



# **General Terms and Conditions**

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## **1. The Contract**

### **1.1 Offer and Acceptance**

Each purchase order (“Purchase Order”) Exo-s Inc. or one of its affiliates or subsidiaries (“Buyer”) issues to the seller identified in the Purchase Order (“Seller”) is Buyer’s offer to purchase the goods (“Goods”) and/or the services (“Services”) described in the Purchase Order. Seller will be deemed to have accepted a Purchase Order as issued upon the first to occur of the following: (1) Seller commencing performance under the Purchase Order, (2) Seller notifying Buyer of its acceptance of the Purchase Order, or (3) Seller’s failure to object in writing to the Purchase Order within five (5) days of receipt. Upon acceptance, the Purchase Order together with these General Terms and Conditions (these “Terms”) and any other documents including, without limitation, specifications, drawings, requirements of Buyer’s customer (“Customer”), or quality requirements, will become a binding contract between Buyer and Seller (collectively, the “Contract”). Any terms or conditions that are different or in addition to the terms and conditions of the Contract, including any terms and conditions proposed by Seller (whether in Seller’s quotation, Purchase Order acknowledgment, invoices, or otherwise) are expressly rejected by Buyer, are not part of the Contract, do not apply to the sale of the Goods or Services, and are not binding on Buyer without the express prior written acceptance of such terms by Buyer’s authorized representative. In the event a conflict between the Purchase Order and these Terms, the specific terms and conditions of the Purchase Order will govern and control.

### **1.2 Changes**

Buyer reserves the right at any time to proceed with a change including: a) specifications, drawings, blueprints and data, b) method of packaging, packing or shipment and, c) place, date and/or time of delivery. Nothing contained in this clause shall relieve Seller from proceeding without delay in the performance of this Contract as changed.

### **1.3 Term**

Subject to Buyer’s termination rights, the Order is binding on Buyer and Seller for the length of the

production life of the applicable Customer vehicle program for which Buyer intends to incorporate the Goods or Services; provided, however Seller’s obligation with respect to service and replacement parts shall survive termination or expiration of this Order. Seller acknowledges and assumes the risk of the vehicle program production life being cancelled or extended by the Customer. Notwithstanding the foregoing, if an expiration date or period is specified in the Purchase Order, the obligations of Seller are binding until such expiration date or end of such a period, subject to Buyer’s termination rights and Seller’s Service Obligations.

Subject to Buyer’s termination rights, if the Goods or Services are not directly or indirectly associated with a specific OEM vehicle program production life, then, unless otherwise agreed in writing, the initial term of the Contract begins on the effective date shown on the Purchase Order and continues for twelve months after the Effective Date (“**Initial Term**”). Thereafter, the order will automatically renew for successive twelve-month terms (each, a “**Renewal Term**”) unless Buyer provides Seller with a notice of non-renewal at least sixty (60) days before the end of the Initial Term or any Renewal Term.

## **2. Goods, Services and Price**

### **2.1 Quantity**

The Contract is a requirement contract under which Seller is required to supply Buyer’s requirements of the Goods. Buyer’s requirements are determined by the needs of its Customer, and market, economic, or other related conditions. Buyer shall not be required to make payment for Goods delivered to Buyer that are in excess of quantities specified in Purchase Order or releases and Buyer may return over-shipments to Seller at Seller’s expense. Should Parties agree on a Minimum Order Quantity (“MOQ”), it is understood that it will not apply during ramp-up (from award to 6 months after start of production) and ramp-down (last year of production) and during 10 years after the end of the production program, unless otherwise agreed in writing by Buyer. Unless otherwise specifically stated in the Contract, the Contract is not exclusive, and Buyer may purchase similar products and services from third parties.

## 2.2 Current-Model Service Requirements

During the term of the Contract, Seller will make Goods covered by the Contract available to Buyer for Buyer's current-model service requirements at the then-current production prices under the Contract.

## 2.3 Past-Model Service Requirements

If a Contract remains in effect at the end of the production program in which Goods covered by the Contract are incorporated, Seller will also make those Goods available to Buyer for Buyer's past-model service requirements for a period of 20 years after the end of the production program. Unless otherwise agreed in writing by Buyer, the parties agree that the current model price will be maintained for the first 10 years and past this delay period, both parties will negotiate in good faith the prices, quantities, and delivery terms for past-model service Goods.

## 2.4 Price Warranties and Competitiveness

(a) Unless otherwise agreed in writing, the price shall be production price only. Neither prototype price will be accepted by Buyer nor setup fees.

(b) Seller warrants that the prices for the Goods and the Services are, and shall ensure that such prices remain, not less favorable to Buyer than the prices currently extended to any other customer of Seller for the same or substantially similar goods or services during the term of the Contract, Seller shall reduce the prices of the Goods and the Services accordingly.

(c) Seller warrants that the prices in the Contract shall be complete, and no surcharges, premiums or other additional charges of any type shall be added, without Buyer's prior written consent. Seller expressly assumes the risk of any event or cause (whether or not foreseen) affecting such prices, including any change in foreign exchange rate, transportation costs, raw materials costs, packaging cost, duties cost, inflation, increases in labor and other manufacturing costs.

(d) Seller shall ensure that the Goods and the Services remain competitive, in terms of price, technology and quality, with substantially similar goods and services.

## **3. Delivery**

### 3.1 Packing and Shipment.

Buyer may specify the method of transportation and the type and number of packing slips and other documents to be provided with each shipment. Seller will pack and ship Goods in accordance with Buyer's instructions, including labeling and hazardous materials instructions required by law. Buyer requests that the packaging protects the Goods against damage, that it is the smallest possible, it is stackable and uses at least 80% of the volume of a regular 53' trailer. If Buyer has not provided packing or shipping instructions, Seller will pack and ship Goods in accordance with this paragraph and sound commercial practices. If Seller is required to use Buyer's returnable packaging, Seller will be responsible for cleaning and returning the returnable packaging. If returnable packaging is not available, upon written authorization by Buyer, Seller may use expendable packaging at its risk and expense unless Buyer agrees otherwise in writing.

### 3.2 Delivery Schedules

TIME AND QUANTITY IS OF THE ESSENCE OF THIS ORDER. Seller will deliver Goods and Services in strict accordance with the Contract terms. Unless otherwise stated in the Contract, Goods will be delivered D.A.P. Buyer's dock (Incoterms 2010) for resin and F.C.A. Seller's dock (Incoterms 2010) for components. Title and risk of loss to the Goods will transfer to Buyer upon receipt of the Goods at the specified delivery location. If Seller fails or refuses to proceed with this order or fails to deliver the Goods or perform the Services within the delivery dates and times specified in the Contract, Buyer may, without limiting or affecting its other rights or remedies available hereunder or at law, terminate the Contract. In addition, Buyer may, without limiting or affecting its other rights or remedies available hereunder or at law, direct expedited shipment and/or incur premium freight or transportation costs, and Seller shall pay all excess costs incurred thereby, including additional handling charges and other expenses (whether related or not) resulting therefrom. Seller shall be responsible for all other direct, consequential and incidental damages incurred by Buyer as a result of Seller's failure to meet the delivery dates or times, including the cost of any line shutdown and the cost of obtaining goods from an alternate source. Buyer's actions in obtaining substitute or replacement products shall not limit the rights and remedies available hereunder or at law. Buyer may change the timing of scheduled shipments or direct temporary suspension of scheduled

shipments without entitling Seller to a price adjustment or other compensation.

#### **4. Ingredients Disclosure**

Upon Buyer's request and within seven (7) days, Seller will furnish to Buyer in such form and detail as Buyer may direct: (a) a list of all ingredients and materials incorporated in the Goods; (b) the amount of such ingredients and materials; and (c) information concerning any changes in or additions to such ingredients and materials. Prior to and with the shipment of the Goods, Seller agrees to furnish to Buyer sufficient advance warning and notice, in writing (including, without limitation, appropriate labels on the Goods, containers and packing), of any dangerous Goods or hazardous material that is an ingredient or a part of any shipment of Goods, together with such special handling instructions as may be necessary to advise carriers, Buyer and their respective employees of how to exercise that measure of care and precaution that will comply with any applicable laws or regulations and best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the Goods, containers and packing shipped to Buyer.

Upon Buyer's request, Seller will certify to Buyer in writing the origin of any ingredients or materials in the Goods. Seller will promptly provide, in writing, any information regarding the Goods requested by Buyer so that Buyer may comply in a timely manner with reporting requirements under applicable law with respect to consumer protection, "conflict minerals" or similar materials or ingredients, if any.

#### **5. Inspection**

Buyer may, upon reasonable advance notice to Seller, inspect production processes and Property and conduct testing at Seller's premises to verify Seller's performance under the Contract.

Buyer has the right to inspect any and all of the Goods, both prior to and after making payment. Buyer is not required to inspect Goods delivered or Services performed, and no inspection or failure to inspect will reduce or alter Seller's obligations under the Contract.

Buyer's payment for and/or acceptance of the Goods or the Services shall not relieve Seller from any of its obligations and/or warranties under the Contract.

Seller still conforms to the quality control standards and inspection systems, as well as related standards,

policies and systems that are established or required by Buyer and or the Customer. Seller agrees to meet the full requirements of industry Production Part Approval Processes (PPAP) as specified by Buyer and the Customer, as applicable and agrees to present this information to Buyer upon request, at the level requested.

#### **6. Taxes**

Unless otherwise stated in the Contract, the Contract price includes all applicable federal, state, provincial, and local taxes other than sales, value added, or similar turnover taxes or charges. Seller will separately invoice Buyer for any sales, value added, or similar turnover taxes or charges that Seller is required by law to pay or collect from Buyer.

#### **7. Payment and Setoff**

Payment terms are as set forth in the Contract. If they are not specified in the Contract, the Buyer will use one of the following payment terms: 2% net 15 days or net 2<sup>nd</sup> day of the second month. . Seller will promptly submit correct and complete invoices or other agreed billing communications with appropriate supporting documentation and other information reasonably required by Buyer after delivery of Goods and, or, performance of Services, and Buyer may withhold payment until a correct and complete invoice or other required information is received and verified. Seller will accept payment by check or other cash equivalent, including electronic funds transfer. Buyer will pay Seller in the currency specified in the Contract or, if none is specified, in the currency of Buyer's order location. In addition to any right of setoff or recoupment provided by applicable law, all amounts due to Seller shall be considered net of indebtedness of Seller and/or its affiliates/subsidiaries to Buyer and/or its affiliates/subsidiaries. Buyer may deduct any amounts due or to become due from Seller and/or its affiliates/subsidiaries to Buyer and/or its affiliates/subsidiaries from any sums due or to become due from Buyer and/or its affiliates/subsidiaries. If an obligation of Seller is disputed, contingent or unliquidated, Buyer may defer payment of all or any portion of an amount due until such dispute or contingency is resolved or the obligation is liquidated. In the event of Seller's bankruptcy, if all of the orders (including this Purchase Order) between Buyer and Seller have not been assumed (under applicable bankruptcy law), then Buyer may withhold payment to Seller for

Goods previously delivered (via administrative hold or otherwise) until the risk of potential rejection and other damages is eliminated.

## **8. Product Warranties**

### **8.1 Seller's Warranties**

(a) For the longer of the period for which Customer warrants the products which incorporate the Goods to its end users or the period provided by law, Seller warrants to Buyer that the Goods, Services, and any Property (as defined below) obtained by Seller for the performance of the Contract shall: (1) conform to all drawings, specifications, samples and other descriptions furnished, specified or adopted by Buyer; (2) comply with all applicable laws, regulations, rules, codes and standards of the jurisdictions in which the Goods, the Services, or the products containing the Goods and Services are to be sold; (3) be merchantable; (4) be free from any defects in design, to the extent furnished by Seller or any of its subcontractors or suppliers, even if the design has been approved by Buyer; (5) be free of any defects in materials and workmanship; (6) be fit, sufficient and suitable for the particular purpose for which Buyer intends to use the Goods or the Services, including the specified performance in the component, system, subsystem and, or, Goods location on the vehicle and the environment in which they are or may reasonably be expected to perform; (7) not infringe the Intellectual Property Rights of any third party; and (8) be free of all liens, claims and encumbrances whatsoever. For the purposes of this section, Seller acknowledges that Seller knows the particular purpose for which Buyer intends to use the Goods or the Services. Furthermore, the foregoing warranties are in addition to all other warranties available under applicable law, express or implied.

(b) Seller shall indemnify and hold Buyer and Customer, and their respective representatives, employees, agents, customers, invitees, subsidiaries, affiliates, successors and assigns, harmless from and against all liabilities, claims, demands losses, costs damages and expenses of any nature or kind (including consequential and special damages, personal injury, property damages lost profits, Recall or other Customer field service action costs, production interruption costs, inspection, handling and reworking charges, professional and other legal fees, and other costs associated with Buyer's administrative time, labor and materials) arising from or as a result of: 1) any breach of the Seller's

warranties; and 2) any other acts, omissions or negligence of Seller or of any of its subcontractors or suppliers in connection with Seller's performance of its obligations under the Contract. No limitations on Buyer's rights or remedies in any of Seller's documents shall reduce or exclude such indemnification.

(c) During the time period the Contract remains in effect, Seller warrants that it will not supply information, Goods or Services directly to the Customer for the program for which Buyer intends to incorporate the Goods or Services without Buyer's prior written consent.

(d) Seller will pass through to Buyer a manufacturer's certificate of analysis for every lot for which Seller receives the same. The Seller will provide Buyer with a wash ticket certificate for each delivery mentioning that the transporter has cleaned the bulk truck.

### **8.2 Non-Conforming Goods**

(a) If any of the Goods or the Services fail to meet the requirements of the Contract, Seller shall, upon notice thereof from Buyer at any time, promptly repair, replace or otherwise satisfactorily deal with the same in a manner acceptable to Buyer, all at Seller's expense and without limiting or affecting Buyer's other rights or remedies available hereunder or at law. Seller's warranties shall also apply to such repaired, replaced or otherwise satisfactorily dealt with the Goods or the Services.

(b) If Seller fails to repair, replace or otherwise deal with any defective or non-conforming Goods or Services in a manner acceptable to Buyer, Buyer may, without limiting or affecting Buyer's other rights or remedies available hereunder or at law, terminate the Contract.

(c) All defective or non-conforming Goods shall be held at Seller's risk. Buyer may return such defective or non-conforming Goods to Seller at Seller's risk, and Seller shall promptly pay all transportation and other applicable charges, both to and from the original destination.

(d) Any payment made by Buyer for defective or non-conforming Goods or Services shall be refunded by Seller, except to the extent that Seller promptly replaces or corrects the same at Seller's expense.

(e) None of Buyer, its subsidiaries or affiliates, or their respective successors, assigns, representatives,

employees, agents or Customers shall be liable for, or be obligated to indemnify or hold any of Seller, its subsidiaries or affiliates, or their respective successors, assigns, representatives, employees, agents, subcontractors or suppliers harmless from and against, any liabilities, claims, demands, costs, damages or expenses of any kind or nature (including personal injury, property damage, consequential or special damages) arising from or as a result of non-conforming Goods or Services.

### 8.3 Recalls

This section applies to any voluntary or government-mandated offer by Buyer (or the OEM manufacturer or Customer) to ultimate purchasers to remedy an alleged defect that affects safety or to address an alleged failure with an applicable safety standard or guideline (a “**Recall**”). Seller will be liable for costs and damages resulting from a Recall to the extent the Recall results, in whole or in part, from a failure of the Goods to conform to the warranties in section 8.1 or Seller’s breach of any provision set forth in the Contract. As a condition precedent to Seller’s liability under this section, Buyer must (i) notify Seller as soon as practicable after Buyer learns that a Recall being considered involves the Goods, (ii) provide Seller with available performance evaluations, accident reports, engineering investigations, and other data relating to the potential Recall, and (iii) consult with Seller about the most cost-effective method of modifying or replacing systems or component parts, including the Goods, in order to remedy the alleged defect or non-compliance.

## 9. Product Liability

### 9.1 Indemnification

Seller will indemnify, defend and hold harmless Buyer against third-party claims or demands for injury or death to persons, property damage, economic loss, and any resulting damages, losses, costs, and expenses (including reasonable legal fees), regardless of whether the claim or demand arises under tort, contract, strict liability, or other legal theories, if and to the extent caused by Seller’s defective design (if Seller has warranted design) or manufacture of Goods or provision of Services, or delivery of non-conforming or defective Goods or Services, or its negligent acts or omissions or non-compliance in its performance under the Contract.

## 10. Compliance with Laws

Seller will comply with applicable laws, rules and regulations of the country where the Goods are manufactured, where the Goods will be delivered, or where the Services are performed. Seller will provide Buyer with material safety data sheets regarding the Goods and, upon Buyer’s request, will provide Buyer with other information reasonably required in order to comply with applicable laws.

## 11. Intellectual Property Rights

### 11.1 Buyer’s Intellectual Property

Buyer does not transfer to Seller any patent, trade secret, trademark, service mark, copyright, mask work, or other intellectual property right (“**Intellectual Property Right**”) of Buyer in information, documents, or property that Buyer makes available to Seller under the Contract, other than the right to use Buyer’s Intellectual Property Rights to produce and supply Goods and Services to Buyer.

### 11.2 Seller’s Intellectual Property

(a) Except as stated in this section, Seller does not transfer to Buyer any Intellectual Property Right of Seller related to the Goods or Services or incorporated in Buyer’s Property, other than the right to incorporate Goods purchased from Seller in finished goods and to sell those finished goods to the public. Notwithstanding the foregoing, Seller agrees that it will not incorporate into any Good supplied or Service provided under this Contract any Intellectual Property Right of Seller without Buyer’s prior written consent. To the extent any Intellectual Property Right of Seller is incorporated with Buyer’s consent, and if the Contract is terminated by Buyer pursuant to section 13, Seller grants to Buyer a non-exclusive royalty free right and license to use Seller’s Intellectual Property Rights during the Contract term that would have applied (and any extensions thereof) had it not been earlier terminated under section 13, and subject to section 15, to obtain from alternate sources products and services similar to the Goods and Services for use in finished goods covered by the terminated Contract.

(b) To the extent that Seller creates or develops any patents, work-of-authorship, industrial designs, technical information, know-how, processes of manufacture or other intellectual property in the

performance of Seller's obligations under the Contract, such intellectual property will be owned by Buyer and may not be used by Seller except for the performance of the Contract. However, to the extent such intellectual property is not owned by Buyer, Seller: (i) hereby assigns and agrees to assign, to Buyer each work-of-authorship, invention, discovery or improvement (whether or not patentable) that is conceived or first reduced to practice by Seller, or by any person employed by or working under the direction of Seller, in the performance of Seller's obligations under the Contract; and (ii) shall promptly disclose in an acceptable form to Buyer all such intellectual property and cause Seller's employees to sign any papers necessary to enable Buyer to obtain title to and to file applications for registration of same throughout the world. To the extent that any works of authorship (including, without limitation, software and computer programs) are created in the performance of Seller's obligations under the Contract, such works shall be considered "works made for hire", and to the extent that such works do not qualify as "works made for hire", Seller hereby assigns and agrees to assign, to Buyer all right, title, and interest in all copyrights and moral rights therein.

(c) Seller shall not manufacture or provide, or offer to manufacture or provide, any goods or services that are based in whole or in part upon Buyer's intellectual property and/or the drawings or specifications in respect of the Goods or the Services, or any derivative thereof, whether for its own purposes (other than to satisfy its obligations under the Contract), for the Customer or any other third parties, without Buyer's prior written consent.

### 11.3 Infringement

Seller will indemnify, hold harmless and defend Buyer and its Customers against claims, liabilities, losses, damages, costs, and expenses, including reasonable legal fees, arising out of the actual or alleged infringement by the Goods of a third-party Intellectual Property Right. If a claim under this section results, or is likely to result, in an injunction or other order that would prevent Seller from supplying or Buyer from using the Goods, Seller will at its option and expense either (i) secure a license of the Intellectual Property Right that permits Buyer to purchase and use the Goods, (ii) modify the Goods so that they become non-infringing, so long as the modification does not materially alter the operation or performance of the Goods, or (iii) replace the

Goods with non-infringing but reasonably equivalent Goods, as determined by Buyer in its sole discretion. Seller shall not settle any action in a manner that adversely affects the rights of Buyer without Buyer's prior written consent.

## 12. Property

### 12.1 Buyer's Property

(a) Buyer will own the tooling, jigs, dies, gauges, fixtures, molds, patterns, supplies, materials, and other equipment and property used by Seller to manufacture, store, and transport Goods or provide Services ("**Property**") that (1) has been furnished to Seller by Buyer or on Buyer's behalf, (2) has been paid by or for Buyer, or (3) will be amortized over the time of the Contract, including any replacement thereof, or any additions, attachments, accessories and repairs ("**Buyer's Property**"), are and will remain the property of Buyer. Upon request by Buyer, Seller shall provide access to permit Buyer to inspect Buyer's Property. Seller will assign to Buyer contract rights or claims in which Seller has an interest with respect to Buyer's Property and execute bills of sale, financing statements, or other documents requested by Buyer to evidence its or its Customer's ownership of Buyer's Property. All of Buyer's Property must be plainly marked as the property of Buyer and shall be safely stored by Seller. While in Seller's control, Buyer's Property will be held at Seller's risk and will be insured by Seller at Seller's expense in an amount equal to the replacement-value cost, with loss payable to Buyer. Seller must use Buyer's Property in a careful and safe manner and shall indemnify, defend and hold Buyer harmless against any-and-all claims, liabilities, expenses and damages arising from or related to the installation, use, storage, or repair of Buyer's Property. Seller will hold Buyer's Property as a bailee at will and will be responsible for loss or damage to Buyer's Property while in its possession or control. Seller hereby waives any lien or similar right it may have with respect to Buyer's Property.

(b) Seller will (1) at its expense maintain Buyer's Property in good condition and repair, normal wear and tear excepted, throughout the useful life of Buyer's Property, (2) use Buyer's Property only for the manufacture, storage, and transport of Goods for Buyer, (3) mark Buyer's Property as belonging to Buyer or its Customer, and (4) not remove Buyer's Property (other than shipping containers and the like) from Seller's premises without Buyer's written



approval.

(c) Buyer will pay for Buyer's Property that it is required to purchase at the amount specified in the Contract or, if no amount is specified in the Contract, at (1) Seller's actual cost of the Buyer's Property, if manufactured by a third party unaffiliated with Seller, or (2) Seller's actual cost of purchased materials, components, and services plus Seller's actual cost of labor and overhead directly allocable to the Buyer's Property, if manufactured by Seller. The foregoing amounts that comprise the purchase price are subject to audit and verification upon Buyer's request. All amounts that Buyer determines are not validly due and owing following the conduct of such audit, will be deducted from the purchase price. Unless otherwise stated in the Contract, final payment for Buyer's Property is due on the later of (i) the Customer manufacturer's PPAP (Production Part Approval Process) approval date, or (ii) the date on which the Contract provides for payment.

(d) Upon request by Buyer, Seller will immediately release Buyer's Property and prepare it for shipment or deliver it to Buyer or Customer, as requested, in the manner requested. For the avoidance of doubt, Buyer may retake immediate possession of Buyer's Property and other property of Buyer or its Customer(s) at any time, with or without cause and without payment of any kind. Seller will deliver the requested Buyer's Property and other property to Buyer, D.A.P. Buyer's dock (Incoterms 2010), properly packed and marked in accordance with the requirements of Buyer's carrier.

#### 12.2 Seller's Property

Seller will own all Property that is not Buyer's Property ("***Seller's Property***"). Seller will at its expense furnish, maintain in good condition, and replace when necessary Seller's Property needed to perform the Contract. Seller grants Buyer an irrevocable option to take possession of and title to Seller's Property that is used exclusively for the production of the Goods upon payment to Seller of its net book value less any amounts that Buyer has previously paid to Seller for the cost of such items, but less any amounts otherwise owing to Buyer by Seller; provided, however, that this option will not apply if Seller's Property is used to produce goods that are the standard stock of Seller or if a substantial quantity of like goods are being sold by Seller to others.

### 13. Termination

#### 13.1 Termination for Convenience

(a) In addition to any other rights of Buyer to terminate the Contract, Buyer may, in its sole discretion, upon thirty (30) days prior notice to Seller or, if applicable, such shorter period as may be required by the Customer, terminate the Contract for convenience or any other reason, in whole or in part at any time, and notwithstanding the existence of any Excusable Delay or other events or circumstances affecting Seller. Seller may not terminate the Contract for convenience or any other reason.

(b) Upon receipt of notice of termination from Buyer, Seller shall: (i) stop work under the Contract and any other orders related to work terminated by such notice; and (ii) protect all property in Seller's possession or control in which Buyer has or may acquire an interest, including the Buyer's Property. Seller shall promptly submit to Buyer a comprehensive termination claim relating to such termination, with sufficient supporting data, within twenty one (21) days from the effective date of such termination. Seller hereby grants Buyer the right to audit and inspect its books, records and other documents relating to any termination claims.

(c) Subject to Buyer's rights under these Terms, Buyer shall, in addition to making payment of the price specified in the Contract for the Goods and the Services delivered or performed and accepted by Buyer prior to the effective date of termination, pay to Seller the following amounts, without duplication: (i) the price specified in the Contract for the Goods and the Services manufactured, accepted, and provided in accordance with the terms of the Contract but not previously paid for; and (ii) the actual costs incurred by Seller (exclusive of profit) in performing its obligations under the Contract, to the extent such costs are reasonable in amount and are properly allocated or apportioned under generally accepted accounting principles to the terminated portion of the Contract. Buyer shall not be obligated to make any payment for: (x) the Goods, the Services, or work-in-process or parts or raw materials inventory that are manufactured, provided or procured by Seller in amounts in excess of those authorized in any release, that are damaged or destroyed or that are not merchantable or useable; (y) any undelivered Goods that are in Seller's standard stock or that are readily marketable; or (z) work-in-process or parts or raw materials inventory that can be returned to Seller's

suppliers or subcontractors for credit. In no event, however, will payments made in connection with a termination of the Contract exceed the aggregate price for the Goods or Services that would be manufactured or provided by Seller under any release outstanding at the effective date of termination. Buyer shall not be liable for and shall not be required to make payments to Seller, directly or indirectly (whether on account of claims by Seller's subcontractors or otherwise), for any loss arising from or attributable to failure to realize anticipated revenue, savings or profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation cost or general and administrative burden charges from a termination of the Contract. In the event of a termination of the Contract by Buyer as a result of Buyer ceasing to be a supplier to the Customer for the program in respect of which Buyer issued the Contract, Buyer shall only be obligated to compensate Seller for any costs under this paragraph if, when and to the extent that the Customer reimburses Buyer for such costs.

(d) Seller may, with Buyer's prior written consent, retain or sell at an agreed price any of the Goods, the Services, work in process or raw materials inventory, the cost of which is allocated or apportioned to and shall credit or pay the amounts so agreed or received as Buyer directs, with an appropriate adjustment for any delivery cost savings. Seller shall, if directed by Buyer, transfer title to and make delivery of any Goods, work in process or raw materials inventory not so retained or sold.

### 13.2 Termination upon Seller's Default or Change of Control

(a) Buyer may terminate the Contract, in whole or in part, for default occasioned by Seller's: (i) breach or threatened breach of any terms of the Contract; (ii) failure to perform in accordance with the requirements of the Contract; or (iii) failure to make progress so as to endanger timely and proper delivery of the Goods or completion of the Services and, in each such case, Seller does not correct such breach or failure within ten (10) days (or such shorter period of time as Buyer may determine, if commercially reasonable under the circumstances) after receipt of written notice from Buyer specifying such breach or failure. Seller shall be liable for all costs, damages and expenses caused by or resulting from its default under the Contract.

(b) Buyer may terminate the Contract, in whole or in part, in the event of a change of control of Seller. For the purposes of the Contract, a "change of control" includes: (i) any sale, lease or exchange of a substantial portion of Seller's assets used in connection with Seller's performance of its obligations under the Contract; (ii) any sale or exchange of a sufficient number of shares of Seller, or of any affiliate that controls Seller, to effect a change in management of Seller; or (iii) the execution of a voting or other agreement of control in respect of Seller, or of any affiliate that controls Seller. Seller shall notify Buyer in writing within ten (10) days of any change of control of Seller, and Buyer may terminate the Contract immediately by giving written notice to Seller upon a change of control of Seller without Buyer's prior written consent.

(c) Any termination under this paragraph shall be without liability to Buyer, except for the Goods delivered or the Services performed by Seller and accepted by Buyer.

### 13.3 Termination upon insolvency, bankruptcy, etc.

(a) Buyer may terminate the Contract, without liability to Seller: (i) in the event of the insolvency, bankruptcy, reorganization, arrangement, receivership or liquidation by or against Seller; (ii) in the event Seller makes an assignment for the benefit of its creditors or ceases to carry on business in the ordinary course; or (iii) if a receiver is appointed in respect of Seller or all or part of its property (collectively, an "**Insolvency Event**"). In the event of such termination, Seller shall be liable for all costs, damages and expenses suffered by Buyer. Any such termination shall not affect the entitlement of Buyer with respect to the Buyer's Property.

(b) In the event that Buyer does not terminate the Contract upon the occurrence of an Insolvency Event, Buyer may make such equitable adjustments in the price and/or delivery requirements under the Contract as Buyer deems appropriate to address the change in Seller's circumstances, including Seller's on-going liability to perform its obligations regarding warranty, defective Goods or Services or other requirements under the Contract.

## **14. Default**

### 14.1 Events of Default

Time is of the essence and Seller will be in "**Default**"

under the Contract if it (1) fails to perform any obligation under the Contract and, if the non-performance can be cured, fails to cure the non-performance within 10 days after notice from Buyer specifying the non-performance, (2) admits in writing its inability to pay its debts as they become due, commences a bankruptcy, insolvency, receivership, or similar proceeding, or makes a general assignment for the benefit of creditors, (3) becomes a debtor in a bankruptcy, insolvency, receivership, or similar proceeding commenced by a third party that is not dismissed within 30 days after commencement, or (4) fails to provide adequate assurance of performance under the Contract within two business days after written demand by Buyer.

#### 14.2 Remedies

(a) The rights and remedies reserved to Buyer in this Contract shall be cumulative, and in addition to all other or further remedies provided in law or equity. Without limiting the foregoing, should any Goods fail to conform to the warranties set forth above or if the materials contained within the Goods are alleged to or are determined to cause injury to third parties, Buyer shall notify Seller and Seller shall, if requested by Buyer, reimburse Buyer for any incidental, special and consequential damages caused by such nonconforming Goods, including, but not limited to, costs (including all attorney's or other professional fees), expenses and losses incurred by Buyer in (a) inspecting, sorting, containing, repairing or replacing such nonconforming Goods, (b) resulting from production interruptions, (c) conducting Recalls or other corrective service actions, (d) claims or litigation arising from personal injury (including death) or property damage caused by such nonconforming Goods, and (e) any amounts for which Buyer is liable to its Customer(s) on account of such nonconforming Goods. If requested by Buyer, Seller will enter into a separate agreement for the administration or processing of charge backs for nonconforming Goods. In addition, Seller shall reimburse Buyer for all liability, claims, demands or expenses (including attorney's or other professional fees) arising from or relating to 1) Seller's breach or anticipatory repudiation of the Contract or any other contract between Seller and Buyer, 2) a request or demand by Seller to modify or change the terms of the Contract, 3) legal proceedings involving Seller that in the reasonable judgment of Buyer, may impact upon Seller's continued or future performance under the Contract, or 4) if Seller is a party to a court case

or proceedings in which Buyer appears, participates, monitors or becomes a party. In the event the Contract is issued or renewed after Seller becomes a debtor in bankruptcy, Buyer shall be entitled to all of its attorney's or other professional fees arising from or relating to the bankruptcy case, including for monitoring the case.

(b) Seller expressly acknowledges and agrees that any failure of Seller to deliver the Goods on the delivery dates and times as specified in the Contract will cause irreparable harm to Buyer and that Buyer shall be entitled to equitable relief, including injunction, in such event.

(c) Any proceeding or action initiated by Seller for breach of contract or any other act or omission (including tort) arising from or in any way related to the Contract must be commenced within one (1) year from the date the breach, act or omission giving rise to Seller's claim occurs, regardless of Seller's knowledge of such breach, act or omission or of its consequences.

(d) Any right or remedy expressly conferred on Buyer herein shall not limit or modify any right or remedy which Buyer would otherwise have. When shipments to places other than Buyer's plant are authorized, Seller's invoices will be paid by Buyer at the time specified on the face thereof but not before acknowledgment of receipt of shipment by the consignee.

(e) In no event will Buyer be liable to Seller or Seller's subcontractors for anticipated profits or for special, incidental or consequential damages.

#### 14.3 Specific Performance

In the event that Seller fails or refuses to deliver the Goods, or otherwise repudiates or threatens to repudiate any provision of the Contract, Seller acknowledges that money damages will not be a sufficient remedy and agrees that, in addition to all other rights and remedies that Buyer may have under the Contract or applicable law, Buyer will be entitled to specific performance of Seller's obligations under the Contract and any other temporary, preliminary, or injunctive relief in connection with any action to enforce the Contract (without, in each case, any requirement of a bond or other security in connection therewith).

#### 15. Confidential Information

All information, trade secrets, specifications,

drawings, notes, instructions, engineering data and analyses, compositions of matter, financial data, and other technical and business data which are supplied or disclosed by Buyer in connection with the Contract, in each case that are marked or otherwise identified as confidential or understood by the Seller, exercising reasonable business judgment, as confidential ("**Confidential Information**"), will be deemed confidential and proprietary to, and remain the sole property of the Buyer. The Seller may not disclose Confidential Information or use Confidential Information for any purpose other than as contemplated under the Contract without in each case the written consent of the Buyer. Confidential Information will not include information that (1) is known to the Seller before the date on which it is received (2) is or becomes generally available to the public other than as a result of a violation of this section by the Seller, (3) was obtained by the Seller on a non-confidential basis from a third party who had the apparent right to disclose it, (4) developed by the Seller independently of, and without reference to any Confidential Information from the Buyer or (5) is legally required to be disclosed. Seller will use the same degree of care to safeguard Confidential Information that it uses to protect its own confidential information from unauthorized access or disclosure (but not less than a reasonable degree of care). Upon request by the Buyer, the Seller will promptly return or destroy the original and all copies of Confidential Information received.

#### **16. Assignment and Subcontracting**

(a) Seller shall not assign or subcontract its duties or responsibilities under the Contract without the prior written consent of the Buyer. Unless otherwise stated in the consent, any assignment or subcontracting by either party, with or without the required consent, will not relieve the Seller of its duties or obligations under the Contract or its responsibility for non-performance or Default by its assignee or subcontractor. Any purported assignment in violation of the foregoing shall be null and void and of no force or effect.

(b) Buyer shall have the right to assign the Contract or its interest herein, without Seller's consent, to any of its affiliates or to any purchaser or successor to Buyer's business.

(c) Seller will ensure that the terms of its contracts with its sub-suppliers and sub-contractors provide Buyer and the Customer with all of the rights

specified in the Contract.

#### **17. Excusable Non-Performance**

A delay or failure by either party to perform its obligations under the Contract will be excused, and will not constitute a Default, only if (1) caused by an event or occurrence beyond the reasonable control of that party and without its fault or negligence, such as but not limited to: war, crime, earthquake, fires, floods, windstorms, explosions, riots, natural disasters, wars and sabotage ("Excusable Delay"). However, in no event will the Seller's performance be excused by: (i) the change in cost or availability of materials, components or services based on market conditions, its supplier failure or inability to perform (unless the failure or inability is caused by an event or occurrence that would itself be an Excusable Delay); (ii) contract disputes; (iii) Seller's or a Seller's financial distress; (iv) any labor strike or other labor disruption applicable to Seller or to any of its subcontractors or suppliers; or (v) Seller's failure to comply with applicable law or to take actions reasonably necessary to schedule performance in anticipation of any customs, export-import and/or Government requirement for which there is public notice or (vi) lack of maintenance and, or, machine breakdown (2) the party unable to perform gives written notice of the Excusable Delay (including its anticipated duration) to the other party promptly after becoming aware that it has occurred or is reasonably likely to occur, followed by prompt notices of any material changes in the facts relative to its ability to perform and/or the anticipated duration of the non-performance. Seller and Buyer shall share information, confer, seek agreement and otherwise act cooperatively to avoid or mitigate the effects of the potential or actual excused non-performance. If Seller is unable to perform for any reason, Buyer may purchase Goods and Services from other sources and reduce its purchases from Seller accordingly without liability to Seller. Within two business days after written request by Buyer, Seller will provide adequate assurances that the non-performance will not exceed 30 days. If Seller does not provide those assurances, or if the non-performance exceeds 30 days, the Buyer may terminate all or part of the Contract.

#### **18. Labor Contracts**

Seller will notify Buyer of the contract expiration date at least six months before the expiration of a

current labor contract that has not been extended or replaced. Buyer may also request a non-strike agreement letter that covers a certain period of time. Buyer may thereafter direct Seller in writing to manufacture up to 30 days of additional inventory of Goods, specifying the quantities of Goods required and any packaging and storage requirements. Seller will comply with Buyer's written directions prior to expiration of the current labor contract and until the current labor contract has been extended or a new contract completed. Seller is responsible for carrying costs and any additional costs of manufacture.

## **19. Customs**

Transferable credits or benefits associated with Goods purchased, including trade credits, export credits, or rights to the refund of duties, taxes, or fees, belong to Buyer unless otherwise prohibited by applicable law. Seller will provide Buyer with all information and records relating to the Goods necessary for Buyer to (1) receive these benefits, credits, and rights, (2) fulfill any customs obligations, origin marking or labeling requirements, and certification or local content reporting requirements, (3) claim preferential duty treatment under applicable trade preference regimes, and (4) participate in any duty deferral or free trade zone programs of the country of import. Seller will obtain all export licenses and authorizations and pay all export taxes, duties, and fees unless otherwise stated in the Contract, in which case Seller will provide all information and records necessary to enable Buyer to obtain those export licenses or authorizations.

## **20. Insurance**

At Seller's sole cost and expense, Seller must obtain and maintain, with insurance companies reasonably acceptable to Buyer, the following types of insurance coverage (1) general liability insurance with a coverage limit of at least US \$5,000,000 for each occurrence and the general aggregate, (2) all risk property perils insurance covering the full replacement value of Buyer's Property, (3) worker's compensation insurance as required by applicable law, (4) employers liability with a coverage limit of at least US \$1 000,000 for each accident, disease policy limit, disease employee, (6) commercial automobile liability insurance with coverage of at least US \$5,000,000 for each occurrence and combined single limit, and (7) any other insurance that is customary in the automotive industry. All such insurance coverage will name Buyer as loss

payee and additional insured. Seller's policies will contain a provision by the respective insurers waiving the right of such insurers to subrogation. The waiver of subrogation shall be in favor of Buyer, its board members, officers, employees, agents, successors and assigns. Upon request, Seller will furnish to Buyer certificates of insurance showing Seller's compliance with this section and such certificates must provide that Buyer will receive not less than thirty (30) days prior written notification from the insurer of any termination or reduction in the amount or scope of coverage. The limits of liability set forth above is the required minimum coverage and will in no way be construed as a limitation of the liability of Seller under the Contract.

When Seller is located in the United Mexican States, the Seller will not be obliged to purchase an employer's liability insurance policy and employee compensation. Notwithstanding this, the Seller shall be obliged to register all of Seller's employees with the Mexican Social Security Institute, and to comply with all obligations related to it.

## **21. Dispute Resolution**

### **21.1 Negotiation and Mediation**

Buyer and Seller will first endeavor to resolve through good faith negotiations any dispute arising under the Contract. If a dispute cannot be resolved through good faith negotiations within a reasonable time, either party may request non-binding mediation by a mediator approved by both parties or, absent that approval, by the ADR Institute of Canada.

### **21.2 Arbitration**

If mediation fails to resolve the dispute within 30 days after the first mediation session, either party may submit the dispute to binding arbitration by notice to the other party. The arbitration proceedings will be conducted, and a single arbitrator will be selected, in accordance with the rules of the National Center for Dispute Resolution or other rules approved by the parties, and will be governed by the *United States Arbitration Act*, 9 U.S.C. §§1-16, and this section. The arbitration will be conducted at an agreed location or at a location selected by the arbitrator if the parties are unable to agree. The arbitrator will issue a written opinion setting forth the basis for the arbitrator's decision, which may include an award of legal fees and costs. The arbitrator's award will be final and non-appealable absent fraud

or manifest error, and judgment on the arbitrator's award may be entered in any court having jurisdiction. While arbitration proceedings are pending, the parties will continue to perform their obligations under the Contract.

### 21.3 Litigation

Either party may pursue through litigation claims that also involve third parties who have not consented to arbitration, claims in litigation commenced by third parties, and claims for injunctive or other non-monetary relief. Regarding actions involving Buyer, Seller waives objection to joinder. Seller must obtain same from its suppliers and must expressly include similar provision in downstream contracts.

## **22. Miscellaneous**

### 22.1 Advertising

Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has contracted to furnish Buyer the Goods or Services covered by the Contract, or use any trademarks or trade names of Buyer in Seller's advertising or promotional materials.

### 22.2 Audit Rights

Seller will maintain records as necessary to support amounts charged to Buyer under the Contract in accordance with Buyer's document retention requirements. Buyer and its representatives may audit Seller's records of transactions to verify Seller's compliance with the Contract. Any audit will be conducted at Buyer's expense (but will be reimbursed by Seller if the audit uncovers any errors in the amounts charged), upon prior written notice to Seller.

### 22.3 Electronic Communication

Seller will comply with the method of electronic communication specified by Buyer, including requirements for electronic funds transfer, purchase order transmission, electronic signature, and communication. Seller will also comply with any modification to Buyer's specified method of electronic communication after the date of the Contract.

### 22.4 Relationship of the Parties

Buyer and Seller are independent contractors, and nothing in the Contract makes either party the agent or legal representative of the other party for any

purpose. Neither party has authority to assume or to create any obligation on behalf of the other party.

### 22.5 Waiver

The failure of Buyer to enforce any right or remedy provided in the Contract or by law on a particular occasion will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy.

### 22.6 Entire Agreement

The Contract constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior oral or written representations or agreements by the parties with respect to the subject matter of the Contract. No subsequent terms, conditions, understandings, or agreements purporting to modify the terms of the Contract will be binding unless in writing and signed by both parties.

### 22.7 Severability

A finding that any provision of the Contract is invalid or unenforceable in any jurisdiction will not affect the validity or enforceability of any other provision of the Contract or the validity or enforceability of that provision in any other jurisdiction. In addition, if any term of the Contract is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order of rule, and the remaining provisions of this Contract shall remain in full force and effect.

### 22.8 Interpretation

When used in these General Terms and Conditions, "including" means "including without limitation" and terms defined in the singular include the plural and vice versa.

### 22.9 Notices

Any notice or other communication required or permitted in the Contract must be in writing and will become effective on the date of actual receipt if the date of actual receipt is a business day or on the next business day if the date of actual receipt is not a business day.

#### 22.10 Third Party Beneficiaries

Seller agrees that Buyer and its Customer are intended third party beneficiaries of any contracts between Seller and its suppliers relating to the production or assembly of the Goods covered by the Contract with the right to enforce such contracts. Seller further agrees that Buyer's Customer is an intended third party beneficiary of this Contract with the right to enforce this Contract against Seller as if it were an original party hereto. Except as expressly provided herein, the parties agree that there are no third party beneficiaries of the Contract.

#### 22.11 Customer Requirements

Where the Goods or Services under the Order are sold, or incorporated into goods or services that are supplied, by Buyer to a Customer whether directly or indirectly through an upper tier supplier, or any other third party customer, the Contract is subject to the Customer general terms and conditions.

#### 22.12 Governing Law.

(a) If the location of Buyer from which the Purchase Order issued is in the United States of America or any location other than Canada, the Contract shall be interpreted and enforced in accordance with the local, domestic laws of the State of Michigan and of the United States of America, exclusive of the choice of law rules thereof. If the location of Buyer from which the Purchase Order issued is in Canada, the Contract shall be interpreted and enforced in accordance with the local, domestic laws of the Province of Quebec and of Canada, exclusive of the choice of law rules thereof. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Contract.

(b) Any litigation on contractual claims arising from the Contract may be brought by Buyer in any court having jurisdiction over Seller or, at Buyer's option, in any court having jurisdiction over any Buyer's locations specified in the Contract, in which event Seller consents to jurisdiction and service of process in accordance with applicable procedures. Any claim or proceeding by Seller against Buyer may be brought by Seller only in the court having jurisdiction over the location of Buyer from which the Contract issued. Seller irrevocably waives and agrees not to raise any objection it might now or hereafter have to any such claim or proceeding in any such court,

including any objection that the place where such court is located in an inconvenient forum or that there is any other claim or proceeding in any other place relating in whole or in part to the same subject matter.

#### 22.13 Jury Trial

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

#### 22.14. Contract Drafting

The parties hereto acknowledge and are satisfied that the foregoing be drawn up in the English language; *Les parties aux présentes reconnaissent qu'ils ont exigé que la présente entente soit rédigée en anglais.*