

**TERMS AND CONDITIONS OF PURCHASE  
EFFECTIVE AUGUST 1, 2016**

**1 Relationship.**

1.1 The Materials. Subject to the exclusive terms and conditions of these Terms and Conditions of Purchase (“T&C”), Seller agrees to sell to Hengst of America, Inc. or its affiliate(s) or subsidiary(ies) (“Buyer”) the goods, services, or material identified in the Purchase Order (“the Material”). Unless the quantity is stated otherwise in the order, this is a requirements contract. Buyer will purchase 80%-100% of its total requirements of Material from Seller.

1.2 Acceptance of the Agreement. The T&C, together with the Purchase Order, shall be deemed an offer by Buyer. Seller accepts the T&C and Purchase Order upon either its written acceptance or upon commencement of any required work or service, under the Purchase Order. Seller’s acceptance shall be limited to the express written terms of the T&C and the Purchase Order (collectively, “the Agreement”). Any new or additional terms contained in Seller’s acceptance documents, or otherwise proposed by Seller, shall be considered nonconforming terms and are unacceptable and expressly rejected by Buyer and shall not become a part of the Agreement. Seller acknowledges that: (i) a request for quotation or similar document issued by Buyer is not an offer by Buyer; and (ii) any response by Buyer to a request for quotation or similar document issued by Buyer is not an offer by Buyer. The Agreement may be modified or amended only as specified in the Agreement.

**2 Quality.**

2.1 Qualification Audit. Prior to start of business with Buyer, if requested by Buyer, Seller shall participate in a Qualification Audit (“Audit”). The Audit shall include an on-site review of Seller’s facilities by member(s) of Buyer’s organization to determine, among other things, whether Seller’s quality and environmental protection measure meet the requirements of Buyer. Seller will grant Buyer and – if necessary – Buyer’s customers access to all operational premises, testing centers, warehouses and adjoining areas and will allow them to inspect all relevant documents. If there is a determination that an unsatisfactory condition exists with respect to any matter covered by the Audit, then Seller shall receive written notice of the condition and, within fourteen (14) days upon receipt of such notice, shall provide Buyer with a written corrective action plan reasonably satisfactory to Buyer. The parties agree that if Seller fails to timely provide or implement an acceptable corrective action plan to the reasonable satisfaction of Buyer, then Buyer may rescind or terminate the Agreement for cause.

2.2 Compliance to Quality Procedures.

2.2.1 Seller will comply, in all respects, and will cause its subcontractors and suppliers to comply, in all respects, with Buyer’s quality requirements and procedures furnished by Buyer which will be amended and up updated from time to time by Buyer. Seller will promote continuous improvement in the quality of the Material and Seller’s manufacturing and logistics processes.

2.2.2 Seller must ensure that its quality assurance system is registered to ISO 9001:2008 or ISO/TS 16949:2009 or AS9100 Rev C, as modified from time to time, or similar standards applicable to the Materials as specified by Buyer. Seller acknowledges that Buyer is ISO/TS 16949:2009 and AS9100 Rev C registered and agrees to take actions reasonably requested by Buyer to assist Buyer in maintaining its registration. Buyer and its customers shall have the right during reasonable business hours and upon at least two (2) days prior written notice to inspect the Seller’s facilities and to perform quality audits with respect to the Materials provided. Seller agrees to participate in all Buyer supplier quality and development programs and implement recommended outcomes. A positive outcome of a compliance audit or implementation of quality recommendations shall not relieve Seller of any liability under this part.

2.3 Verification. The Buyer's customer or customer's representative shall be afforded the right to verify at the Seller's premises and the Buyer's premises that product and process conforms to specified requirements.

2.4 Inspection and Rejection. Buyer shall have the right to inspect any Material after delivery and before acceptance and reject any Material which are non-conforming. If Material are rejected, the quantities will automatically be reduced unless Buyer otherwise notifies Seller. Seller shall not replace Material rejected by Buyer as non-conforming unless directed by Buyer to do so. Non-conforming Material will be held by Buyer for disposition in accordance with Seller's instructions, and at its cost, within three (3) days after notification of rejection, or such shorter period as may be commercially reasonable under the circumstances. If Seller fails to provide timely disposition instructions, Buyer may, at its option, charge Seller for storage and handling or dispose of such Material without liability. Payment for non-conforming Material shall not constitute an acceptance, or impair, limit or otherwise restrict Buyer's right to claim any legal or equitable right, nor shall it relieve Seller of any responsibility or liability for defects or breach of warranty that are discovered after delivery, payment or acceptance.

2.5 Corrective Action. In the case of any defective or damaged Material, including but not limited to non-compliance with Seller's Quality System requirements as set forth in this Section 2, Seller agrees (i) to initiate any required corrective action within 24 hours from the date that Buyer requests such action, (ii) to provide Buyer with a written corrective action report explaining the cause of the defect or damage within 5 business days of such date, and (iii) to provide Buyer with a written report identifying the short and long term action being taken by Seller to prevent or avoid similar defects or damage in the future within 15 working days of such date. The short term action is defined as the immediate corrective action to ensure the defective, damaged or otherwise not in conformity Material is contained within 24 hours of the occurrence. The long term action is defined to be the root cause analysis and resulting actions to ensure the occurrence will not reoccur. Notwithstanding anything in the T&C to the contrary, the parties agree that if Buyer is not reasonably satisfied that the short and long term corrective action as set forth above will be sufficient to prevent or avoid similar defects or damage in the future, or if Seller fails to take the short and long term corrective action in the manner and the time period set forth in the submitted report, Buyer may terminate the Purchase Order with respect to the particular part numbers of Material as applicable or the entire Agreement by providing written notice 30 days prior to termination.

### **3 Specifications, Confidential Information, Intellectual Property.**

3.1 Confidential Information. The following shall be considered Confidential Information of Buyer: (i) any written specifications for the Material and processing of the Material covered under the Agreement which Buyer has or provides to Seller ("Purchase Specifications"); (ii) any other business or technical information, including without limitation, all oral or written information relating to the Materials, information relating to Buyer's customers, suppliers, business practices, products, designs, inventions, and Intellectual Property (defined below), research and development; and (iii) the terms and conditions of the T&C. However, "Confidential Information" shall not include any information that Seller can establish by written documentation was (i) in the public domain at the time of disclosure or thereafter through no fault of Seller, (ii) independently developed by Seller, or (iii) obtained by Seller without restriction from a third party. Seller agrees to safeguard the Confidential Information by using reasonable efforts, consistent with those used in the protection of its own proprietary information of a similar nature, to prevent its disclosure to third parties. Seller agrees to cause its employees, "contractors," officers, directors, agents and representatives to be bound by and comply with the foregoing restrictions regarding the use or disclosure of such confidential and proprietary information. Seller further agrees not to assert any claims with respect to any technical information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the Materials. Seller acknowledges that the Buyer's business is extremely competitive, and promises to closely safeguard all Confidential Information. At Buyer's request, Seller shall surrender to Buyer all Confidential Information (including copies) shared by Buyer.

3.2 Intellectual Property. Buyer remains the owner of Confidential Information and any drawings, models, patterns, tools, dies, jigs, specifications or other documents (collectively "Intellectual Property")

that Buyer provides to Seller. Without Buyer's written consent, such Intellectual Property may not be used for the Seller's own purposes or for any other purpose or made available to third parties and may be used only for the purpose of the delivery of Materials to Buyer. Buyer may request at any time that such Intellectual Property be returned. Seller shall not, without first obtaining the written consent of Buyer, in any manner publish Buyer's name or otherwise indicate that Seller has furnished or contracted Materials to Buyer.

3.3 Production Rights. Buyer does not grant or convey to Seller and Buyer reserves all rights to use tooling, drawings, designs, patterns or materials or other information belonging to Buyer or supplied by or on behalf of Buyer in the production, manufacture or design of goods for third parties or for the manufacture or production of larger quantities than those specified in this order. This, however, does not preclude Seller from producing, manufacturing or designing goods for anyone other than Buyer if such goods are not of Buyer's design or specifications and if tooling is owned by Seller.

3.4 Customer Relationships. Seller agrees that it will not solicit any business from any customer of Buyer where such business has already been sourced to Buyer, nor will it submit quotes to any customer of Buyer regarding any business that has been sourced to Buyer, unless otherwise approved in writing by Buyer. This provision applies to current business of Buyer and to replacement business on programs that were sourced to Buyer. Seller agrees that during the course of the Order, it will have no communication with Buyer's customers that is in any way damaging to Buyer, and further agrees that it will immediately report to Buyer any communication that Seller's representatives have with any of Buyer's customers relating in any way to Buyer.

#### **4 Process Change**

Seller agrees to process and package all Materials in conformity with any purchase specifications supplied. At the request of Buyer and prior to delivery of any new or changed Materials, the Seller shall provide samples to Buyer for the purposes of inspection and testing along with an initial sample report. Once purchase specifications or a sample has been approved, Seller may not alter the function, appearance, characteristics, material or production method or processes, manufacturing location, subcontractors, or material suppliers without advance written approval from Buyer. For all changes, Seller shall comply with Production Part Approval Process requirements and/or other applicable industry requirements and requirements of Buyer. Buyer's final approval of samples shall not affect the Seller's liability for any defects in the Materials.

#### **5 Delivery**

5.1 Delivery Date. The delivery date shall be the date designated by Buyer in written material releases or other writing. The parties agree that in the event that Seller fails to deliver any order/release for Material on the delivery date, Buyer, in addition to other rights or remedies it may have, shall be entitled, at its option, to cancel the order/release for the Material which was not timely delivered without any obligation or liability to Seller and to purchase such Material from a third party.

5.2 Performance Obligation. As time is of the essence, Seller shall deliver all orders for Material 100% "on time." The term "on time" shall mean on, or no sooner than two (2) days prior to, the delivery date.

5.3 Corrective Action. Should at any time Seller fail to deliver required Materials per the delivery date, Seller shall incur all costs of expedited delivery and any other reasonable and verifiable cost that may be made necessary to make such a delivery to Buyer and Buyer's customer.

5.4 Material Surplus. Material Surplus is defined to be manufacture by Seller in advance of normal flow time or delivery of any good in advance of Buyer's schedule. Should at any time Seller have a Material Surplus made to Buyer's specification, Seller shall not sell the Material Surplus to anyone but Buyer. If Buyer chooses to not purchase said Material Surplus product, Seller guarantees to destroy Material Surplus within 30 days of Buyer's decision to not purchase. Seller will certify the destruction of

the Material Surplus, specifying the quantity of product destroyed and method of destruction, within three (3) days of occurrence of destruction. Seller shall be responsible for all costs incurred as a part of said destruction.

5.5 Capacity. Seller represents that the production capacity quoted to Buyer is based on a tooling and production plan capable of supplying Material to support Buyer's peak daily and annual requirements.

5.6 Delivery / Risk of Loss. Seller is responsible for all costs associated with delivering the Materials to the delivery location stated on the Order. Title and risk of loss transfers when the Materials are received by Buyer at its facility.

## **6 Forecasts**

From time to time, Buyer may issue forecasts of its anticipated Material requirements. The parties acknowledge that any forecast is an estimate only and is subject to change at any time. Seller will not manufacture Materials or procure raw materials in excess of that required to fill Buyer's firm releases, unless earlier procurement (not to exceed 2 weeks fabrication, 4 weeks raw material for forecasted requirements) is necessary to maintain orderly supply. Subject to this paragraph, at contract end (unless contract ends due to termination of Seller for breach), Buyer agrees to purchase conforming Materials and raw materials in Seller's possession. If authorized by Buyer in writing, however, Seller will use its best efforts to resell this inventory, with the resale price credited against any amount otherwise due under this paragraph. Seller acknowledges that notwithstanding any quantity estimates provided, Buyer's requirements are determined largely by Buyer's Customer and consumer demand, and accordingly, Seller may not rely on any estimates, and instead shall reserve enough production capacity for Buyer's actual requirements, regardless of quantity.

## **7 Productivity and Price Competitiveness**

7.1 Base Price. The base price and any future year over year cost reductions for each part number of Material ordered by Buyer during the term from Seller shall be the price set forth in the Purchase Order. Unless otherwise stated, the purchase price: (i) is a firm fixed price for the duration of the Agreement and not subject to increase for any reason, including increased raw material costs, increased labor or other manufacturing costs, increased development costs, or changes in volumes or program length from those estimated or expected; (ii) is inclusive of all federal, state, provincial, and local taxes and any duties applicable to provision of the Supplies; and (iii) is inclusive of all storage, handling, packaging and all other expenses and charges of Seller.

7.2 Maintaining Price Competitiveness. Seller shall be, at all times, competitive in price, quality, performance and fulfillment of obligations. If Seller is determined by the Buyer not to be competitive, especially on pricing, Buyer shall be entitled to re-source any or all parts to a more competitive source.

7.3 Productivity. Seller agrees to lower its price at the end of each one (1) year period for the term of this contract as specified in the PO or other agreement.

## **8 Shipment and Payment Terms**

8.1 Premium Charges. Seller shall be responsible for any premium freight charges required in order for Seller to deliver an order by the applicable delivery date or remedy a past due situation found to be the responsibility of Seller.

8.2 Invoices. Unless instructed otherwise by Buyer, Seller shall invoice Buyer upon shipment of an order. Invoices and packing lists must be sent to locations identified by Buyer. For shipments that will cross national borders (exports) the required documentation must be provided to parties identified by the Buyer no later than the time of shipment.

8.3 Payment. Buyer shall make payment for conforming Materials at the price stated in the Agreement. Unless otherwise agreed to on the Order, payment terms shall be net 60 days after receipt of invoice. The price of any releases shall be the limit of the liability of Buyer for the Materials. Any cash discount or payment privilege to Buyer shall be extended until such invoice and compliance certification are received. Unless otherwise stated, all payments are in U.S. Dollars and include all storage, handling, packing, freight, insurance, taxes, duties and any other charge of any nature. Seller represents and warrants that the prices charged to Buyer shall be no less favorable than those which Seller extends to its most-favored-customers for like goods and services. In addition to any other remedy which may be available, Buyer shall have the right of set off with respect to any sums due Seller by Buyer with any sums payable by Seller to Buyer under any agreement between the parties

## **9 Warranty**

9.1 Warranty. The Seller warrants that the Materials:

- 9.1.1 will conform to drawings, materials, descriptions and specifications designated by Buyer and with all samples approved by Buyer;
- 9.1.2 will be of merchantable quality and fit and sufficient for the particular purposes intended, new, best available technology, safe, of first-class materials and workmanship and free from defects, contamination and rust;
- 9.1.3 will be packaged and marked correctly.
- 9.1.4 if designed by Seller, free from defects in design.
- 9.1.5 will comply with all Laws, in accordance with Section 15.
- 9.1.6 are manufactured in accordance with the applicable quality agreement, if any.
- 9.1.7 are accompanied by the documents necessary for the safe and environmentally friendly use and storage.
- 9.1.8 If designed by Seller, will not infringe any patents, copyrights or other proprietary rights of Seller or others, and
- 9.1.9 will be free from all liens and encumbrances.

9.2 Warranty Period. All warranties of Seller extend to future performance of the Materials and are not modified, waived or discharged by delivery, inspection, tests, acceptance and payment. Buyer's approval of any design, drawing, material, process or specifications will not relieve Seller of these warranties. Seller waives any right to notice of breach. The warranty period is the longest of: four years from the date Buyer accepts the Materials, the warranty period provided by applicable law, or the warranty period offered by Buyer or its Customer to end-users for the products into which the Materials are incorporated.

9.3 Non-conformity. In the event that Buyer determines that any Material is defective, damaged or otherwise not in conformity, Buyer may reject the Material and in such case, Buyer shall not be obligated for payment of the purchase price and may cancel the order/release without obligation or liability. Should Seller not make whole on promised Material, or goods and services or, if Buyer has already paid for the Material in question, Seller shall, at Buyer's option, either: (i) replace or reprocess the Material, or (ii) reimburse Buyer for the purchase price of the Material. In either case, Seller shall pay for incidental and verifiable costs including but not limited to, Buyer's cost of repackaging, manufacturing and transporting the defective Material and/or replacement Material to and from Buyer's or Buyer's customer's facility.

9.4 Damages. The Seller is liable for all direct, incidental and consequential damages, losses, costs, and expenses incurred by the Buyer resulting from Seller's failure to deliver conforming and non-defective Materials or to comply with the shipping and delivery or other requirements of the Buyer, even if the Seller has cured the failure. This includes but is not limited to compensating Buyer for:

9.4.1 any amounts charged by Customer(s) to Buyer;

9.4.2 all costs of containment, sorting, repair, replacement, cure, cover, or any other costs incurred by Buyer, determined in such manner and in such amount as reasonably determined by Buyer;

9.4.3 all costs of any recall campaign, corrective service action, or other voluntary or involuntary action in which Buyer or any Customer participates related to the Materials.

9.5 Fault Analysis. If possible, at Seller's expense, Buyer will send defective Material back to the Seller. If Buyer is merely provided with the test results from the Customer, such test results will be forwarded to the Seller. The Seller will inspect the defective Material returned and will submit its test result to Buyer. The scope and depth of Seller's test is to be agreed upon with Buyer. Seller's test must be carried out and communicated to Buyer within four weeks after Seller's receipt of the defective Material. In case of serial damages or other cases of urgency, Buyer may require Seller to perform its test and communicate the results to Buyer within five days.

## **10 Insurance**

Without limiting Seller's liability, Seller and its subcontractors agree to furnish certificates from their insurance carriers showing that they carry Worker's Compensation, Commercial General Liability, including Products Liability (at a minimum of \$5,000,000 per occurrence), Completed Operations and Contractual Liability, "All Risks" Property (including, but not limited to, coverage for tooling and material maintained by Seller and owned by Buyer), and Comprehensive Automobile insurance coverage within 10 days of Buyer's written request. Certificates must show the amount of coverage, number of policy, and date of expiration, and in respect to Product Liability coverage, must name Buyer as an additional named insured. Seller may not terminate or modify insurance coverage without informing Buyer in advance and showing new equivalent coverage.

## **11 Bailed Property**

11.1 Property Damage. Seller bears all responsibility for loss of and damage to any property owned by Buyer and in Seller's possession or control for use in performing under the T&C, including responsibility for loss and damage which occur despite Seller's exercise of reasonable care. Seller will: (i) Properly house and maintain such property on Seller's premises; (ii) Prominently mark it property of Buyer; (iii) Adequately insure such property against loss or damage; and (iv) Refrain from commingling it with the property of Seller or with that of a third party.

11.2 Liens. Seller affirmatively waives any lien, whether based in statute or common law, that Seller might otherwise have on any Materials or Buyer's property for work done thereon, with or otherwise. Seller will assign to Buyer any claims against third parties with respect to Buyer's property. Upon request, Seller will immediately deliver such property at Buyer's option F.O.B. Buyer's premises (CIF Buyer Plant/Delivered Buyer Plant), properly packed and marked in accordance with the requirements of the carrier and Buyer. Seller will cooperate with Buyer's removal of the property from Seller's premises. Seller's cooperation with delivery and removal of Buyer's property is not contingent on final payment unless final payment is both undisputed and overdue.

11.3 Tooling. Special dies, jigs, tools and patterns and/or other equipment that is dedicated to the production of Materials (collectively "Tooling") used in connection with the Materials for which Buyer

has agreed to pay Seller (whether paid separately or amortized in the price of the Materials) shall be or become the property of Buyer upon fabrication or acquisition by the Seller, regardless of payment.

## **12 Indemnification and Products Liability**

12.1 General. Seller shall indemnify and hold Buyer and Buyer's customers harmless from and against any and all claims, damages, recall and other costs, liabilities and expenses (including without limitation, actual attorneys' fees) incurred by reason of any breach of warranty made by Seller or other obligation by Seller under the T&C or other defect or unsafe condition with respect to any Material. If Seller is obligated to indemnify under this Section, then Buyer may at its option participate in the defense of any claim with its own counsel, at Seller's expense.

12.2 Infringement. The Seller shall defend, indemnify and hold Buyer and Buyer's customers harmless against any and all liabilities, damages or expenses (including actual attorney fees) which may be incurred in connection with any suit, claim, judgment or demand asserting that any Material purchased by Buyer infringes upon any patent or other intellectual property rights, whether such infringement is caused by the manufacture, purchase, use or disposition of the Material alone or in combination with use of the Material with other products except to the extent that such infringement or alleged infringement arises from a design furnished completely by Buyer and Seller is not aware, and has no reason to be aware, of such infringement or alleged infringement. Tolerance modifications to Seller's design shall be considered Seller's design for purposes of the T&C. Buyer shall notify the Seller promptly upon receipt of any written claim or notice of any infringement of third party intellectual property rights in connection with the T&C. The Seller shall immediately take all steps to prevent or settle such dispute on its own authority and shall hold the Buyer harmless against all effects whatsoever in respect thereof. Buyer may retain counsel of its choice at its expense to participate in any suit, claim, or proceeding. Seller shall have the right to settle or compromise any suit, claim or proceeding at its discretion, provided that the terms of the settlement or compromise provide for the unconditional release of Buyer, and the settlement or compromise requires the payment of monetary damages only. Seller shall not settle, without Buyer's prior written consent, any suit, claim or proceeding which imposes upon Buyer any obligation, or in any way prejudices the rights of Buyer, other than as set forth herein. Any other settlement or compromise requires prior written approval from Buyer.

## **13 Term and Termination**

13.1 Term. The T&C shall commence upon acceptance under Section 1.2. Subject to Buyer's termination rights and unless otherwise stated on the Order, the agreement formed by the Order is binding on the parties for the length of the applicable Original Equipment Manufacturer ("OEM") vehicle program production life (including model refreshes as determined by the applicable OEM customer), and both Buyer and Seller acknowledge the risk of the vehicle program production life being cancelled or extended by the OEM. If the Material is not utilized by Buyer for the production of automotive parts or systems, the agreement formed by the Order will be binding for one year from the date the Order is transmitted to Seller. In such case, subject to Buyer's termination rights, the Order will automatically renew for successive one-year periods after the initial term unless Seller provides written notice at least 180 days prior to the end of the current term of its desire that the Order not be renewed. Notwithstanding the foregoing, if an expiration date is stated in the Order or an Agreement, the term of the Order will continue until that date. Unless specifically waived in writing by an authorized representative of Buyer, Seller's obligations with respect to service and replacement parts will survive the termination or expiration of the Order as set forth below.

13.2 Termination by Buyer. In addition to any other termination right which Buyer has, it may terminate the T&C, or any Purchase Order issued under it:

13.2.1 for convenience, with three months' advance notice, except that advance notice is not required if Buyer's customer terminates its order with Buyer for any reason, or if Buyer exits the business and/or closes a plant which is the recipient of the Material

13.2.2 for breach by Seller, including if a) Seller repudiates or defaults on any material term, including Seller's warranty or b) Seller fails to perform services or deliver goods or Material as specified by Buyer or fails to make progress so as to endanger timely and proper completion of services or delivery of goods or Material. Seller's default shall constitute a breach if, after receipt of notice from Buyer specifying the nature of the default, it does not correct such default to Buyer's satisfaction within 10 days, or such shorter period of time that is commercially reasonable under the circumstances. Declaring a default or breach under this Paragraph 13 shall be in addition to any other remedy available to Buyer and shall not relieve Seller of its obligations under the Agreement or imposed by law.

13.2.3 in any one or more of the following or other comparable events a) Seller's insolvency, bankruptcy, reorganization, receivership or liquidation; b) appointment of an administrator, a trustee or a receiver over Seller's assets or execution of an assignment for the benefit of creditors executed by Seller, provided that such appointment or assignment is not vacated or nullified within 15 days; or c) Seller ceases to carry on business in the ordinary course. In the event of such termination, Seller shall be liable for all costs, damages and expenses suffered by Buyer.

13.3 Termination by Seller. The Seller may terminate the T&C and the Agreement only for non-payment of the purchase price for Materials which are thirty or more days past due and material in amount, and then only if: (i) Seller first provides Buyer written notice specifying the amounts past due and Seller's intent to terminate if the past due amount is not paid; and (ii) Buyer, within 60 days of such notice, does not either: (x) pay the past due amounts; or (y) notify Seller that the amount claimed to be unpaid are disputed by Buyer. Seller shall terminate under this Section by delivering a Termination Notice to Buyer. Seller may not terminate or cancel for any reason except as permitted under this Section. Seller may not suspend performance for any reason.

13.4 Obligations on Termination. In the event of termination by Buyer under Section 13.2.1 above, unless otherwise agreed by Buyer and Seller, Buyer shall pay to Seller the following amounts, without duplication: a) the Agreement price for all goods, services or Material that have been completed and delivered in conformance with the Agreement and not previously paid for, and b) the actual and reasonable costs of work-in-process and raw materials incurred by Seller, as permitted under Section 6, less, the sum of the reasonable value or costs (whichever is higher) of any goods or materials used or sold by Seller with Buyer's written consent, and the cost of any damaged or destroyed goods or materials. Buyer will make no payment for finished goods, work-in-process or raw materials fabricated or procured by Seller in amounts in excess of those authorized under Section 6 above or necessary to meet the then firm delivery schedules nor for any undelivered goods that are in Seller's standard stock or that are readily marketable. Buyer's maximum liability for payments pursuant to this paragraph shall not exceed the total of all required payments under the T&C minus those actually made. Seller shall submit its claim for payments under this paragraph, with supporting documentation, within 60 days of the effective termination date. Buyer shall have the right to audit the relevant books and records, facilities, work, material, inventories and other items relating to Seller's claim.

13.5 Seller's Obligations and Transition of Materials Following Termination or Expiration. Following expiration or termination of the Agreement by either party for any reason (including termination by Seller) and notwithstanding any claimed or actual breach of any obligation by Buyer, Seller will cooperate in the transition of supply to a successor supplier, including the following, which will collectively be referred to as "Transition Support":

- 13.5.1 Seller will continue production and delivery of all Materials as ordered by Buyer, at the prices and other terms stated in the Agreement, without premium or other condition, during the entire period reasonably needed by Buyer (not to exceed 12 months) to complete the transition to the alternate supplier(s), such that Seller's action or inaction causes no interruption in Buyer's ability to obtain Materials as needed;
- 13.5.2 At no cost to Buyer, Seller will promptly provide all requested information and documentation regarding, and access to, Seller's manufacturing process, including on-site inspections, bill-of-material data, tooling and process detail and samples of Materials and components; and
- 13.5.3 Seller will provide overtime production, storage and/or management of extra inventory of Materials, extraordinary packaging and transportation and other special services as expressly requested by Buyer in writing. If the transition occurs for reasons other than Buyer's termination of Seller for Default, Buyer will, at the end of the transition period, pay the reasonable, actual cost of the assistance under this Section, provided that Seller 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 Seller, and Seller will accept the agreed portion without prejudice to Seller's right to seek to recover any disputed amounts.
- 13.5.4 Seller will surrender to Buyer all Confidential Information, materials, tools or other property of Buyer in Seller's possession or control.

13.6 Limitation on Liability. UNDER NO CIRCUMSTANCES SHALL BUYER BE LIABLE FOR CONSEQUENTIAL AND INCIDENTAL DAMAGES, PAYMENTS OWED TO SELLER'S SUBCONTRACTORS OR FOR LOSS OF ANTICIPATED PROFITS, UNABSORBED OVERHEAD, INTEREST, PRODUCT DEVELOPMENT OR ENGINEERING COSTS, FACILITIES AND EQUIPMENT COSTS OR RENTAL, UNRECOVERED DEPRECIATION COSTS, OR GENERAL AND ADMINISTRATIVE BURDEN CHARGES.

13.7 Service and Replacement Parts. During series production, Seller will sell to Buyer Material necessary for Buyer to fulfill its current model service and replacement parts requirements at the price(s) set forth in the corresponding Order(s). If the Material are systems or modules, Seller will sell the components or parts that comprise the system or module at a price(s) that shall not, in the aggregate, exceed the price of the system or module less assembly costs. During the 15 year period after the end of series production, Seller will sell Material to Buyer, and only to Buyer, to fulfill Buyer's past model service and replacement parts requirements. Unless otherwise agreed to by Buyer, the price(s) during the first three years of this period shall be those in effect at the conclusion of series production. For the remainder of this period, the price(s) for Material shall in all respects be reasonable and be as reasonably and mutually agreed to by Buyer and Seller.

## **14 Remedies**

14.1 The rights and remedies reserved to Buyer will be cumulative with and in addition to all other legal or equitable remedies.

14.2 In any action brought by Buyer to enforce Seller's obligations in connection with the production or delivery of Materials 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 an immediate order for specific performance of Seller's obligations (including related temporary and preliminary injunctive relief).

14.3 Seller shall reimburse Buyer for all actual attorney's fees (including the cost of in-house counsel) in any action arising out of this Order, unless Seller is the prevailing party.

## 15 Other Provisions

Compliance with Laws. Seller and its subcontractors shall comply with all applicable laws, regulations, directives, guidelines, rules, orders, conventions, ordinances and standards of the country(ies) of origin and destination or that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval or certification of the Material, including, but not limited to, those relating to environmental matters, human rights, diversity, compliance, bribery, data protection and privacy, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety (collectively, "Laws"). Seller further represents that neither it nor any of its subcontractors will utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in abusive worker treatment or corrupt business practices, in the supply of goods or provision of services under the T&C. At Buyer's request, Seller shall certify in writing its and its subcontractors compliance with the foregoing. Seller shall indemnify and hold the Buyer harmless from and against any liability claims, demands or expenses (including attorney's or other professional fees) arising from or relating to Seller or Seller's subcontractor's non-compliance. Seller shall comply with all applicable laws and regulations, including but not limited to conflict mineral standards, the Fair Labor Standards Act and Occupational Safety and Health Act of 1970. Where this purchase order covers materials and/or services to be used in the fulfillment of a government contract, Seller shall comply with Executive Order 11246, the Vocational Rehabilitation act of 1973, the Vietnam Era Veteran's Readjustment Act of 1974, the National Women's Business Enterprises Program established by Executive Order 12138, the Labor Surplus Area Program mandated by P.L. 95-89, Small Business Concerns and Small Disadvantaged Business Concerns Programs established by P.O. 95-507, and all rules and regulations thereunder, unless exempt from such compliance. Seller shall hold Buyer harmless from and reimburse it for any and all costs, damages, and expenses (including actual attorney's fees) suffered by it directly or indirectly through the failure of Seller to comply with any such laws, regulations, or orders. Supplier must supply a Material Safety Data Sheet (MSDS) that complies with OSHA 29 CFR 1910.1200 to Buyer, to be on file at Buyer's facility, including the DOT Hazard Class UN, NFPA Rating numbers, and EPA Reportable Quantity, and technical data sheets on usage of material.

15.1 Notice. Whenever written notice is required or permitted to be given hereunder, it shall be deemed given on the date the same is delivered, personally or by Federal Express or comparable commercial service, or sent by facsimile or email with confirmation, or three working days after the mailing thereof, to the party to whom the notice is to be given at its last known address

15.2 Directed Seller. If Buyer's customer directed, recommended, requested, suggested or otherwise identified Seller as a source of the Materials: (a) Buyer will pay Seller for the Materials only following and to the extent of Buyer's actual receipt of payment from that customer for those goods in which the specific Materials are incorporated; (b) within three business days of any change in price, specifications or other terms negotiated or proposed between Seller and the customer, Seller will notify Buyer in writing and will immediately adjust its invoices to reflect any price reduction, provided that no change will be binding on Buyer without Buyer's specific written consent.

15.3 No Agency. Nothing in the T&C shall constitute or be deemed to constitute an agency relationship between the parties. No party hereto is authorized or empowered to act as an agent for the other.

15.4 Force Majeure. Except as set forth herein, neither party shall be liable for failure to perform or delay in performance hereunder if such failure or delay is due to fire, storm, flood, war, embargo, or any act of God or other cause or contingency beyond such party's reasonable control; provided that, if any act or event described in this Section prevents or will prevent Seller from performing its obligations under the T&C, Buyer shall have the right, without obligation or liability to Seller, to purchase Material from another supplier until Seller is able to resume performance of its obligations hereunder. Under such circumstances Seller shall reimburse Buyer for any premium reasonably and verifiably paid by Buyer for such Material. For avoidance of doubt, labor problems (including lockouts, strikes and shortages), rising costs of raw materials and financial difficulties of Seller will not constitute force majeure events excusing Seller's performance.

15.5 No Assignment. Seller may not assign its rights or obligations under the T&C to any other party without the prior written consent of Buyer.

15.6 Governing Law; Arbitration; Jurisdiction. The T&C shall be governed by and construed in accordance with the laws of the State of South Carolina. 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, are excluded. Any action hereunder shall be subject to the exclusive jurisdiction of Kershaw County Circuit Court, South Carolina or the U.S. District Court for the District of South Carolina, as applicable, without giving effect to the principles thereof relating to conflicts of law. The arbitration provisions of this Section 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 Materials, the Order, the validity of the Order or any of the terms of the T&C, or any other matter between the parties (other than requests for equitable or injunctive relief or specific performance) will be resolved by binding arbitration, conducted in the English language using a single arbitrator. If such location and/or rules are not identified: (a) 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, in a location agreed by the parties; (b) if the parties cannot agree on a location within 30 days of either party's written request for arbitration, the arbitration will be conducted in the metropolitan area of Columbia, South Carolina, USA; and (c) the arbitrator will be selected from an AAA list using the AAA-recommended selection method. The arbitrator will issue written findings of fact and conclusions of law. Each party will bear equally the costs and expenses of AAA and of the arbitrator, and each party will bear its own costs and expenses – provided, however, (1) that the failure by one party to pay its share of arbitration fees constitutes a waiver of such party's claim or defense in the arbitration, and (2) that the arbitrator may award attorneys' fees and costs to the substantially prevailing party. In no event will any party be awarded punitive or exemplary damages or any other damages not measured by the prevailing party's actual 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. The award of the arbitrator will be enforceable in any court of competent jurisdiction, provided that either party may appeal to the court identified in the Country Supplement, or if no court is identified, then to the U.S. District Court for the District of South Carolina 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 actual attorneys' fees and costs). In all other cases, including any request for equitable or injunctive relief, the parties agree and consent to the exclusive jurisdiction of the Kershaw County Circuit Court, South Carolina or the U.S. District Court for the District of South Carolina as applicable, provided that Buyer may elect to bring an action against Seller in any court having jurisdiction over Seller.

15.7 Survival. The provision of Sections 3, 9, 12, 13.4, 13.5, 14 and 17 contained in the T&C shall survive the termination of the T&C for any reason. The termination of the T&C shall not affect in any manner the rights and obligations of the parties accruing prior to the date of such termination nor any rights or remedies existing at law or in equity by reason of any breach of any term of the T&C which occurred prior to such termination.

15.8 No Waiver. NO WAIVER OF ANY BREACH OF ANY PROVISION OF THESE TERMS WILL CONSTITUTE A WAIVER OF ANY OTHER BREACH OR OF SUCH PROVISION. THESE TERMS MAY BE MODIFIED ONLY IN WRITING SIGNED BY AUTHORIZED REPRESENTATIVES OF BUYER AND SELLER. HOWEVER, BUYER MAY, AT ANY TIME, BY WRITTEN CHANGE ORDER, MAKE CHANGES IN (A) QUANTITIES ORDERED, (B) THE DRAWINGS, DESIGNS OR SPECIFICATIONS APPLICABLE TO THE GOODS OR SERVICES COVERED BY THIS ORDER, (C) THE METHOD OF SHIPMENT AND PACKING, AND/OR (D) THE PLACE OF DELIVERY. IF SUCH CHANGES MATERIALLY AFFECT THE TIME FOR PERFORMANCE, THE COST OF MANUFACTURING THE GOODS AND MATERIALS, OR THE COST OF FURNISHING SERVICES, BUYER WILL MAKE AN EQUITABLE ADJUSTMENT IN THE PURCHASE PRICE OR THE DELIVERY SCHEDULE OR BOTH. ANY DISPUTE WITH RESPECT TO AN

EQUITABLE ADJUSTMENT SHALL NOT RELIEVE SELLER OF ITS OBLIGATION TO PERFORM IN ACCORDANCE WITH A WRITTEN CHANGE ORDER.

15.9 Entire Agreement. The T&C is intended as a final expression and a complete and exclusive statement of the Agreement between the parties respecting the subject matter hereof and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. No amendment to or modification of the T&C shall be valid or binding upon either party unless it is made in writing and signed by a duly authorized representative of both parties unless otherwise required by law.

15.10 Severability. In the event that any provision of the T&C is held illegal or invalid for any reason, such illegality or invalidity shall at the option of the party against whom the same is asserted not affect the remaining parts of the T&C but the T&C shall be construed and enforced as if that illegal and invalid provision had never been inserted herein.

15.11 Communication and Technology. When notified of availability by Buyer, the Seller shall be required to connect to Buyer's EDI systems to provide two-way electronic communication for items that include, but are not limited to ASNs, invoices, schedules, etc. All costs associated with the connection and use of the systems will be borne by the Seller.

15.12 No License. Nothing in the T&C will be construed as granting any right or license to the Seller, either express or implied, to any Intellectual Property right of the Buyer or any right to use Confidential Information except for the purposes of the T&C. Upon expiration or termination of the T&C, Seller shall immediately cease all use of Buyer's Intellectual Property or Confidential Information. All copies of Buyer's Confidential Information shall be immediately returned to Seller or destroyed at Buyer's discretion.

15.13 Trade Remedy Proceedings. Seller understands that the Materials it produces may be, either now or in the future, subject to one or more trade remedy proceedings (e.g., anti-dumping, countervailing duty, safeguard) in the United States or another country, which may result in the imposition of additional duties or other charges on the Materials. If such proceedings are initiated, Seller agrees that, at Buyer's request, it will cooperate fully with Buyer and with requests for information from the competent government authorities in the importing country. Seller further understands and agrees that such cooperation may require it to provide confidential sales and cost information to the competent authorities so that they can calculate the amount of the duty or other charge on the Materials.

At all times before, during, or after the initiation of a trade remedy proceeding in the United States or another country, Seller agrees to take all available steps necessary to minimize the risk that additional duties or other charges may be imposed on the Materials sold to Buyer. Seller also provides Buyer with a warranty of non-applicability of any future additional duties or other charges (e.g., anti-dumping duties) covering the Materials sold to Buyer, so long as the Materials are: (1) sold before the date of publication of the official government notice that establishes the authority of the competent authorities to impose additional duties or other charges (i.e., the "order"); and (2) exported before the date of publication of the official government notice concluding the investigation phase of the trade remedy proceeding. The purpose of this provision is to comply with U.S. regulation 19 C.F.R. 351.402(f) (2006). Buyer retains the right to terminate the T&C if additional duties or other charges are imposed on the Materials produced by Seller.

15.14 Seller's Labor. Seller shall inform Buyer of the expiration dates of any collective bargaining agreements covering Seller's workforce for the Material at least six (6) months before such dates, shall take appropriate measure to ensure an uninterrupted supply of Material to Buyer for the duration of any labor dispute and shall hold Buyer harmless from and indemnify Buyer for any and all claims or damages arising from any labor dispute between Seller and its employees.

## **16 Import Laws**

For Seller's Materials to be imported into the United States, Seller shall comply with all applicable recommendations or requirements of the United States Bureau of Customs and Border Protection's Customer-Trade Partnership Against Terrorism ("C-TPAT") initiative (for information go to <http://www.cbp.gov/> and find the link to the C-TPAT section). At the Buyer's or the Bureau of Customs and Border Protection's request, Seller shall certify in writing its compliance with the forgoing. Seller shall indemnify and hold the Buyer harmless from and against any liability, claims, demands or expenses (including actual attorney's or other professional fees) arising from or relating to Seller's noncompliance.

## **17 Trademark and Marks**

17.1 Trademark Protection: Buyer may require Seller to place Buyer's trademarks (MARKS) on the Material. If Buyer makes such a request, Buyer grants to Seller a limited, revocable, nonexclusive royalty free license for the term of the T&C to use the MARKS on products and packaging materials in connection with the sale of Material to Buyer only. This license grant is limited to sales made to Buyer or at the direction of Buyer. The license granted in the T&C is limited to Material manufactured and/or produced by Seller at the direction of and for Buyer, or Buyer's authorized subsidiaries or affiliates. Seller is not authorized to use the MARKS in connection with the sales, manufacturing or distribution of any products or services unless expressly authorized by Buyer in writing. Upon expiration or termination of the T&C for any reason, Seller will immediately refrain from further use of the MARKS or any further reference to them, direct or indirect, or anything deemed by Buyer to be similar to the MARKS in connection with the manufacture, sale or distribution of any of Sellers's products.

### **17.2 Ownership of Marks**

- 17.2.1 Seller recognizes there is significant value and good will associated with the MARKS, and acknowledges that the MARKS and all rights and good will associated with the MARKS belong exclusively to Buyer.
- 17.2.2 Seller's every use of the MARKS shall inure to the benefit of Buyer and Seller shall not at any time acquire any rights in the MARKS by virtue of any use it may make with the MARKS.
- 17.2.3 Seller shall cooperate fully and in good faith with Buyer for the purpose of securing and preserving Buyer's rights to the MARKS.
- 17.2.4 Upon the termination or expiration of the T&C, Seller will be deemed to have assigned, transferred, and conveyed to Buyer any rights or good will to the MARKS that may have been obtained by Seller. Seller shall cooperate with and do all acts necessary so that Buyer can accomplish or confirm the foregoing. Any such assignment, transfer, or conveyance shall be without consideration other than the mutual covenants and considerations of the T&C.
- 17.2.5 Seller and its parent company, subsidiaries, and divisions, if any, and its subcontractors, agents, and representatives agree not to attempt to register the MARKS on any product or service either during the term of or after termination of the T&C.