



# Purchase Order Terms and Conditions

## 1. The Contract.

**1.1 Offer and Acceptance.** Each purchase order Buyer issues ("**Purchase Order**") is Buyer's offer to purchase the products ("**Products**") and services ("**Services**") identified in that Purchase Order. Seller will be deemed to have accepted a Purchase Order as issued (1) if Seller fails to object to it in writing within 10 business days after receipt and has begun or later begins performance under the Purchase Order, or (2) if Seller acknowledges in writing its acceptance of the Purchase Order. Upon acceptance, the Purchase Order together with these General Terms and Conditions and any other documents specifically incorporated in the Purchase Order or separately agreed to in writing, such as specifications, drawings, requirements including quality requirements of Buyer or Buyer's customer will become a binding contract between Buyer and Seller (collectively, the "**Contract**"). If Seller timely objects to a Purchase Order or proposes alternate or additional terms, the Purchase Order will become a Contract only when Buyer and Seller mutually agree in writing, even if Seller commences or has commenced performance under the Purchase Order. Specific terms and conditions on the Purchase Order and the other documents comprising the Contract will take priority over any inconsistent provision in these General Terms and Conditions.

**1.2 Changes.** Buyer may from time to time by notice to Seller make reasonable changes, within the scope of the Contract, to the drawings, specifications, materials, packaging, testing, quantity, time or method of delivery or shipment, or similar requirements prescribed in the Contract. At Seller's request with appropriate supporting documentation, the parties will agree upon an equitable adjustment to the Contract prices and times for performance because of Buyer's changes. Contract changes must be in writing signed by Buyer's authorized representative, and Buyer will not unreasonably withhold or delay consent to a Contract change proposed by Seller.

**1.3 Other Changes.** Except for the changes described in §1.2, neither party may make any changes to the Contract during its term (as described in §12.1) without the prior written agreement of Buyer and Seller's authorized representative. If the General Terms and Conditions change during the term of the Contract, those changes shall not apply during the term, even if the Buyer has issued a purchase order revision during the term, unless expressly agreed in writing by Buyer and Seller's authorized representative.

## 2. Products and Services.

**2.1 Quantity.** If quantities or delivery schedules are not specified in the Contract, they will be as reasonably determined by Buyer and stated in Buyer's firm releases issued to Seller from time to time. Whether quantities or delivery terms are "reasonably determined" shall take into account, without limitation: (i) any capacity limitations specified in the Contract or otherwise agreed to by Buyer and Seller in writing; (ii) unusual volume or timing fluctuations that are inconsistent with customary lead time requirements or any lead time requirements specified in the Contract or otherwise agreed to by Buyer and Seller in writing. However, in all events, Seller shall use best efforts to meet Buyer's quantities and delivery schedules. Buyer may return over-shipments to Seller at Seller's expense. Unless otherwise specifically stated in the Contract, the Contract is not exclusive and Buyer may purchase similar products and services from third parties, subject to **Section 10.2**.

**2.2 Current-Model Service Requirements.** During the term of a Contract, Seller will make Products 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 vehicle production program in which Products covered by the Contract are

incorporated, Seller will also make those Products available to Buyer for Buyer's past-model service requirements for a period of 10 years after the end of the vehicle production program. The parties will negotiate in good faith the prices, quantities, and delivery terms for past-model service Products based on the availability and cost of needed materials, supplies, and skilled workers, the additional costs for equipment setup, packaging, shipping and handling, related services, and other relevant factors.

### **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 Products in accordance with Buyer's instructions, including labeling and hazardous materials instructions. If Buyer has not provided packing or shipping instructions, Seller will pack and ship Products in accordance with sound commercial practices. If Seller is required to use Buyer's returnable packaging, Seller will be responsible for cleaning and returning the returnable packaging.

**3.2 Delivery Schedules.** Seller will deliver Products and Services in strict accordance with the Contract terms. Unless otherwise stated in the Contract, Products will be delivered F.C.A. Seller's dock (Incoterms 2020) and title will transfer upon receipt of the Products by the freight carrier. If Products are not ready for delivery in time to meet Buyer's delivery schedules, the party causing the delay will be responsible for additional costs of any resulting expedited or other special transportation. Buyer will also be responsible for additional costs of expedited or other special transportation that Buyer may require as a result of changes to its firm releases or delivery schedules.

### **4. Inspection.**

Buyer may, upon reasonable advance notice to Seller, inspect production processes and Property and conduct testing at Seller's premises for the sole purpose of verifying Seller's performance under the Contract. Seller may restrict Buyer's access as necessary to protect proprietary information and may require appropriate indemnification and releases. Buyer is not required to inspect Products delivered or Services performed, and no inspection or

failure to inspect will reduce or alter Seller's obligations under the Contract.

### **5. 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.

### **6. Payment.**

Payment terms are as set forth in the Contract. 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 Products and 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 Seller's shipping or service location. Buyer may setoff or deduct from sums owed to Seller under the Contract those sums owed by Seller to Buyer. Unless Seller consents in writing, Buyer may not setoff or deduct amounts owed to Buyer by Seller's affiliates or others who are not parties to the Contract.

### **7. Product Warranties.**

**7.1 Seller's Warranties.** Unless otherwise specified in the Contract, the warranty period is the period for which the automobile manufacturer warrants the Products to end users. During the warranty period, Seller warrants to Buyer that the Products will be free from defects in workmanship and materials, and will conform to the specifications, drawings, samples, and performance requirements specifically incorporated in the Contract. Seller also warrants to Buyer that it will transfer to Buyer ownership and good title to Products delivered and Services provided, free of all liens, encumbrances, and rights of third parties (except those created by Buyer).

**THE FOREGOING WARRANTIES ARE THE SOLE**

**WARRANTIES AND ALL OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, ARISING BY LAW OR CUSTOM, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED.**

**7.2 Non-Conforming Products.** Except as otherwise specifically provided in the Contract and subject to **Sections 7.3, 8 and 13.2(c)**, Buyer's sole remedy for Products or Services that do not conform to the warranties in **Section 7.1** will be to (1) reject the non-conforming Products or Services, (2) require Seller, at Seller's option and expense (including applicable shipping costs), to either repair or replace the non-conforming Products or Services, and/or (3) require Seller to implement at its expense containment, inspection, sorting, and other quality assurance procedures if Buyer reasonably determines (through statistical sampling or other quality assessments) that a substantial quantity of incoming Products does not conform to the warranties in **Section 7.1**. To the full extent possible, Buyer will provide Seller with access to any available warranty data related to the Products and any available field-returned Products. Buyer will also provide Seller with an opportunity to participate in any root cause analysis performed by Buyer concerning the Products.

**7.3 Recalls.** This **Section 7.3** applies to any voluntary or government-mandated offer by Buyer (or the vehicle manufacturer) to vehicle purchasers to remedy an alleged defect that affects motor vehicle safety or to address an alleged failure of a vehicle to comply with an applicable motor vehicle safety standard or guideline (a "**Recall**"). Except as otherwise stated in the Contract (including **Section 13.2(e)**), Seller will be liable for costs and damages resulting from a Recall only if the Recall results in whole or in part from a failure of the Products to conform to the warranties in **Section 7.1** during the warranty period specified in the Contract. If Seller is liable for a Recall, the extent of Seller's liability will be negotiated on a case-by-case basis based on (1) a good faith allocation of responsibility for the Recall, (2) the reasonableness of the costs and damages incurred, (3) the quantity purchased and Contract price of the affected Products, and (4) other relevant factors. As a condition precedent to Seller's liability under this **Section 7.3**, Buyer must (i) notify Seller as soon as practicable after Buyer learns that a Recall being

considered implicates the Products, (ii) provide Seller with available performance evaluations, accident reports, engineering investigations, and other data relating to the potential Recall, (iii) provide Seller a reasonable opportunity to participate in inquiries and discussions among Buyer, its customer, and governmental agencies regarding the need for and scope of the Recall, and (iv) consult with Seller about the most cost-effective method of modifying or replacing vehicle systems or component parts, including the Products, in order to remedy the alleged defect or non-compliance.

## **8. Product Liability.**

**8.1 Indemnification.** Seller will indemnify and defend 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 Products or provision of Services, delivery of non-conforming Products or Services, or its negligent acts or omissions in its performance under the Contract. This **Section 8** will not apply to the extent that the injury, loss, or damage results from (1) Buyer's specification of materials in the Products, (2) Buyer's design of the Products, (3) any alteration or improper repair, maintenance, handling, or installation of the Products by anyone other than Seller, or (4) the integration or interaction of the Products with systems or components not supplied by Seller unless the injury, loss or damage is caused by the Seller.

**8.2 Procedure.** Buyer will notify Seller promptly after Buyer becomes aware of the basis for a claim under this **Section 8**. The parties will cooperate with each other to determine the root cause of a defect in or failure of the Products (and related systems and components) and an equitable allocation of responsibility among all responsible parties. Seller may examine and test all available Products and related systems and components that are subject to a third-party claim. Buyer will endeavor to include Seller in settlement discussions where indemnity has been or will be sought from Seller, and Buyer may not settle or compromise any third-party claim that gives rise to an

indemnification claim without Seller's prior written consent, which will not be unreasonably withheld or delayed.

## 9. Compliance with Laws.

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

## 10. Intellectual Property Rights.

**10.1 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 Products and Services to Buyer.

**10.2 Seller's Intellectual Property.** Except as stated in this **Section 10.2**, Seller does not transfer to Buyer any Intellectual Property Right of Seller related to the Products or Services or incorporated in Buyer's Property, other than the right to incorporate Products purchased from Seller in vehicles and component parts and to sell those vehicles and component parts to the public. If the Contract is terminated by Seller or Buyer pursuant to **Section 12.1** (other than by Seller for Buyer's Default), Seller grants to Buyer a non-exclusive right and license to use Seller's Intellectual Property Rights during the Contract term that would have applied had it not been earlier terminated under Section 12.1, and subject to **Section 14**, to obtain from alternate sources products and services similar to the Products and Services for use in vehicles or component parts covered by the terminated Contract. There will be no fee for this license if (1) Buyer terminates the Contract for Seller's Default, or (2) Seller terminates the Contract other than for Buyer's Default or pursuant to **Section 16**. Otherwise, the parties will negotiate a reasonable fee for use of Seller's Intellectual Property Rights.

### **10.3 Infringement.**

(a) Subject to **Section 10.3(b)**, Seller will indemnify 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 Products of a third-party Intellectual Property Right (1) in the United States, the European Union, or Japan, and (2) in another jurisdiction if Seller is aware of the actual or alleged infringement in that other jurisdiction at the time the Purchase Order is issued and fails to disclose it to Buyer within 10 days after accepting the Purchase Order. If a claim under this **Section 10.3** results, or is likely to result, in an injunction or other order that would prevent Seller from supplying or Buyer from using Products for their intended purpose, Seller will at its option and expense either (i) secure a license of the Intellectual Property Right that permits Seller to continue supplying the Products to Buyer, or (ii) modify the Products so that they become non-infringing, so long as the modification does not materially alter the operation or performance of the Products, or (iii) replace the Products with non-infringing but practically equivalent Products.

(b) Seller will have no liability under this **Section 10.3** if, after requesting the same in writing from the Buyer, the Buyer fails to provide Seller with information, cooperation, and assistance regarding, and authority to defend, a claim covered by this **Section 10.3**. Seller will have no liability under this **Section 10.3** if and to the extent that a claim of infringement is based on (1) a Product modification made by Buyer or a third party without the consent of the Seller, (2) use or interconnection by Buyer of the Product in combination with other products not made or sourced by Seller provided that the infringement does not relate to the Product and is not caused by the Seller..

## 11. **Property.**

### **11.1 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 Products or provide Services ("**Property**") if (1) the Property is so designated in the Contract, or (2) Buyer or its customer has provided or paid for the Property ("**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 reasonably requested by Buyer to evidence its or its customer's ownership of Buyer's Property. Seller will indemnify and defend Buyer against claims or liens adverse to Buyer's or its customer's ownership of Buyer's Property except those that result from the acts or omissions of Buyer or its customer. Seller will hold Buyer's Property on a bailment basis and will be responsible for loss or damage to Buyer's Property while in its possession or control. To the extent permitted by law, Seller waives any lien or similar right it may have with respect to Buyer's Property. Buyer will be responsible for personal property taxes assessed against 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 Products for Buyer unless Buyer otherwise approves in writing, (3) at Buyer's request and expense, 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. All replacement parts, additions, improvements, and accessories to Buyer's Property will become part of Buyer's Property unless they can be removed without damaging Buyer's Property.

(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, or (2) Seller's actual cost of purchased materials, components, and services plus Seller's actual cost of labor and overhead allocable to the Buyer's Property, if manufactured by Seller. Unless otherwise stated in the Contract, final payment for Buyer's Property is due (i) on the vehicle manufacturer's PPAP (Production Part Approval Process) approval date, or (ii) within 90 days after the Property is tendered for PPAP approval if no action has then been taken on the request for PPAP approval.

(d) Subject to **Section 11.1(e)**, Seller will immediately release to Buyer upon request, and Buyer may retake immediate possession of, Buyer's Property and other property of Buyer or its customers at any time, with or without cause and without payment of any kind unless otherwise provided

in the Contract. Seller will release the requested Property and other property to Buyer F.C.A. Seller's plant (Incoterms 2010), properly packed and marked in accordance with the requirements of Buyer's carrier. If the release or recovery of Buyer's Property or other property renders Seller unable to produce a Product, the release or recovery will be deemed a termination of the Contract with respect to that Product pursuant to **Section 12** or **13**, as applicable.

(e) Seller's obligation to release and allow Buyer possession of Buyer's Property under Section 11.1(d) shall be conditioned on payment by Buyer of all amounts owed for Buyer's Property under **Section 11.1(c)**, except that if Buyer and Seller dispute the amount owed under Section 11.1(c), Seller shall release and allow Buyer possession upon payment by Buyer of the undisputed portion of the amount claimed by Seller to be owed. Seller's relinquishment of possession shall not prejudice any claim or right to payment of Seller for the disputed amounts.

**11.2 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. While a Contract for Products remains in effect, Buyer may purchase Seller's Property used exclusively to produce those Products and not needed by Seller to produce Products or products for other customers, for a purchase price equal to the greater of fair market value or Seller's unamortized acquisition cost.

## **12. Term and Termination.**

**12.1 Generally.** Each Contract will remain in effect for the term specified in the Contract (or until terminated if no term is specified) unless earlier terminated by either party (1) by reasonable (but not less than 60 days) notice to the other party, or (2) pursuant to **Section 13** or **16**. Upon termination of a Contract, Seller will assist Buyer in locating an alternative source for the Products and Services and in moving production to the alternate source selected by Buyer.

**12.2 Long-Term Contracts.** If Buyer terminates a Contract issued for a term of more than one year ("**Long-Term Contract**") before the end of its specified term (other than for Seller's Default), Buyer will (1) purchase

completed Products at the Contract price and work-in-process and raw materials at Seller's actual cost, in each case to the extent reasonably necessary to satisfy Buyer's firm releases, and (2) reimburse Seller for reasonable costs actually incurred by Seller as a result of the early termination, including the cost to store the items to be purchased and relocate production to an alternate source and the cost of unreimbursed and unamortized research and development costs, engineering costs, capital equipment, Seller's Property, and supplies that are unique to the Products. If Seller terminates a Long-Term Contract before the end of its specified term (other than for Buyer's Default), (i) Seller will reimburse Buyer for reasonable costs actually incurred by Buyer to relocate production to an alternate source, and (ii) Buyer may purchase completed Products at the Contract price and work-in-process and raw materials at Seller's actual cost. For purpose of this provision, if Buyer and Seller have agreed in writing to pricing for more than one year or have agreed in writing that the Products or Services will be supplied for the life of the program, the Contract shall be a Long-Term Contract, even if a particular Purchase Order expires in one-year or less.

**12.3 Short-Term Contracts.** If Buyer terminates a Contract issued without a definite term or for a term of one year or less ("Short-Term Contract") before the end of its specified term (other than for Seller's Default), Buyer will purchase completed Products at the Contract price and work-in-process and raw materials at Seller's actual cost, in each case to the extent reasonably necessary to satisfy Buyer's firm releases. If Seller terminates a Short-Term Contract issued without a definite term or before the end of its specified term (other than for Buyer's Default), Buyer may purchase completed Products at the Contract price and work-in-process and raw materials at Seller's actual cost. For purpose of this provision, a Contract that is a Long Term Contract under the final sentence of Section 12.2 shall not be a Short Term Contract.

**12.4 Property Orders.** If Buyer terminates a Contract for Buyer's Property before it is fully performed (other than for Seller's Default), Buyer will (1) purchase the completed Buyer's Property at the Contract price and work-in-process and raw materials related to the uncompleted work at Seller's actual cost, and (2) reimburse Seller for reasonable costs actually incurred by Seller as a result of

the early termination, including the cost to store the items to be purchased and to relocate the work to an alternate source.

### **13. Default.**

**13.1 Events of Default.** Time is of the essence and, subject to **Section 16**, either party 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 15 business days after notice from the other party 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, or (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.

#### **13.2 Remedies.** Subject to **Section 13.3**:

(a) Subject to **Sections 7** and **8** (which provide the exclusive remedies for breach of warranty, Recalls, and products liability) and to the limitations in this **Section 13.2**, either party may exercise the remedies provided in this **Section 13.2**, which are cumulative and are in addition to all other rights and remedies available elsewhere in the Contract or by law.

(b) Either party may recover from the other party actual out-of-pocket damages or costs directly caused by the other party's breach of the Contract, regardless of whether the breach subsequently becomes a Default with the passage of time or giving of notice or both. All damages under this **Section 13.2** will be reasonably determined based on the nature, type, price, and profitability of the Products or Services, industry practices, and the overall volume, scope, and profitability of other business relationships between Seller and Buyer.

(c) Upon the occurrence of a Default and while that Default is continuing, the non-defaulting party may terminate the Contract by notice to the defaulting party. If Seller is in Default, Buyer's damages will include the reasonable costs actually incurred to relocate the work to an alternate source, and Buyer may purchase completed Products at the Contract price and work-in-process and raw materials

at Seller's actual cost. If Buyer is in Default, Seller's damages will include (1) the Contract price for completed Products and Services and the actual cost of work-in-process and raw materials (which will become Buyer's property upon payment in full), and (2) the cost of actual and verifiable unreimbursed and unamortized research and development, capital equipment, Property, and supplies that are unique to the Products.

(d) If Seller does not release or deliver Buyer's Property or other property of Buyer or its customers in accordance with **Section 11.1(d)**, Buyer may at Seller's cost (1) obtain an immediate court order for possession, and (2) enter Seller's premises and take immediate possession of Buyer's Property and the other property. To the extent permitted by law, Seller waives any right to object to Buyer's repossession of Buyer's Property and the other property in a bankruptcy or other proceeding.

**(e) EXCEPT AS OTHERWISE EXPRESSLY AUTHORIZED IN THE CONTRACT, ALL IN-DIRECT, SPECIAL, CONSEQUENTIAL (INCLUDING LOST PROFITS OR MARKET SHARE OR DAMAGE TO BRAND VALUE), INCIDENTAL, PUNITIVE, AND EXEMPLARY DAMAGES, WHETHER OR NOT FORESEE-ABLE, ARE EXCLUDED UNDER THESE GENERAL TERMS AND CONDITIONS TO THE EXTENT PERMITTED BY APPLICABLE LAW.**

#### **14. Confidential 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 or Seller in connection with the Contract, in each case that are marked or otherwise identified as confidential or where their confidential nature is apparent at the time of disclosure ("**Confidential Information**"), will be deemed confidential and proprietary to, and remain the sole property of, the disclosing party. The receiving party 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 disclosing party. Confidential Information will not include information that (1) is or becomes generally available to the public other than as a result of a violation of this **Section 14** by the receiving

party, (2) was obtained by the receiving party on a non-confidential basis from a third party who had the apparent right to disclose it, or (3) is legally required to be disclosed. Buyer and Seller will each 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 disclosing party, the receiving party will promptly return or destroy the original and all copies of Confidential Information received.

#### **15. Assignment and Subcontracting.**

Neither party may assign or subcontract its duties or responsibilities under the Contract without the prior written consent of the other party, which will not be unreasonably withheld or delayed. Unless otherwise stated in the consent, any assignment or subcontracting by either party, with or without the required consent, will not relieve that party of its duties or obligations under the Contract or its responsibility for non-performance or Default by its assignee or subcontractor. If Buyer requires Seller to subcontract all or a portion of its duties or obligations under the Contract to a designated subcontractor, Seller will not be responsible for a breach of the Contract caused by that subcontractor's failure to meet its warranty, delivery, or other contractual obligations.

#### **16. 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, including a labor dispute, and (2) the party unable to perform gives notice of the non-performance (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 Products and Services

from other sources and reduce its purchases from Seller accordingly without liability to Seller. Within three business days after written request by the other party, the non-performing party will provide adequate assurances that the non-performance will not exceed 30 days. If the non-performing party does not provide those assurances, or if the non-performance exceeds 30 days, the other party may terminate the Contract by notice given to the non-performing party before performance resumes. If Seller reasonably incurs extraordinary costs in order to maintain or restore supply in response to an inability to perform (or what would be an inability to perform except for those extraordinary costs), the cost shall be allocated between the parties in an equitable manner.

### **17. 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 thereafter direct Seller in writing to manufacture up to 30 days of additional inventory of Products, specifying the quantities of Products required and any packaging and storage requirements. Seller will use commercially reasonable efforts to 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. By authorizing the additional inventory, Buyer commits to buy the entire quantity of conforming Products requested and produced. Seller is responsible for carrying costs and any additional costs of manufacture.

### **18. Customs.**

Transferable credits or benefits associated with Products 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 Products 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.

### **19. Insurance.**

Prior to commencing work on Buyer's premises or utilizing Buyer's property (including Buyer's Property), Seller will maintain and upon request furnish to Buyer a certificate evidencing (1) general liability insurance with coverage limits reasonably acceptable to Buyer and naming Buyer as an additional insured, (2) all risk property perils insurance covering the full replacement value of Buyer's Property while in Seller's care, custody, or control and naming Buyer as loss payee, and (3) worker's compensation insurance as required by applicable law.

### **20. Dispute Resolution.**

**20.1 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 National Center for Dispute Resolution.

**20.2 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 20**. 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 without setoff for any matters being contested in the arbitration proceedings.

**20.3 Litigation.** The parties have selected binding arbitration as the sole means to resolve a dispute between them over monetary claims that cannot be resolved through mediation. 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.

## **21. Miscellaneous.**

**21.1 Advertising.** During and after the term of the Contract, Seller will not advertise or otherwise disclose its relationship with Buyer or Buyer's customers without Buyer's prior written consent, except as may be required to perform the Contract or as required by law.

**21.2 Audit Rights.** Seller will maintain records as necessary to support amounts charged to Buyer under the Contract in accordance with Seller's document retention policies. Buyer and its representatives may audit Seller's records of transactions completed within one year prior to the audit date, to the extent needed to verify the quantities shipped and that the prices charged match the Contract prices. Any audit will be conducted at Buyer's expense (but will be reimbursed by Seller if the audit uncovers material errors in the amounts charged), at reasonable times, and at Seller's usual place of business.

**21.3 Electronic Communication.** Seller will comply with the method of electronic communication specified by Buyer in Buyer's request for quotation and confirmed in the Contract, including requirements for electronic funds transfer, purchase order transmission, electronic signature, and communication. Seller will also make commercially reasonable efforts to comply with any modification to Buyer's specified method of electronic communication after the date of the Contract, subject to **Section 1.2**.

**21.4 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.

**21.5 Waiver.** The failure of either party 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.

**21.6 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, including Buyer's request for quotation and Seller's quotation unless specifically incorporated in the Contract. Except as authorized in **Section 1.2**, 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.

**21.7 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.

**21.8 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.

**21.9 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.

**21.10 Governing Law.** Unless otherwise agreed in writing, the Contract will be governed by and interpreted according to the internal laws of Alberta, Canada. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the Contract.