

## TERMS AND CONDITIONS OF PURCHASE

**1. DEFINITIONS AND DOCUMENTS** “Goods” shall mean the goods, products, materials, supplies, parts, assemblies, drawings, documents, or services covered by this Purchase Order. “Production” and “delivery” as used herein shall include any services to be rendered under this Purchase Order. “Buyer” shall mean Troy Design and Manufacturing Company. “Seller” shall mean the party designated on the face of the Purchase Order. A **Request For Quote** (RFQ) asks the Seller to provide a quotation for the Goods. Any quotation must be based on these Terms and Conditions of Purchase. A **Statement of Work** is prepared or approved by the engineering activity of Buyer. In most cases, it is developed before a Purchase Order is issued. A **Quality/Reliability Statement of Work** is a Statement of Work that includes long-term durability specifications for the Goods (like 3-years or 36,000 miles, whichever comes first). It may also specify the testing methodology that will be used. A **Warranty Program Agreement** is an agreement relating to a warranty reduction, recovery or chargeback program. It may be entered into at any time. A **Technology Agreement** may be entered into in special cases to address intellectual property rights, confidential information, or other matters. In most cases, it will be entered into before a Purchase Order is issued. A **Purchase Order** describes the Goods and specifies the price, quantity and other key terms, and is used to purchase prototype goods, production goods, service parts, and non-production goods and services. A **Release** instructs the Seller to ship a specified quantity of Goods to a particular location by a specified date and time.

### 2. THE CONTRACT; SELLER’S COMPLIANCE

All specifications, drawings, technical data and documents expressly referred to in this purchase order are incorporated herein by reference. If such reference is to a portion only of such specifications, drawings, data or documents, then only the portions referenced shall be incorporated herein. This purchase order, including all items incorporated herein by reference, contains the final and entire contract between Buyer and Seller, and no agreement or other understanding purporting to add to or modify the terms and conditions hereof shall be binding upon Buyer unless agreed to by Buyer in writing on or subsequent to the date of this purchase order. Any terms proposed by Seller are expressly rejected unless agreed to in writing by Buyer. Seller’s performance shall constitute acceptance of the terms of this purchase order. Seller shall not delegate to any other person the production of Goods under this purchase order. Buyer shall be entitled to assert against any assignee of Seller all rights, claims, and defenses arising under this purchase order. Time and quantities are of the essence under this purchase order. Seller agrees to participate in Buyer’s cost reduction and quality programs as requested by Buyer. At Buyer’s request, Seller will provide Buyer with **Advanced Shipping Notices**. Failure to do so may delay payment to Seller.

### 3. PAYMENT TERMS; TAXES

Payment terms are Net 13th, 23rd prox., 3rd, 13th subsequent for all Purchase Orders, unless specified otherwise on the Purchase Order. The total price for the Goods will include duty, if applicable, and tax. All payments made under this purchase order shall be in US Dollars or such other currency as is designated by Buyer. Seller will separately show on its invoice any duties, and any sales tax, use tax, value-added tax (VAT) or similar turnover taxes, levied on the Goods. Seller will provide whatever documents and information Buyer may require to support taxes paid, tax reporting, or recovery of VAT. Seller will pay duty if the delivery term specified on the Purchase Order requires Seller to pay it.

### 4. INSPECTION AND SAMPLES

Buyer and, if the face of this order bears a Government prime contract number, representatives of the United States Government shall have the right to inspect and test the material and workmanship of all Goods at all times and place when practicable during manufacture. Seller shall furnish without additional charge all reasonable facilities and assistance for a safe and convenient inspection or test. Seller will supply samples in accordance with Buyer's quality standard QS9000 and/or its applicable supplements if samples are specified as required by a Purchase Order.

### 5. DELIVERY

a. All Goods shall be properly packed, marked, loaded and shipped as required by this order and the transporting carrier, and shipped in a manner that will permit the lowest transportation rates to apply. Seller shall reimburse Buyer for all expenses incurred due to improper packing, marking, loading or routing or incorrect shipping documents. Seller shall route shipments in accordance with Buyer’s instructions.

b. Delivery shall not be complete until Goods have been actually delivered to and accepted by Buyer, notwithstanding any agreement to pay freight, express, parcel post, or other transportation charges. The risk of loss or damage in transit shall be upon the Seller, except where shipment is by Buyer’s carrier in which case the risk of loss or damage shall pass to Buyer upon completion of loading. Seller will obtain a straight bill of lading from the carrier of the Supplies and will include on each packing slip and bill of lading the relevant Purchase Order number and the destination address. Seller will include a numbered master packing slip with each shipment. For shipments of less than a full carload or truckload, the slip will be included in one of the packages that will be marked "Packing Slip Inside." For full carload and truckload shipments the master packing slip will be enclosed in an unsealed envelope that is affixed near the door on the inside of the freight vehicles. Seller will retain the original bill of lading for three years from the date of shipment unless otherwise directed by Buyer.

c. Seller agrees to 100% on-time delivery of the quantities and at the times specified by Buyer, as stated in the purchase order and Buyer's releases. Quantities listed in the purchase order as estimated are Buyer's best estimate of the quantities of Goods it might purchase from Seller for the contract term specified in the purchase order, and do not constitute a commitment by Buyer to purchase quantities listed as estimated. If no quantity is stated or if the quantity is stated as zero, Seller is obligated to supply Buyer's stated requirements for Goods in quantities as specified in Buyer's releases. Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which entitles Seller to modify the price for Goods. Shipments in excess of those authorized may be returned to Seller and Seller shall pay Buyer for all packing, handling, sorting, loading, and transportation expenses in connection with such shipments.

d. If delivery dates are not specified in a Purchase Order, Seller will procure materials and fabricate, assemble, and ship Supplies or provide services only as authorized in shipment releases issued to Seller by Buyer. Buyer, at any time may change or temporarily suspend shipping schedules specified in a Purchase Order or shipment release or other written instructions issued by Buyer pursuant to this Section. Time and quantity are of the essence in any Purchase Order. Unless otherwise agreed, delivery times specified are the times of delivery of the Supplies at Buyer's designated place of delivery or destination. The individual remedies reserved in a Purchase Order will be in addition to any remedies provided by law.

e. Seller shall in the event of a delay or threat of delay, due to any cause, in the production or delivery of Goods hereunder, immediately notify Buyer and shall include with such notice all relevant information with respect to such delay or threatened delay. Seller shall be liable for any damages resulting from failure to make delivery within the time called for by this order or by any written instructions of Buyer, except where (1) such delay in delivery shall be due to causes beyond the reasonable control of Seller, and (2) Seller notifies Buyer as provided herein. If Seller for any reason cannot comply with Buyer's delivery schedule, Buyer, in addition to any other rights or remedies available to it by law or under these terms and conditions, may terminate this purchase order or cancel any shipments thereunder without further liability to Seller. Seller will provide Buyer with written notice (a) at least 30 days in advance of the expiration of any labor contract or (b) concerning any potential labor dispute involving Seller that could affect Buyer's operations or the supply of the Goods under the purchase order. If Buyer waives nonperformance under a purchase order, such waiver will apply only to the specific instance addressed in the waiver and to no other past or future nonperformance.

f. Seller will deliver only Goods that conform in all respects to the requirements described in Section 7. Buyer is not required to inspect the Goods prior to their use. Seller waives any right to require Buyer to conduct an inspection. If the Goods do not conform, Buyer will inform Seller, orally or in writing, about the nonconformity as soon as reasonably practicable after Buyer has discovered it. Buyer will confirm the nonconformity in a written notice if requested by Seller to do so. Seller will be permitted to rework, replace or otherwise remedy a nonconformity in the Goods as long as: (i) the nonconformity has been discovered after delivery of the Goods but before Buyer has started to use the Goods (including in any pre-assembly processing or fitment); (ii) Seller can perform the remedial work at its location, or at Buyer's site (subject to any restrictions in any labor agreement of Buyer), without disruption to Buyer's operations; (iii) the remedial work will not cause any delay in Buyer's operations, including its production process, or cause Buyer to incur any additional costs; and (iv) the cure can be completed by the deadline established by Buyer. If Buyer determines in good faith, after consulting with Seller, that the remedial work cannot be done within the limits of Section 4(e)(ii), Buyer is entitled to: (a) reject the nonconforming Goods, return them to Seller and, at Buyer's option, request redelivery of conforming Goods; or (b) retain them and either repair them itself or request Seller do so, on or off-site. In any event, Seller will bear the risk and expense of the remedial action undertaken by Buyer or Seller. Seller may request that Buyer hold and make available to Seller, at Seller's expense, any nonconforming Goods, subject to Buyer's options under this paragraph. Supplier is liable for all direct, incidental and consequential damages, losses, costs, and expenses incurred by Buyer resulting from the failure of Seller to deliver conforming Goods or to comply with the shipping and delivery or other requirements of Buyer, even if Seller has cured the failure. These include costs associated with the off lining of vehicles or the Goods, interruptions or delays in production, reduced line-speeds, and plant shutdowns. Buyer's rights under this Section 5 apply even if the nonconformity does not become apparent until after delivery of the Goods. Seller is not liable for damage to the Goods after delivery due to actions taken by Buyer or third parties. Payment will not constitute acceptance of nonconforming Goods, nor will it limit or affect any of Buyer's rights.

## **6. QUALITY ASSURANCE**

Seller will promote continuous quality improvement in the manufacture, production and distribution of the Goods. Seller will comply with the quality assurance processes, inspections and standards specified by Buyer for suppliers providing goods or services similar in nature to the Goods. These standards may include, but are not limited to, Buyer's Q1 quality program, ISO/TS 16949, ISO9000 and ISO14000. In lieu of certification to one or more of these standards, Seller is subject to an on-site audit performed at the discretion of Buyer.

## **7. WARRANTY**

a. In addition to any implied warranties, Seller warrants that all Goods covered by this purchase order will: be free from defects in material and workmanship and design (to the extent that Seller furnishes the design, even if the design has been approved by Buyer), conform to applicable specifications, drawings, samples and descriptions, be merchantable, comply with all regulations in force in the countries in which the Goods are to be provided; be suitable for their intended use by Buyer, including the specified performance in the facility or equipment specified by Buyer and the environment in which the Goods are or reasonably may be expected to perform. To the extent such Goods comprise services, Seller warrants that the Goods will: (i) conform in all respects to the specifications, Statements of

Work, and other descriptions and requirements relating to the Goods that have been furnished, specified or approved by Buyer; (ii) comply with all regulations in force in the countries in which the Goods are to be provided; (iii) be suitable for their intended use by Buyer, including the specified performance in the facility or equipment specified by Buyer and the environment in which the Services are or reasonably may be expected to perform; and (iv) be provided by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for Buyer to expect in the circumstances. In case any such Goods shall be defective or otherwise not in conformity with this order, Seller shall at Buyer's option and in addition to all other remedies of Buyer, either credit Buyer for, or at Seller's own expense replace, repair, or correct any such Goods. Such warranties, together with service warranties and guarantees, shall run to Buyer, its successors, assigns, customers, and to the users of its products and shall survive any inspection, delivery, acceptance, or payment by Buyer of or for the Goods. Seller shall hold Buyer harmless for any costs, expenses and damages, whether direct, indirect, incidental or consequential, arising from a breach of these warranties. Seller also warrants that the Goods shall comply with applicable United States Government specifications, unless the Goods are standard commercial products (not intended as component parts or as equipment or accessories for Buyer's products).

b. The warranty period for Goods shall be the greater of one year after final acceptance by Buyer, or the period specified on Buyer's Purchase Order, provided that for Goods installed or used in a production vehicle, the warranty period begins on the date the Goods are delivered to Buyer (or a Related Company or third party designated by Buyer) and expires on the date that is the later of: (a) the date on which the period of the applicable New Vehicle Warranty (as defined herein) covering the Goods ends; or (b) the date on which any longer or broader government requirement covering the Goods ends. The "New Vehicle Warranty" consists of the basic warranties provided by Buyer or Buyer's customer to the end customer that cover the specific vehicle, its components and parts. The New Vehicle Warranty includes extended warranty coverage provided at no additional charge to the end customer, but does not include any optional extended warranty that may be separately purchased by the end customer. For Goods installed, used or sold as service or replacement parts, the warranty period begins on the date the Goods are delivered to Buyer and expires on the date that is the later of: (a) the date on which the period of the warranty provided by Buyer to Buyer's customer for the Goods ends; (b) the date on which the period remaining under the applicable New Vehicle Warranty covering the Goods ends; or (c) the date on which any longer or broader government requirement covering the Goods ends.

c. Buyer may change the New Vehicle Warranty or any warranty offered by it covering the Goods. If the change is made after the Purchase Order has been issued, Buyer will promptly notify Seller of the change in a written notice.

## **8. INDEMNITY**

a. At Buyer's request, Seller will defend all claims (including lawsuits, administrative claims, and other proceedings to recover for personal injury or death, property damage, or economic losses) that are related in any way to Seller's performance or obligations under this purchase order, including: claims based on Seller's breach of warranty; claims arising out of or related to work performed by Seller, its employees or subcontractors on Buyer's premises; and claims for any related violations of any law, ordinance or regulation. To the full extent permitted by applicable law, Seller will indemnify Buyer, its directors, officers and employees for all expenses (including attorney fees, settlements, and judgments) incurred by Buyer in connection with such claims. Seller's obligation to defend and indemnify under this paragraph 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.

b. Seller at its expense will indemnify and hold Buyer harmless with respect to every claim that may be brought against Buyer or others that use the Goods, for any alleged infringement of any present or future patent, copyright, industrial design right or other proprietary right based on Seller's activity under a purchase order, or the manufacture, sale, or use of the Goods (i) alone, (ii) in combination by reason of their content, design or structure, or (iii) in combination in accordance with Seller's recommendations. Seller will investigate and defend or otherwise handle every such claim, and at Buyer's request, assist Buyer in Buyer's investigation, defense, or handling of any such claim. Seller will pay all expenses and damages or settlement amounts that Buyer and others selling Buyer's products or using the Goods may sustain by reason of each such indemnified claim. Seller's obligations will apply even though Buyer furnishes all or any portion of the design and specifies all or any portion of the processing used by Seller.

c. If Seller provides services to Buyer on Buyer's premises, Seller will examine the premises to determine whether they are safe for such services and will advise Buyer promptly of any situation it deems to be unsafe. Seller's employees, contractors and agents will not possess, use, sell or transfer illegal drugs, medically unauthorized drugs or controlled substances, or unauthorized alcohol, and will not be under the influence of alcohol or drugs on Buyer's premises. Seller shall be exclusively responsible for, shall bear, and shall relieve Buyer from liability for all loss, expense, damage or claims resulting from bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any person or persons, or on account of damage to or destruction of property, including that of Buyer, arising out of, or in connection with the performance of work on Buyer's premises except that Seller shall not be responsible for or relieve Buyer from liability for claims arising from the willful misconduct or the sole negligence of Buyer.

d. Buyer or Seller, 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. Buyer and Seller will cooperate fully with each other to identify the cause of the nonconformity and to develop a plan for the prompt remediation of it. A **Field Service Action** is a recall or other service action performed by Buyer, its dealers or other authorized repair facilities. Buyer may initiate a Field Service Action required by a Government (either mandated or voluntarily agreed upon by Buyer) or on its own for customer satisfaction or other reasons independent of any Government action. If Buyer determines a Field Service Action is necessary to remedy the nonconformity, it

will promptly notify Seller. Buyer will provide this notice prior to the launch of a Field Service Action if it is reasonably practicable for it to do so. Buyer will provide its rationale for conducting a Field Service Action and review information presented by Seller. Buyer reserves the right to determine all aspects of a Field Service Action, including when to conduct one and its implementation. Seller is liable for all costs and expenses of a Field Service Action to remedy the nonconformity in the Goods. If Buyer has agreed, as part of a Field Service Action negotiated with a Government, to provide an extended warranty, customer incentives to increase the Field Service Action completion rate, or to take other actions, Seller's liability will also include the costs and expenses of these actions. Once the Field Service Action has been initiated, Buyer and Seller will negotiate diligently and in good faith on the extent to which Seller'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, Buyer may debit Seller for up to 50% of the Actual Recall Costs relating to a specific Field Service Action if: (a) Buyer has made a good faith determination that Seller 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 Buyer and Seller concerning their relative fault; and (b) No agreement has been reached on the allocation of costs within 90 days after the commencement of negotiations. For purposes of this paragraph only, the term **Actual Recall Costs** will be limited to the cost of parts and labor actually incurred by Buyer. These costs will be calculated in accordance with Buyer's Field Service Action Cost Recovery Web-Guide. Debits will be made no more often than once a quarter. The maximum cumulative debits for Actual Recall Costs for any one Field Service Action will not exceed three times the aggregate price paid under the Production Purchase Orders for the Goods for the model years that are the subject of the Field Service Action. Once Seller's share of the Field Service Action cost has been determined under this paragraph, Buyer will credit or debit the account of Seller, as may be appropriate. Neither Buyer nor Seller will be deemed to have admitted that the amount of any Interim Field Service Action Cost Recovery Debit, or the maximum, is the amount for which Seller may ultimately be liable. Buyer's rights are in addition to any other rights that it may have to recover from Seller for any nonconformity of the Goods. Neither party will be deemed to have waived any right it might have against the other party relating to any nonconformity in the Goods.

## 9. CHANGES

No modification of this order shall be binding on Buyer unless made by a formal purchase order document signed by Buyer. Buyer may unilaterally make changes to the design, specifications, engineering level, materials, packaging, shipping costs, or time or place of delivery. Seller shall make all changes requested by Buyer. Seller may not make any change on its own without first obtaining the Buyer's written consent. Seller shall transmit to Buyer a statement, in such detail as Buyer may reasonably require, of the effect of such change on the Seller's cost and ability to make deliveries. If Buyer agrees that an adjustment is appropriate, Buyer and Seller shall agree upon an equitable adjustment of the purchase price or delivery schedule and incorporate such agreement into the order by formal purchase order document.

## 10. SETOFF

Buyer shall be entitled at all times to set off any amount owing at any time from Seller, or any affiliated company of Seller, to Buyer against any amount payable by Buyer in connection with this purchase order. "Affiliated company" shall mean any corporation, firm or association which controls, is controlled by or is under common control with Seller.

## 11. BUYER FURNISHED MATERIAL, TOOLING AND EQUIPMENT

a. Unless otherwise agreed to in writing, all tools, equipment, documents, or other material of every description furnished to Seller by Buyer or for which Seller has been reimbursed by Buyer, including any replacements thereof and any materials affixed or attached thereto, shall be the personal property of Buyer. Such property shall at all times be properly maintained by Seller, shall be deemed to be personalty, shall be appropriately marked to establish Buyer's ownership, shall not be commingled with the property of Seller or of any third party, shall not be moved from Seller's premises without Buyer's prior written approval, and shall be held at Seller's risk and expense. Seller shall, upon Buyer's written request, sign and file such documents as may be necessary to secure title of such property in Buyer. Such property shall be subject to removal at Buyer's written request in which event Seller shall redeliver such property in the same condition as originally received by Seller, reasonable wear and tear excepted, all at Seller's expense. Buyer shall have the right to enter upon Seller's premises at all reasonable times to inspect such property and Seller records with respect thereto. Seller agrees not to use any designs, tools, patterns, drawing, material, or other information or equipment furnished by Buyer in the manufacture or design of any Goods for any other customer and further agrees not to use or disclose to any third party any confidential or proprietary information of Buyer acquired by Seller in the course of producing Goods under this purchase order. Title to all property furnished by Buyer to Seller shall remain in Buyer or the U.S. Government. Title to all special tooling as defined in DAR7-104-25 or other tooling called for by this Purchase Order shall vest in Buyer upon fabrication. Seller shall not be required to account to Buyer for the proceeds from the sale of scrap generated during the performance of this order by processing of materials furnished by Buyer, provided, however that Seller shall reimburse Buyer at Buyer's then-current prices for any such material used by the Seller in excess of the allowance, if any, set forth in this order. Upon termination of this Purchase Order any of the materials furnished by Buyer and not properly consumed in the performance of the order and any tooling and equipment shall be returned or disposed of in accordance with instruction from Buyer. When Buyer furnishes any material, in whole or in part, for the manufacture of parts or assemblies, Seller shall not substitute material from any other source nor shall the Seller alter its physical or chemical properties except in accordance with applicable Buyer specifications or except with Buyer's written approval.

b. Buyer may have valuable Intellectual Property Rights in tooling, documents and information provided to Seller. **Intellectual Property Rights** include trademarks, trade dress, patents, copyrights, trade secrets and industrial design rights. Seller may use the Intellectual Property Rights of Buyer only in the production and supply of the Goods to Buyer. Seller will first obtain Buyer's written approval before

it manufactures, sells or otherwise disposes to third parties any goods made by Seller, its related companies or one of their subcontractors using any tooling, equipment or Intellectual Property Rights of Buyer.

## **12. USING THE SUPPLIER'S TECHNICAL INFORMATION**

Seller will provide Buyer with Technical Information required by Buyer to install, assemble and otherwise use the Goods. Technical Information includes engineering, package and installation drawings, specifications, testing protocols and results, documents, data and other information relating to the Goods and Tooling. Technical Information must comply with the computer-aided-design and drafting standards of Buyer. Technical Information will be provided as specified in Sections 12(a) and 12(b) and categorized into either Level One Materials or Level Two Materials as provided in Section 12(c).

a. Use of Level One Materials. Seller will provide Buyer with Level One Materials to use without restriction. Level One Materials define in general terms the geometric and functional attributes of the Goods as they interface with Buyer's products, demonstrate that they meet Buyer's specifications, and describe how they interact with other vehicle systems or environments. At a minimum, Level One Materials are those Buyer requires to support its engineering release systems and package and installation drawings with functional requirements. At Buyer's request, Level One Materials must also be provided for component parts. Buyer may use or disclose Level One Materials without restriction, subject only to any patent or trademark rights of Seller. Any Seller legend, like "Confidential" or "Proprietary," will not affect Buyer's right to use Level One Materials. Buyer may share Level One Materials with third parties without restriction.

b. Use of Level Two Materials. Level Two Materials include more detailed design and manufacturing information such as Failure Mode and Effects Analyses (FMEA, including Design Failure Mode and Effects Analysis and Process Failure Mode and Effects Analysis), Design Verification Plans and Reports (DVP&R, including test specifications, test reports and test data), P-Diagrams and Control Plans. Seller will provide Buyer with reasonable access, including delivery of reference copies, to Level Two Materials as well as the right to use Level Two Materials internally, including to integrate the Goods into the vehicle. Any additional rights (such as licenses or ownership, or the right to disclose the materials to third parties to which disclosure is not permitted under this Section 11) to these or other materials (such as detailed drawings and math data, CAE Models, electrical schematics, or software algorithm and code) will be negotiated in good faith by Buyer and Seller and formalized in a Statement of Work or other written document. Buyer shall use the same standard of care to protect the confidentiality of Level Two Materials Buyer would use in protecting the confidentiality of Buyer's own confidential information.

c. Categorization. Seller and Buyer will work in good faith to categorize Seller's Technical Information as Level One Materials or Level Two Materials and, if appropriate, itemize them in a Statement of Work or other written document. In the event that Seller and Buyer are unable to agree on the appropriate categorization, there will be a presumption that Seller's Technical Information is Level One Materials.

## **13. COPYRIGHT**

Any work of authorship created by Seller under a Purchase Order which is specially ordered or commissioned by Buyer will be considered as a "work made for hire" and all copyrights for such works of authorship will belong to Buyer. In the event any portion of any work of authorship created by the Seller in performing the services under a Purchase Order does not qualify as "work made for hire", Seller hereby assigns or, if Seller has failed to previously secure ownership of all copyrights in such portion, will obtain title and assign all copyrights to such work to Buyer. Seller hereby grants to Buyer a permanent, nonexclusive, paid-up, worldwide license under each copyright it owns and controls or has the right to license, in each work of authorship fixed in any tangible medium of expression furnished by Seller to Buyer or its designee pursuant to a Purchase Order, to use such work, to reproduce such work, to prepare derivative works, to distribute copies of such work to the public, and to perform and display such work publicly.

## **14. TERMINATION**

a. A Purchase Order may be terminated in whole or in part by Buyer at any time by mailing or delivering written notice of termination to Seller.

b. After receipt of a notice of termination and unless otherwise directed by Buyer, Seller shall immediately terminate all production of Goods under this Purchase Order; terminate all orders and subcontracts relating to the production of Goods as terminated by the notice; settle all claims arising out of such termination of orders and subcontracts; transfer title and deliver to Buyer (i) all completed Goods which conform to the requirements of this order and do not exceed the amount authorized for production by Buyer, and (ii) all reasonable quantities (but not in excess of amounts authorized by Buyer) of Goods in process and materials produced or acquired by Buyer specifically for the production of the Goods, provided such Goods in process and materials are of a type and quality for producing Goods which conform to the requirements of this Purchase Order and cannot be reasonably used by Seller in producing Goods for itself or for its other customers; take all action necessary to protect property in which Buyer has or may acquire an interest; cooperate with Buyer to help avoid production disruptions while the production of Goods is being transitioned to a different supplier; and submit to Buyer not later than three months from the effective date of termination (one month in the case of partial termination) its termination claim, provided, however, that in the event of Seller's failure to submit its termination claim within such period, Buyer may determine notwithstanding the provisions of sub-paragraph (d) hereof, on the basis of information available to it, the amount, if any, due Seller with respect to the termination and such determination shall be final.

c. Buyer may terminate a Purchase Order, in whole or in part, upon written notice to Seller if Seller fails to comply with any of the requirements of the Purchase Order. If the noncompliance relates to an obligation of Seller that is, in the opinion of Buyer, capable of cure, Buyer may terminate under this paragraph only if Seller has failed to either: (a) timely cure the noncompliance; or (b) provide Buyer with adequate assurances of performance acceptable to Buyer. If Seller delivers Goods that fail to comply with the requirements of the Purchase Order, Seller will have 10 days (or less if commercially reasonable under the circumstances) after the effective date of Buyer's written notice to Seller specifying the failure by Seller within which to: (a) cure the nonperformance; or (b) provide adequate assurances of performance acceptable to Buyer. Buyer may terminate a Purchase Order, in whole or in part, upon written notice to Seller, if control of Seller changes. A change of control includes: (a) the sale, lease or exchange of a substantial portion of Seller's assets used for the production of the Goods; (b) the sale or exchange of a controlling interest in the shares of Seller; or (c) the execution of a voting or other agreement of control. Seller will provide Buyer with written notice of a change of control within 10 days after the change of control has become effective. Buyer will have 60 days from the date the written notice from Seller is effective within which to notify Seller of its decision to terminate the Purchase Order and the effective date of the termination, which will be no sooner than 30 days after the date the written notice of termination is effective. Buyer may terminate a Purchase Order, in whole or in part, upon written notice to Seller, if Seller: (a) becomes insolvent; (b) files a voluntary petition in bankruptcy; (c) has an involuntary petition in bankruptcy filed against it; (d) has a receiver, administrator, custodian or trustee appointed over Seller or its assets; or (e) executes an assignment for the benefit of its creditors. In each case, Seller is liable for all actual costs incurred by Buyer, including those for attorneys, experts, consultants and other professionals.

d. Upon termination by Buyer under this Section, Buyer's obligation to Seller will be (i) the Purchase Order price for all finished work and completed services which conform to the requirements of a Purchase Order; (ii) Seller's actual cost of the work in process and parts and materials transferred to Buyer in accordance with subsection (b) hereof; (iii) Seller's actual costs of settling the claims by subcontractors of subsection (b) hereof; and (iv) Seller's actual cost of carrying out its obligations of subsection (b) hereof, but Buyer's obligations will not exceed those Buyer would have had to Seller in the absence of termination. Unless otherwise stated in a Purchase Order, Buyer shall have no obligation for and shall not be required to make payments to Seller, directly or on account of claims by Seller'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 depreciation costs, and general and administrative burden charges from termination of a Purchase Order. Seller will furnish to Buyer, within one month after the effective date of termination, Seller's termination claim, which will consist exclusively of the items of Buyer's obligation to Seller that are listed in subsection (b) hereof. Buyer may audit Seller's records, before or subsequent to payment, to verify amounts requested in Seller's termination claim. Buyer will have no obligation to Seller under (b) or (c) above if Buyer terminates its purchase obligations of a Purchase Order because of a default by Seller.

e. If Buyer terminates all or any part of a Purchase Order due to Seller's default, Buyer may repurchase similar Goods elsewhere and the Seller shall be liable to Buyer for any excess cost. The remedies provided herein are not exclusive and are in addition to any other remedy provided by law or this contract.

## **15. CLAIMS**

Any claim seeking a payment from Buyer as the result of termination must be submitted within 60 days after the effective date of termination, non-renewal, or program cancellation. The claim must include sufficient supporting data to permit Buyer's auditors to verify and substantiate the claim. Buyer (and its designated agent) has the right to examine and audit all pertinent items related to the claim, including books, records, facilities, work-in-process, raw materials and inventory. If necessary, Seller may request an extension of the submission deadline, provided that it does so within the 60-day submission period. Buyer has no liability to Seller or any Related Company of Seller for lost profits, unabsorbed overhead, capital investment, interest expense, product development and engineering costs, facilities and equipment rental or purchase or rearrangement costs, unamortized depreciation costs, penalties, or general or administrative charges, whether incurred directly or indirectly by Seller, any of its related companies, or their suppliers, except to the extent expressly provided in these terms.

## **16. COMPLIANCE WITH LAWS AND BUYER DIRECTIVE**

Seller agrees to comply with all U.S. and foreign federal, state and local laws, rules, regulations, conventions, ordinances or standards including, without limitation, those that relate to the manufacture, labeling, transportation, importations, licensing, approval or certification of Goods or services. Seller will comply with Buyer's Vehicle Parts Branding Directive. This Directive requires the inclusion of the Buyer's brands on the Goods.

## **17. GOVERNMENT CONTRACT REGULATIONS**

a. If this Purchase Order is a subcontract under a Government prime contract as may be evidenced by the inclusion of a reference to a Government Contract on the face of this order, then all clauses required by the Defense Acquisitions Regulation (DAR's) or other equivalent regulation or by the government prime contract to be included in a subcontract of this nature are hereby incorporated in and made a part of this Purchase Order.

b. Since the phraseology of the clauses incorporated above has been primarily designed for government prime contracts, words and phrases in the foregoing regulation importing the government or their representative shall when a fair and reasonable interpretation of the context of this order so requires in order to express properly the subcontract relationship, deemed to refer to Buyer or Seller or their respective representative provided however that all referenced to "Government" in the patent clauses incorporate herein above refer only to the United States Government and all referenced to "Contract officers, in the clauses incorporated herein, refer to the Government

Contacting Officer for the Prime contract provided further that all the references to the clauses entitled "Disputes" shall be deemed deleted. Buyer shall furnish copies of such DAR clauses and information as to the Cognizant Contracting Officer to Seller upon request.

## 18. AUDIT

If requested by the Buyer, the Seller will permit the Buyer (which, for purposes of this Section 18, includes its authorized representatives) to (a) examine all pertinent documents, data and other information relating to the Goods, Tooling, the Seller's obligations under the Purchase Order, any payment made to the Seller or any claim made by the Seller; (ii) view any facility or process relating to the Goods or the Purchase Order, including those relating to production quality; and (iii) audit any facility or process to determine compliance with the requirements of the Purchase Order. Any examination under this Section 18 will be conducted during normal business hours and upon advance written notice to the Seller.

## 19. CUMULATIVE REMEDIES; NO THIRD PARTY RIGHTS

The rights and remedies herein reserved to Buyer shall be cumulative and additional to any other or further rights and remedies provided in law or in equity. Except as expressly provided herein, no term, condition or right in or arising under any of the documents relating to the purchase of the Goods gives or creates any third-party beneficiary rights or any other rights, whether in law or equity, to any person or entity other than Buyer and Seller.

## 20. LICENSES AND INFORMATION

a. If this order involves experimental, development, or research activities, including engineering related thereto, all information developed in the course thereof shall be owned by Buyer, and be deemed confidential and proprietary property of Buyer whether patented or not, and Seller shall cooperate (and cause its employees to cooperate) in executing any documents and taking any other actions necessary or convenient to patent or otherwise perfect or protect for the benefit of Buyer any inventions conceived, developed or reduced to practice in performance of this Purchase Order. Seller hereby grants to Buyer an irrevocable, non-exclusive and royalty-free license to make, have made, use and sell any improvement in the Goods which is conceived, developed or reduced to practice by Seller in its performance under this Purchase Order.

b. Seller grants to Buyer a permanent, paid-up license under each copyright it owns or controls or has a right to license. This license is limited to the use, repair, modification or sale of any Embedded Software that is part of the Goods in conjunction with the use or sale of the Goods. "Embedded Software" is software that is embedded in the Goods and performs operating or other functions. Seller grants to Buyer a permanent, paid-up License under each copyright it owns or controls or has the right to license in any work of authorship (other than Embedded Software and Level Two Materials) fixed in any tangible medium of expression delivered by Seller under the purchase order to use such work, reproduce such work, prepare derivative works, distribute copies of such work to the public, and to perform and display such work publicly.

c. Any documents, including drawings and specifications produced or acquired by Seller under a purchase order will belong to Buyer, subject only to Seller's patent rights, but without any other restrictions on Buyer's use, including reproduction, modification, disclosure or distribution of the documents or the information contained therein. To the extent such documents contain original work of authorship created in order to comply with a Purchase Order, the copyrights to such work shall be owned by Buyer in accordance with Section 13. Seller agrees not to label any such documents with a notice asserting that the documents contain confidential or proprietary information of Seller. Any engineering drawing that Seller is required to prepare and furnish to Buyer will conform to the requirements of the local computer aided design standards of Buyer.

d. Seller will grant Licenses on the bases specified below unless an earlier agreement states otherwise. A *License* is a license granted in all cases to Buyer on a nonexclusive, worldwide basis, to make, have made, use, have used, sell and import manufactures, compositions, machines and processes covered by the Intellectual Property Rights of Seller. Purchase of the Goods does not include any License from Seller if they are *Off-the-Shelf Goods*. *Off-the-Shelf Goods* do not include any functionally or structurally significant features developed specifically for Buyer. If the Purchase Order includes development services, such as the design of a unique part or modification of an *Off-the-Shelf* part for a specific vehicle program, Seller grants to Buyer: (a) a permanent, paid-up License, with a right to sublicense others, for any and all inventions or other results of Seller's development work which Seller conceives, develops or acquires in the course of performing work under the Purchase Order or other written agreement with Buyer; and (b) a background License, on Commercially Reasonable terms and conditions, under any Intellectual Property Rights that are owned or controlled by Seller (now or acquired in the future) that cover any invention embodied in the Goods delivered under the Purchase Order. When negotiating *Commercially Reasonable* terms and conditions, the parties will take into account the relative technical and other contributions to the development of the technology, the level of business being offered to Seller, and Buyer's needs for subsequent migration of the developed technology to other projects or vehicle applications. Seller grants to Buyer a permanent, paid-up License under any intellectual property rights that are owned or controlled by Seller or its related companies (now or in the future) necessary to rebuild and have rebuilt, but not to have newly manufactured by another, the Goods and Tooling.

## 21. CONFIDENTIAL DISCLOSURE

a. Seller shall protect as proprietary and keep confidential all proprietary information including but not limited to designs, processes, drawing, specifications, report data and other technical or business information and the feature of all parts, equipment, tools, gauges, patterns and other items furnished or disclosed to the Seller by Buyer. Unless otherwise provided herein or authorized by Buyer in writing, Seller shall use such information and items and the features thereof only in performance of this purchase order. Seller shall not

sell or otherwise dispose of as scrap or otherwise, any completed or partially completed, defective proprietary Goods without defacing or rendering such Goods unsuitable for use. Upon complete or termination of this Order, Seller, at Seller's expense, shall make such disposition of all such proprietary information or Goods as herein required or as may be subsequently requested by Buyer. Seller shall include in any subcontract hereunder provisions to provide Buyer the same rights and protections as provided in this paragraph 21.

b. All drawings, know-how, and confidential information supplied to Seller by Buyer and all rights therein will remain the property of Buyer and will be kept confidential by Seller in accordance with Section 21(a). Seller is licensed to use Buyer's drawings, know-how, and confidential information only for the purpose of fulfilling its obligations under a purchase order. In addition to the obligations of Section 21(a), Seller will not disclose such drawings to third parties unless this is required for Seller to fulfill its duties under a purchase order. Seller will inform Buyer in writing of any third parties to whom Seller subcontracts any of the work required under a purchase order specifying in detail the work which has been subcontracted to such third party.

## **22. APPLICABLE LAW AND FORUM; CONTROLLING LANGUAGE**

This agreement shall be construed and governed in accordance with the internal laws of the State of Michigan without regard to conflict of laws provisions. The U.N. Convention on Contracts for the International Sale of Goods shall not apply. Any litigation between Seller and Buyer relating to the Goods or services or the terms of this agreement shall be brought only in the United States District Court for the Eastern District of Michigan or in a state court located within the State of Michigan. The English version of these Terms and Conditions shall apply in the event of any disagreement over any translation.

## **23. SEVERABILITY**

Should any provisions of this agreement be declared or be determined by a court of competent jurisdiction to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provisions shall be deemed not to be a part of this contract. The obligations of the Buyer and the Seller under the following Sections will survive the expiration, non-renewal or termination of the Purchase Order: 5, 7, 8, 11, 12, 14, 15, 18-23, 29, 30 and 31.

## **24. INSOLVENCY**

Buyer may cancel this agreement without liability to Seller in the event of the happening of any of the following, or of any other comparable event: insolvency of the Seller; the filing by Seller of a voluntary petition in bankruptcy; the filing of an involuntary petition concerning Seller in bankruptcy provided such petition is not vacated within 30 days from the date of filing; the appointment of a receiver or trustee for Seller provided such appointment is not vacated within thirty (30) days from the date of such appointment; or the execution by Seller of an assignment for the benefit of creditors.

## **25. ASSIGNMENT**

Seller will not assign or delegate all or substantially all of its substantive duties under a Purchase Order without Buyer's prior written approval. Seller will provide Buyer with reasonable advance written notice of any assignment of Seller's right to receive payment under a Purchase Order. Any such assignment shall not prohibit Buyer from enforcing any of its rights against the assignee. Buyer will have the right to assign any benefit or duty under a Purchase Order to any third party upon notice to Seller.

## **26. SUBCONTRACTS**

In each subcontract of Seller's work performed pursuant to a purchase order, Seller will obtain for Buyer the rights and licenses granted in Section 12 and 20. Seller shall not subcontract all or part of the manufacture of the Goods to a third-party subcontractor or locate Tooling on a subcontractor's premises without first obtaining Buyer's written consent. In addition, Seller will: (a) inform Buyer of the identity of the subcontractor and the location of the Tooling; (b) inform the subcontractor in writing that it is a bailee-at-will, through Seller, of Tooling owned by Buyer; and (c) be solely responsible for payments to the subcontractor.

## **27. ADVERTISING**

Any reference to Buyer or use of Buyer's trademarks or logos by Seller in Seller's advertising or publicity materials shall require Buyer's advance written approval prior to use.

## **28. BASIC WORKING CONDITIONS AND EMPLOYMENT STATUS**

(a) In its production or delivery of Goods, Seller will not: (i) use forced labor, regardless of its form; (ii) 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 (iii) engage in physically abusive disciplinary practices.

(b) If Seller retains subcontractors to perform work on the Goods, Seller will use only subcontractors that will adhere to the requirements of Section 28(a). Seller will monitor the subcontractor's compliance.

(c) Seller represents when it delivers the Goods that it has complied with the requirements of Section 28(a) and Section 28(b). Buyer may retain an independent third party, or request Seller to retain one reasonably acceptable to Buyer, to: (i) audit Seller's compliance with the requirements of Section 28(a); and (ii) provide Seller and Buyer with written certification of Seller's compliance, including areas for potential improvement.

(d) Seller may bear the cost of any third-party audit and certification, regardless of which party retained the auditor. Buyer, at its option, may accept an audit or certification by the Seller in lieu of a third-party certification.

(e) 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.

## **29. INFORMATION PROVIDED TO A GOVERNMENT**

Seller will promptly notify Buyer if it has provided information to a government regarding the Goods, including information provided to the U.S. Government in accordance with the following reporting requirements of U.S. law: 49 CFR Part 573 (Defect and Noncompliance Reporting) and 49 CFR Part 579 (Reporting of Information and Communications About Potential Defects). The Seller notification will include the following information: the date the notification was provided to a Government, the affected Goods (or components of the Goods, as applicable), and the report type (e.g., for reporting to the U.S. Government, an Early Warning Report or Noncompliance Report). Upon the request of Buyer, Seller will provide Buyer with access to and copies of any data, materials or information provided to a Government relating to the Goods, any component or part of the Goods, or any materials or substances used in the Goods or in connection with their production, including any test, manufacturing, field performance or warranty data. Seller will provide the information within 10 business days after receipt of Buyer's request.

## **30. SERVICE PARTS**

a. If requested by Buyer, Seller will supply Service Parts and Component Parts (as defined herein) to Buyer to meet their current model year and past model year Service Parts and Component Parts needs. The term *Service Parts* refers to the Goods that Buyer may offer for resale to its dealers and others as service or replacement parts or as accessories. Buyer may also offer for resale individual component parts of the Goods. These are referred to as *Component Parts*.

b. The price for current model year Service Parts will be no greater than the price specified in the purchase order for the Goods used in production plus the actual net cost differential for required unique packaging, shipping and handling.

c. The price for current model year Component Parts will be no greater than Seller's actual production or acquisition cost for the Component Parts plus (a) the actual net cost differential for required unique packaging, shipping and handling, and (b) an appropriate fee for services to be negotiated in good faith by Buyer and Seller. In no case, however, will the total price of all Component Parts of the Goods, less the total costs for those Component Parts specified in (a) and (b), exceed the price for the Goods less actual assembly costs.

d. The price for past model year Service Parts will be no greater than the price specified in the Production Purchase Order for the Goods used in production plus the actual net cost differential for required unique packaging, shipping and handling.

e. The price for past model year Component Parts will be a price no greater than Seller's actual production or acquisition cost for the Component Parts plus (a) the actual net cost differential for required unique packaging, shipping and handling, and (b) an appropriate fee for services to be negotiated in good faith by Buyer and Seller.

f. If Seller or Buyer believes a change in pricing (up or down) is warranted for past model year Service Parts or Component Parts due to significant and ongoing changes in volume, component or raw material costs, or manufacturing costs, it may file a price change request with Buyer or Seller as appropriate.

g. The party requesting the price change will provide volume data, actual invoices, published price changes, price change requests from Sellers, and other information reasonably requested by the other party to substantiate the requested price change. The parties will promptly negotiate in good faith the terms of any price change.

h. The prices of Service Parts and Components Parts supplied to Buyer will also apply to Service Parts and Component Parts supplied to Buyer's related companies, except that the prices will be adjusted (either up or down) to account for any actual net cost differential for the presence or absence of any unique packaging, shipping and handling required for supply to the related company (as compared to that required for supply to Buyer).

i. If requested by Buyer, Seller will supply past model year Service Parts and Component Parts for up to 15 years following the end of production of the current model year for the Goods. If Buyer has a legal obligation to make the Service Parts or Component Parts available for a longer period, Buyer will so advise Seller. Seller will supply the Service Parts or Component Parts for this longer time period.

j. If requested by Buyer, Buyer and Seller will negotiate, in good faith, for the supply of the Service Parts and Component Parts beyond the applicable time period specified in Section 30(i). If, despite good faith negotiations, the parties are unable to agree on supply beyond that time period and Seller elects to discontinue supply beyond that time period, it will provide Buyer with written notice to that effect sufficiently in advance of the expiration of the required supply period to enable Buyer to resource supply in a timely and orderly manner. In no case will Seller's written notice be provided less than 3 months prior to the expiration of the required supply period. In all cases, Seller will consult with Buyer's activity responsible for purchasing service parts and component parts prior to giving its written notice to ensure that it will be timely, and the parties will confirm in writing their agreement to Seller's written notice period.

k. If Seller elects to discontinue supply of Service Parts it will, if requested by Buyer: (a) work diligently with Buyer to identify an alternative source of supply that is acceptable to Buyer; and (b) identify Seller's component-part and raw-material Sellers relating to the Goods. In addition, Seller will supply Buyer during the transition period to the new supply source for up to 6 months after the expiration of the required supply period specified in Section 30(i). If a transition period longer than 6 months is required, Buyer and Seller will negotiate in good faith on the terms and conditions of any longer transition period.

### **Supplemental Provision Applicable to Tooling**

#### **31. TOOLING FABRICATION**

a. All right, title, and interest in and to any part of Tooling to be paid for by Buyer ("Tooling") shall pass to Buyer as soon as it is acquired or fabricated in accordance with a Purchase Order. During the term of a Purchase Order, all such Tooling in the possession of Seller shall be deemed to be bailed property and shall not be deemed to be a fixture or a part of Seller's real property. Seller will (i) properly house and maintain such property on Seller's premises, (ii) prominently mark it property of TDM, (iii) refrain from commingling it with the property of Seller or with that of a third party, and (iv) adequately insure it against loss or damage and (v) not move it to another location whether owned by Seller or a third party, without the prior written consent of Buyer, except in the case of an emergency, Seller may move the Tooling property provided that it gives Buyer notice that the Tooling has been moved and the location of the Tooling as soon as reasonably practicable. Seller shall indemnify Buyer against any claim adverse to Buyer's ownership of the Tooling, except as such claims may result from any acts or omissions of Buyer. To the extent permitted by law, Seller waives its right to object to the repossession of the Tooling by Buyer in the event Seller is involved in bankruptcy proceedings. While in its possession, Seller, at Seller's expense, shall maintain the Tooling in first class condition and immediately replace any items which are lost or destroyed or become worn out. All repaired or replaced Tooling shall be the property of Buyer. Wear and repair of the Tooling is Seller's responsibility. Title to any modifications, changes or accessions to Tooling shall vest in Buyer regardless of whether Buyer has reimbursed Seller for such modification, changes or accessions. Seller shall keep such records in relation to the Tooling as Buyer may reasonably require. None of the Tooling shall be used in the production, manufacture or design of any goods or materials except to the order of Buyer. Seller shall not sell or otherwise dispose of any product using Tooling to any party other than Buyer except where specifically authorized by Buyer in writing. Seller's responsibility continues beyond the expiry date of the related parts Purchase Order. If the Tooling is not utilized to produce any parts for Buyer for a period of two years, Seller shall so notify Buyer and request instructions as to the disposition of the Tooling. If Seller subcontracts all or any portion of the manufacture of the Tooling, Seller shall so notify Buyer in advance and obtain for Buyer all of the rights contained in this Section 31 from each such subcontractor used by Seller.

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

#### **32. SELLER-OWNED TOOLING**

In the case of Seller-Owned Tooling, Seller acknowledges that the Purchase Order price has already taken into account the capitalization of Seller-Owned Tooling. Seller will, at its expense, properly maintain Seller-Owned Tooling in a condition that ensures continued production and delivery of the Goods in accordance with the terms of the Purchase Order. Seller will not incorporate any of Seller's logos, trademarks, trade names or unique part numbers on any other products manufactured or distributed by Seller, including aftermarket parts, except as may be provided under the Purchase Order or other written document or as may be required to comply with a government requirement. Seller will not disclose or imply in its marketing efforts that any of Seller's other products are equivalent to the Goods provided Seller unless proven and agreed in advance by Seller in a written notice.