property from being divulged to third persons not employed by Supplier without the prior written consent of Buyer, including having recipients acknowledge the proprietary status of such Buyer's Property and agree to similar restrictions. These obligations shall survive termination of this Agreement and will continue for a period of three (3) years thereafter, or for as long as the Buyer's Property remains a trade secret, whichever is longer. Notwithstanding anything to the contrary in an Order, any confidentiality or non-disclosure agreement between the parties that predates the Order will remain in effect

except as expressly modified by the Order, and to the extent of a conflict between the express terms of such an agreement relating to Buyer's confidential information and this Section 25, the terms of that agreement will control with respect to Buyer's proprietary information.

**26. Supplier's Property**

Supplier, at its expense, shall furnish, keep in good working condition capable of producing Supplies meeting all applicable specifications, and replace when necessary, all machinery, equipment, tools, jigs, dies, gauges, fixtures, molds, patterns, and items other than Buyer's Property that are necessary for the production of Supplies ("Supplier's Property"). Supplier shall insure Supplier's Property with full fire and extended coverage insurance for its replacement value. If Supplier uses Supplier's Property to produce goods or services, similar to Supplies, for other Customers, including aftermarket Customers, such goods or services shall not incorporate any of Buyer's Property, intellectual property, logos, trademarks, trade names or part numbers. Supplier shall not disclose or imply in its marketing efforts that these goods or services are equivalent to those purchased by Buyer. Supplier grants to Buyer an irrevocable option to take possession of and title to Supplier's Property that is special for, or configured for, the production of Supplies under an Order upon payment to Supplier of its net book value less any amounts that Buyer has previously paid to Supplier for the cost of these items. This option does not apply if Supplier's Property is used to produce goods that are the standard stock of Supplier or if a substantial quantity of like goods is being sold by Supplier to others.

**27. Customs; Related Matters**

Credits or benefits resulting from an Order, including trade credits, export credits, or the refund of duties, taxes or fees, belong to Buyer. Supplier will provide all information and certificates (including NAFTA Certificates of Origin) necessary to permit Buyer (or Buyer's Customers) to receive these benefits or credits. Supplier agrees to fulfill any customs or NAFTA related obligations, origin marking or labeling requirements, and local content origin requirements. Export licenses or authorizations necessary for the export of Supplies are Supplier's responsibility unless otherwise indicated in the Order, in which case Supplier will provide the information necessary to enable Buyer to obtain the licenses or authorizations. Supplier will promptly notify Buyer in writing of any material or components used by Supplier in filling the Order that Supplier purchases in a country other than the country in which the Supplies are delivered. Supplier will furnish any documentation and information necessary to establish the country of origin or to comply with the applicable country's rules of origin requirements. Supplier will promptly advise Buyer of any material or components imported into the country of origin and any duty included in the Supplies' purchase price. If Supplies are manufactured in a country other than the country in which Supplies are delivered, Supplier will mark Supplies "Made in (country of origin)." Supplier will provide to Buyer and the appropriate governmental agency the documentation necessary to determine the admissibility and the effect of entry of Supplies into the country in which Supplies are delivered. Supplier warrants that any information that is supplied to Buyer about the import or export of Supplies is true and that all sales covered by the Order will be made at not less than fair value under the anti-dumping laws of the countries to which the Supplies are exported. To the extent any Supplies covered by the Order are to be imported into the United States of America, Supplier shall comply with all applicable recommendations or requirements of the Bureau of Customs and Border Protection's Customs-Trade Partnership Against Terrorism ("C-TPAT") initiative. Upon request, Supplier shall certify in writing its compliance with the C-TPAT initiative.

**28. Set-Off; Recoupment**

In addition to any right of set off or recoupment provided by law, all amounts due to Supplier shall be considered net of indebtedness of Supplier and its affiliates or subsidiaries to Buyer and its affiliates or subsidiaries. Buyer shall have the right to set off against or to recoup from any payment or other obligation owed to Supplier, in whole or in part, any amounts due to Buyer or its affiliates or subsidiaries from Supplier or its affiliates or subsidiaries. Buyer will provide Supplier with a statement describing any offset or recoupment taken by Buyer.

**29. No Advertising**

Supplier shall not advertise, publish or disclose to third parties (other than to Supplier's professional advisors on a need-to-know basis) in any manner the fact that Supplier has contracted to furnish Buyer the Supplies covered by the Order, or use any trademarks or logos of Buyer in Supplier's advertising or promotional materials, without first obtaining Buyer's written consent.

**30. Relationship of Parties**

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

**31. Non-Assignment**

(a) Supplier may not assign or delegate its obligations under an Order without Buyer's prior written consent. In the event of any approved assignment or delegation authorized by Buyer, Supplier retains all responsibility for Supplies, including, without limitation, all related warranties and claims, unless otherwise expressly agreed in writing by Buyer. (b) With Buyer's prior written consent, Supplier may make an assignment of receivables due or to become due to a single financial institution; provided, however, that any such assignment shall be subject to set-off or other proper method of enforcing any claims that Buyer may have under Section 28 above. (c) Buyer will have the right to assign any right or duty under an Order to any third party upon notice to Supplier with or without consent.

**32. Suppliers with Particular Needs**

Buyer encourages Supplier to use suppliers with particular needs. A Supplier with particular needs is a business, which meets one or more of the following conditions: (a) a small business, as defined in Title 15, Section 632 of the United States Code and related regulations; (b) a small business owned and controlled by socially disadvantaged individuals (at least 51% of the business owned and controlled by one or more socially and economically disadvantaged individuals and the management and daily business operations are controlled by one or more such individuals); and (c) a business that is at least 51% owned by a woman or women who also control and operate the business. Upon Buyer's request, Supplier will inform Buyer on an annual basis the percentage, based on a dollar value, of the content of the Supplies provided by suppliers with particular needs as well as the basis for claiming that such content was provided by a supplier with particular needs.

**33. Basic Working Conditions**

Supplier represents that neither it nor any of its subcontractors or suppliers will (a) utilize forced labor, regardless of its form; (b) employ any person below the age of 15, unless it is part of a government approved job training, apprenticeship or other program that would be clearly beneficial to its participants; or (c) engage in physically abusive disciplinary practices. Supplier further represents when it delivers the Supplies that it has complied with the requirements of this Section. Buyer may retain an independent third party, or request Supplier to retain one reasonably acceptable to Buyer, to: (a) audit the Supplier's compliance with this Section 33 and (b) provide Supplier and Buyer with written certification of Supplier's compliance, including areas for potential improvement. Supplier will bear the cost of any third-party audit and certification under this Section 33, regardless of which party retained the auditor. Buyer, at its option, may accept an audit or certification by Supplier in lieu of a third-party certification. For purposes of this Section 33, the temporary assignment of employees of one party to the facilities operated by the other party will not affect the status or change the employment relationship of the assigned employees.

**34. Governing Law; Jurisdiction; [Arbitration]**

(a) Each Order is to be construed according to the laws of the State of Michigan, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any conflict of laws provisions that would require application of another choice of law.

(b) *[Subject to Section 34(c) below regarding arbitration.]* (i) any litigation on contractual claims arising from an Order may be brought by Buyer in any court(s) having jurisdiction over Supplier or, at Buyer's option, in court(s) having jurisdiction over Buyer's headquarters or the Buyer location from which the Order issued, in which event Supplier consents to jurisdiction and service of process in accordance with applicable procedures, and (ii) any actions or proceedings by Supplier



against Buyer may be brought by Supplier only in the court(s) having jurisdiction over Buyer's headquarters or the buyer location of Buyer from which the Order issued.

*(c) [The arbitration provisions of this Section 34(c) will be governed by the United States Federal Arbitration Act. At Buyer's option, exercised by written notice any time before or within 30 days following the service of process in a legal action, any dispute regarding the Supplies, the Order, the validity of the Order or any of these Terms, or any other matter between the parties (other than requests for injunctive relief) will be resolved by binding arbitration, conducted in the English language and using a single arbitrator to be selected solely by the Buyer, to be conducted at a location also to be selected solely by the Buyer. The arbitration will be conducted under the commercial arbitration rules of the American Arbitration Association (AAA) and under Rules 26 through 37 of the U.S. Federal Rules of Civil Procedure. The arbitrator will issue written findings of fact and conclusions of law, and may award attorneys' fees and costs to the substantially prevailing party. In no event will any party be awarded punitive or exemplary damages. All arbitration proceedings shall be confidential, except to the extent that disclosure is necessary to enforce an arbitration award in a court of competent jurisdiction or is required by Buyer's Customer(s). A judgment of any court of competent jurisdiction shall be entered upon the award, provided that either party may appeal to the U.S. District Court for the Eastern District of Michigan, for correction of any clear error of fact or law by the arbitrator (provided that the appealing party must first post an appropriate bond and that the prevailing party in any such action will be entitled to its attorneys' fees and costs).]*

### **35. Severability**

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

**36. Survival** The obligations of Supplier to Buyer survive termination of an Order, except as otherwise provided in the Order.

### **37. Waiver of Jury Trial**

Buyer and Supplier acknowledge that the right to trial by Jury is a constitutional one, but that it may be waived. Each of Buyer and Supplier, after consulting (or having the opportunity to consult) with counsel of its choice, knowingly, voluntarily and intentionally waives any right to trial by jury in any action or other legal proceeding arising out of or relating to any Order or other document pertaining to any Order.

### **38. Entire Agreement; Modifications; No Implied Waiver**

(a) Except as described in Section 1, an Order including these Terms, together with any attachments, exhibits, supplements, or other terms of Buyer specifically referenced in the Order, constitutes the entire agreement between Supplier and Buyer with respect to the matters contained in the Order and supersedes all prior oral or written representations and agreements. An Order may only be modified by a written amendment executed by authorized representatives of each party, or by an amendment to the Order issued by Buyer on Buyer's purchase order form through Buyer's standard purchasing protocol and accepted by Supplier as provided in Section 1, or, in the case of changes within the scope of Section 9, by a purchase order amendment issued by Buyer. In the event of any conflict between the terms specified in an Order and these Terms, the terms specified in the Order shall govern. Any clerical errors contained in the Order are subject to correction by Buyer.

(b) Buyer may modify these Terms with respect to future Orders at any time by posting revised Terms to its internet web site at [www.summitpolymers.com](http://www.summitpolymers.com) / supplier documents / terms & conditions or at such other internet web site as is specified in writing by Buyer to Supplier, and such revised Terms will apply to all Orders and Order amendments issued thereafter. Buyer may modify these Terms with respect to current Orders and Order Amendments by posting revised terms to its website and by notifying Supplier of the revised Terms. With respect to current Orders and Order Amendments, the revised Terms will become effective 30 days from the date of notification to Supplier. It is the responsibility of Supplier to review and obtain a copy of the current version of the Terms. The Terms that are applicable to an Order or Order amendment shall be the version of the Terms that is in effect on the date of the Order or the Order amendment applicable to the Order, whichever date is later.

(c) The failure of either party at any time to require performance by the other party of any provision of an Order shall in no way affect the right to require performance at any later time, nor shall the waiver of either party of a breach of any provision of an Order constitute a waiver of any later breach of the same or any other provision of the Order.

**39. Conflict of Interest**

Supplier represents and warrants that its performance of the Order will not in any way conflict with any continuing interests or obligations of Supplier or its employees or contractors. Supplier further warrants that while the Order is in effect, Supplier and those of its employees and contractors participating in the performance of the Order will refrain from any activities which could reasonably be expected to present a conflict of interest with respect to Supplier's relationship with Buyer or its performance of the Order.

**40. Sales Tax Exemption**

Buyer certifies that Supplies purchased under an Order and identified as industrial processing are eligible for state and federal sales tax exemption under the federal identification number indicated on the face of the Order or otherwise provided by Buyer.

**41. Tooling; Capital Equipment**

(a) The provisions of this Section apply only to tooling or capital equipment orders. Buyer shall have access to Supplier's premises, prior or subsequent to any payment, to inspect work performed and to verify charges submitted by Supplier against an Order or amendment. The price set forth in the Order or amendment shall be adjusted so as to credit Buyer in the amount, if any, by which the price exceeds Supplier's actual cost as verified. Supplier further agrees to retain all cost records for a period of two (2) years after receiving final payment of the charges. All tools and capital equipment are to be made to Buyer's specifications (or, where directed by Buyer, those of Buyer's Customer). Exceptions are to be covered in writing on the Order or in a signed writing from the Buyer.

(b) Notwithstanding any other provision of these Terms, and except as otherwise expressly agreed in writing, where Buyer is entitled to receive reimbursement or other payment from a Customer for Supplies to be provided by Supplier to Buyer under an Order that constitute tooling or capital equipment, Supplier shall be entitled to receive payment under the Order for such tooling or capital equipment only after and to the extent of, and in proportion to, Buyer's actual receipt of such reimbursement or other payment from the Customer.

(c) To the extent permitted by applicable law, any payments made by Buyer for Buyer-owned tooling are expressly intended by Buyer to be held in trust for the benefit of any subcontractor(s) used by Supplier to produce the Buyer-owned Tooling that are covered by such payments and Supplier agrees to hold such payments as trustee in express trust for such subcontractor(s) until Supplier has paid the subcontractor(s) in full for the Buyer-owned Tooling. Supplier acknowledges and agrees that such subcontractor is an intended third party beneficiary of the terms of this Section 40(b) relating to the express trust and as such, such tooling subcontractor shall have the right to enforce these terms of this Section 40(b) directly against Supplier in subcontractor's own name. Supplier agrees that Buyer has no obligation to Supplier or Supplier's tooling subcontractor under this Section other than making the payment to Supplier in accordance with a Tooling Purchase Order. In the event Supplier's tooling subcontractor brings an action against Supplier under this section, Supplier agrees that it will not join Buyer in any such action.

**42. Subcontracts.**

Supplier will inform Buyer in writing of any third parties to whom Supplier subcontracts any of the work required under an Order, specifying in detail the work which has been subcontracted to such third party. Supplier will ensure that the terms of its contracts with its subcontractors provide Buyer and its Customers with all of the rights and licenses specified in the Order, including but not limited to those set forth in Section 7, Section 16, 17, 20, 22, 23, 25, 26, 34 and 41.

**43. Noncircumvention.**

(a) Supplier agrees that Supplier, during the term of this Agreement [and for one year thereafter], will not (1) interfere with, disrupt or attempt to disrupt any relationship, contractual or otherwise, between Buyer and any customer of Buyer, relating in

any way to Supplies subject to this Agreement or to similar goods of Supplier, or (2) contact, communicate with, or solicit (without the prior approval of Buyer) any customer of Buyer (or any other third party) for such customer to do business with anyone other than the Buyer as related to any Supplies subject to this Agreement or to similar goods of Supplier, or for such customer to breach any agreement or other obligations to Buyer, or to terminate or not to renew or extend or continue or expand any business with Buyer related to any Supplies subject to this Agreement or to similar goods of Supplier. (b) In the event that Supplier is contacted, directly or indirectly, by or on behalf of any customer of Buyer or other third party, relating in any way the matters described in items (a) (1) or (2) above, Supplier (1) will immediately advise Buyer and (2) will cooperate with Buyer consistent with Supplier's obligations to Buyer in relation to items (a) (1) and (2) above and otherwise under this Agreement. (c) Supplier agrees that the obligations of this Section are in addition to Supplier's obligation under other sections of this Agreement, including without limitation Section 25 (regarding limitations on disclosure and use of Buyer's Property including confidential information) and Section 29 (limitation on advertising or disclosure to third parties of the fact that Supplier has contracted with Buyer with respect to Supplies).