



3200 Fruit Ridge Ave NW
Grand Rapids, Michigan
49544

STANDARD TERMS FOR PURCHASES OF TOOLING, EQUIPMENT OR SERVICES

1. Formation of Contract. The terms set forth in these Standard Terms For Purchases of Tooling, Equipment or Services, in the corresponding Challenge Mfg. Company, LLC (“Buyer”) Purchase Order and in the corresponding Buyer Statement of Work / Request for Quotation, collectively referred to as the “Order”, are the sole terms for the purchase of goods and services by Buyer. They shall apply to the exclusion of any additional or different terms contained in Seller’s quotation, proposal, credit application (whether signed or unsigned), extension of credit, acknowledgment, or otherwise proposed by Seller in any manner. Any acceptance by Seller of an Order is an acceptance of these express terms, to the exclusion of any contrary provision contained in any other document except the Order itself. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of these terms is hereby objected to and rejected. Any such proposal shall not operate as a rejection of the Order, unless the variances are in the terms of the description, quantity, price, or delivery schedule of the goods or services, but shall be deemed an unaccepted material alteration. Accordingly, the Order shall be deemed accepted by Seller without such additional or different terms. If the Order shall be deemed an acceptance of a prior offer by Seller, the acceptance is expressly made conditional on assent to the terms of the Order and such acceptance is limited to those express terms, including these Standard Terms. Seller’s written acknowledgment of, commencement of work or services under, shipment of any goods or component parts of goods related to, or receipt or procurement of any Tools (as defined below) related to the Order, whichever occurs first, shall be deemed as acceptance of the terms set forth in these Standard Terms for Tooling, Equipment or Services, in the corresponding Buyer Purchase Order and in the corresponding Buyer Statement of Work / Request for Quotation.

2. Intentionally omitted.

3. Invoicing, Payment, and Price. All invoices must show the Order number. Unless otherwise stated in the Order, the terms of payment for all invoices will be Net 60 days. Payment does not constitute acceptance of goods or services. Pricing shall be as set forth in the Order and shall be firm with the sole and limited exceptions of: (a) the extent the price is adjusted downward as provided by the terms of any productivity savings requirements; (b) price adjustments, if any, agreed to by Buyer under the Order; or (c) other adjustments agreed to in writing by Buyer. The price stated in the Order shall not be increased unless specifically authorized in writing by issuance of a revised Order signed by Buyer.

4. Taxes. No sales, use, excise, or other taxes, whether federal, state, or

local, shall be added to the Order's purchase price unless otherwise stated in the Order.

5. Shipping, Packaging, and Logistics. Seller shall deliver to the specific dock identified in the Order. Seller must include a packing list with all shipments. Delivery shall be made in one shipment, unless otherwise specified by Buyer to Seller. The costs of any additional shipments will be wholly borne by Seller. Seller shall adhere to shipping directions specified in the Order. Seller acknowledges that time is of the essence and Seller shall notify Buyer immediately if Seller believes it cannot meet Buyer's delivery requirements. Unless otherwise stated in the Order, all shipments shall be F.O.B. Buyer's plant and shall be made at Seller's expense and risk of loss. Buyer shall have the right to instruct Seller on the method of shipment and packaging. No charges will be allowed for boxing, crating, packing, or other materials or preparation for shipment under the Order. In performing under the Order, Seller shall comply in all respects with all terms of the Buyer and any and all other requirements, including, but not limited to, any engineering requirements or labeling or barcode requirements that are included in or attached to the Order or the applicable Request for Quotation ("RFQ") or the technical specifications attached to the Order, any of which requirements may be amended by Buyer from time to time.

6. Quantity. If no quantity is specifically stated in the Order, or if the Order contains the term "Blanket," Seller agrees, for the time period that each Order is in effect and has not been terminated, to furnish to Buyer 100% of the goods or services covered by the Order.

7. Intentionally omitted.

8. Changes.

a. By written notice to Seller, Buyer may, from time to time, direct changes, or direct Seller to make changes, to drawings and specifications of the goods or to otherwise change the scope of the work covered by this Contract, including, without limitation, work with respect to such matters as the configuration and features or parts to be produced, inspection, testing or quality control, and Buyer and Seller will promptly discuss, reasonably and in good faith, any pricing adjustments (up or down) to be made in connection with such changes;

b. Notwithstanding any such discussions, Seller will promptly implement such changes as directed by Buyer without delay;

c. Pricing for such changes is to be quoted by Seller using the same costing and profit algorithms used by Seller in developing the quotation upon which the Order was placed, including a proportional implementation of any price reductions accepted by Seller in the Order, as acceptance is defined in paragraph 1 of these Standard Terms.

d. In the event that Buyer and Seller are unable to reach agreement on any pricing adjustments to be made in connection with such changes, any difference in price or time for performance resulting from such changes will be equitably adjusted by Buyer based on a fair cost assessment after receipt of documentation in such form and detail as Buyer may direct. Seller will accept any amendments issued by Buyer implementing such changes. Seller may, from time to time, propose changes to drawings and specifications of the goods or to the scope of the work covered by this Contract. If Buyer agrees, in its discretion, to implement such changes, the

agreement between the parties with respect to such changes will be made in accordance with paragraph 26(j) and shall thereby become part of the Entire Agreement between the parties.

e. Any agreed-upon changes to the design (including drawings and specifications), processing, methods of packing and shipping, and the date or place of delivery of the goods or services covered by the Order, shall not affect the time of performance or cost of the goods or services, unless Seller notifies Buyer in writing within ten (10) days of receipt by Seller of notice of any change. Without Buyer's prior written approval, Seller shall not change: (a) any third-party supplier of services, raw materials, or goods used by Seller in connection with its performance under the Order; or (b) the nature, type, or quality of any services, raw materials, or goods used by Seller or its suppliers in connection with the Order.

9. Inspection of Goods; Samples. All goods and services described in this Order shall be subject to Buyer's inspection and approval. Buyer reserves the right to reject any nonconforming goods or services. Acceptance of any goods or services shall not relieve Seller from any of its other obligations under the Order. Seller shall provide samples of goods or services in the amounts and at the times requested by Buyer.

10. Seller's Quality Control; Delivery, Inspection by Buyer of Seller. Seller agrees to participate in all Buyer Supplier and Development Program(s) and to comply with all quality requirements and procedures specified by Buyer, as revised from time to time. In addition, Seller agrees to establish and maintain quality control procedures to satisfy the requirements of Buyer and Buyer's Customers, including, but not limited to, all applicable automotive manufacturer and other automotive industry standards. Buyer has the right to periodically inspect Seller's facility, goods, materials, and property covered by the Order to determine Seller's compliance with applicable quality control standards, upon reasonable advance notice to Seller.

a. In addition to this right of periodic inspection, Buyer shall have a right of immediate inspection, if issues relating to quality control, production or delivery have resulted or are threatening to result in any failure of the Seller to deliver the required goods and/or services on the time schedule called for in any agreement between Buyer and Seller. Seller shall permit Buyer's representative access the Seller's premises at any time that the Seller's facilities are open to any of its own personnel for production, renovation change-over, setup or other business purpose, provided that Buyer shall only be permitted access to those facilities used in connection with the goods and services being supplied to Buyer. In the event that the internal policies of the Seller require that Buyer's representatives be accompanied by Seller's personnel, Seller agrees to make such personnel available and to not hinder, delay or abridge Buyer's right of inspection for any reason, so long as goods and services due or to become due to Buyer are or may be delayed or out of conformity with any requirements under the contract(s) between Buyer and Seller.

b. Buyer's inspection, whether during manufacture, prior to delivery, or within a reasonable time after delivery, shall not constitute acceptance of any work-in-process or finished goods or services. Further, Seller shall continuously monitor the goods and services and promptly report to Buyer any goods and services that do not comply with specifications, drawings, and all other specifications applicable to the

Order. The warranties required of Seller in the Order shall apply to all goods and services provided by Seller for Buyer. Seller shall promptly notify Buyer of any defects or deficiencies in design (including if Seller has reason to believe that any specification provided by Buyer are not adequate to provide the goods and services that will function throughout the greater of the expected life of the goods or services or the applicable warranty period), manufacture, or in use-performance of the goods or services relating to the Order.

11. Customer Requirements. Seller agrees to comply with the applicable terms and conditions of any agreements (“Customer Agreements”) received by Buyer from a third party (each a “Customer”), in which Buyer agrees to supply to Customer, or incorporate into goods and services supplied to Customer, goods and services purchased by Buyer from Seller. Buyer may provide Seller with information regarding the Customer Agreements, but Seller shall be responsible for ascertaining any terms and conditions contained in the Customer Agreements that may affect Seller’s obligations under the Order. Seller will do everything within its control to enable Buyer to meet the terms and conditions of the Customer Agreements. If this section conflicts with any other paragraph in the Order, Buyer has the right to elect to have the provisions of this section prevail.

12. Intentionally omitted.

13. Seller’s Warranties. Seller expressly warrants and guarantees as follows to Buyer, Buyer’s successors, assigns, and Customers, and the users of Buyer’s goods and services:

a. All goods and services, as applicable, will in manufacture and design, during the Warranty Period (as defined below), conform to the specifications, standards, drawings, instructions, advertisements, and statements on containers or labels, descriptions, and samples;

b. All goods and services, as applicable, will in manufacture and design, during the Warranty Period, be free from defects in workmanship and materials and shall be new and of the highest quality;

c. Buyer shall receive title to all goods that is free and clear of any liens, encumbrances, and any actual or claimed patent, copyright, or trademark infringement;

d. All goods and services, as applicable, will, during the Warranty Period, be merchantable, safe, and fit for Buyer’s intended purposes, which purposes have been communicated to Seller;

e. All goods will, during the Warranty Period, be adequately contained, packaged, marked, and labeled;

f. All goods and services, as applicable, will, during the Warranty Period, be manufactured and/or performed in compliance with all applicable federal, state, and local laws, regulations, or orders, and with all applicable agency or association standards or other standards applicable to the manufacture, labeling, transporting,

licensing, approval or certification of such goods or services, including, by way of illustration and not by way of limitation, the Occupational Health and Safety Act, the Fair Labor Standards Act, and any law or order pertaining to discrimination, including any regulations in force in countries where the goods and/or services, as applicable, or Buyer's Customer's vehicles equipped with the goods are to be sold;

g. All services performed by Seller shall be performed in a competent, workmanlike manner and in accordance with industry standards;

h. Seller will indemnify and hold Buyer harmless for the cost of recall campaigns and all other corrective service actions that, in Buyer's reasonable judgment, are required to rectify non-conformities in goods or services that are the result of a breach of the foregoing warranties, whether mandated by any governmental entity, by any Customer of Buyer, or by Buyer;

i. For purposes of this Agreement, "Warranty Period" for any goods and services provided to Buyer by Seller shall be computed from the time of delivery of the goods and services at issue and shall mean the time period extending for three (3) years from Buyer's final acceptance of such goods and/or services. Notwithstanding the foregoing, Seller agrees to waive and extend the expiration of the Warranty Period in the event, in Buyer's opinion, that there are failures or defects discovered after the Warranty Period of a significant nature or in a significant portion of the goods or services, or a defect is discovered that constitutes a threat of damage to property or to the health and safety of any person. Further, the Warranty period shall never expire as to the obligations imposed by any duly authorized governmental agency for recall of goods provided by Seller pursuant to the Order; and,

j. Seller represents and warrants that the prices for the goods or services under the Order will be no less favorable than those that Seller presently, or in the future, offers to any other customer for the same or similar goods or services. If Seller offers a lower price for the same or similar goods or services to any other customer, then Seller will immediately offer Buyer the same price for the goods or services on the same terms and conditions as was offered to the other customer.

These warranties shall be in addition to all other warranties, express, implied, or statutory. These warranties shall survive inspection, test, delivery, acceptance, use, and payment by Buyer and shall inure to the benefit of Buyer, its successors, assigns, Customers, and the users of Buyer's products. These warranties may not be limited or disclaimed by Seller. Buyer's approval of Seller's design, material, process, drawing, specifications, or the like shall not be construed to relieve Seller of the warranties set forth herein and shall not be a waiver by Buyer of any Buyer or Customer design, material, process, drawing, specifications, or the like request or any such requirements for the remaining goods or services to be delivered hereunder, unless so stated by Buyer in writing.

14. Defense, Indemnity, and Insurance. Seller acknowledges and agrees as follows:

a. To the fullest extent permitted by law, Seller agrees to

indemnify, hold harmless, and defend Buyer and its affiliated companies, their respective directors, officers, employees, agents, and Customers (“Indemnitees”) from and against any loss, liabilities, costs, expenses, suits, actions, claims, and all other obligations and proceedings, including, without limitation, all judgments rendered against, and all fines and penalties imposed upon, Indemnitees and all Indemnitee attorneys’ fees and any other costs of litigation (collectively, “Liabilities”) that are in any way related to Seller’s performance or obligations under the Order, including claims arising out of a breach hereof or thereof, warranty claims, product recall claims, product liability claims, injuries to persons (including death), or damage to property caused by Seller, its employees, agents, subcontractors, or in any way attributable to the performance of Seller, including, without limitation, breach of contract, breach of warranty, or product liability. Seller’s obligation to defend and indemnify under this section will apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability, or otherwise, except for claims that arise as a result of the sole negligence of Buyer. Seller agrees to indemnify, hold harmless, and defend Indemnitees from and against all Liabilities arising out of actual or alleged infringement, including infringement of any patent, trademark, or copyright relative to goods or services;

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

c. Seller shall maintain insurance coverage as follows:

i. Workers’ Compensation at minimum statutory limits for the state or states in which this Order is to be performed (or Seller shall provide evidence of authority to self- insure) and Employers Liability insurance for not less than \$1 million.

ii. Comprehensive General Liability insurance, including extended products liability insurance, which covers third-party liability claims arising out of the supply of defective goods or services or completed operations. This policy must comprise coverage for claims due to bodily injury, property damage, and financial losses, such as losses arising out of the non- existence of warranted characteristics, mixing and conjunction of products, further processing, disassembling, assembling costs, and testing and sorting costs.

iii. Automobile Liability insurance covering all owned, non-

owned, and hired vehicles with limits of not less than \$3 million combined single limit per occurrence.

iv. Such other liability insurance as may be required by the specific nature of the Order.

v. In addition, the Seller must provide Buyer with written evidence of an existing automotive products recall insurance policy compensating, among other expenses, for communication, transportation of motor vehicles, disassembling and assembling, warehousing, testing and sorting of goods, and the disposal of faulty goods in the event of a recall initiated by an OEM or applicable authorities.

vi. The limits of indemnity for the aforementioned insurance policy or policies must be at least twelve million USD (USD \$12,000,000) per occurrence and per insurance period. The policy or policies must be maintained during the complete course of business under the Order and for the Warranty Period and shall be confirmed by the Seller's insurance carrier(s) on request of Buyer.

d. Seller shall furnish certificates of the above-required insurance setting forth the amounts of coverage, policy numbers, and dates of expiration for the above-required insurance maintained or procured by or for Seller within ten (10) days of Buyer's written request. The above- required insurance policies of Seller shall be primary to any self-insurance or insurance policies carried by Buyer. In addition, Seller shall name Buyer as additional insured on the Comprehensive General Liability, Automobile, and Umbrella policy(ies). Such certificates shall provide that Buyer will receive thirty (30) days prior written notification from the insurer of any termination or reduction in the amount or scope of coverages. Seller's purchase of the above- required insurance coverage and the furnishing of certificates of the above-required insurance shall not release Seller of its obligations or liability under this Order. In the event of Seller's breach of this provision, Buyer shall have the right to cancel the undelivered portion of any goods or services under the Order and shall not be required to make further payments except for conforming goods or services delivered prior to cancellation. If Seller does not provide Buyer with written certificates of insurance issued by its insurance carrier confirming existence of the above-required insurance policies, Buyer is entitled to purchase the above-required insurance coverage on behalf of Seller. Costs incurred thereby will be charged by Buyer to Seller and may be deducted from the outstanding accounts receivable of Seller arising out of any contractual relationship between Buyer and Seller.

15. Infringement and Proprietary Rights. Seller acknowledges and agrees as follows:

a. Seller, at its expense, will indemnify and hold Buyer and all others harmless with respect to every claim that may be brought against Buyer or others that use the goods or services delivered under the Order, for any alleged infringement of any present or future patent, copyright, industrial design right, or other proprietary

right related to the goods or services under the Order, or the manufacture, sale, or use of goods alone, or in combination, by reason of their content, design or structure. Seller will investigate and defend or otherwise handle every such claim and, at Buyer's request, assist Buyer and all others in Buyer's and all others' investigation, defense, or handling of any such claim. Seller will pay all expenses and damages or settlement amounts that Buyer, Buyer's Customers, and all others using Buyer's products may sustain by reason of each such indemnified claim. Seller's obligations will apply even though Buyer furnishes all or any portion of the design and specifies all or any portion of the processes used by Seller;

b. Seller grants to Buyer, for the period the Order is effective, a nonexclusive, royalty free, permanent, paid-up, irrevocable license related to the goods or services under the Order with a right to Buyer to grant a sublicense to rebuild and have rebuilt goods under the Order;

c. Seller will neither assert nor transfer to another a right to assert against Buyer and/or any of Buyer's affiliates, dealers, Customers, or suppliers thereof, any intellectual property right of Seller that is applicable to any works of authorship related to the goods or services under the Order; and

d. Seller will not sell, transfer, or otherwise dispose of any goods or services that incorporate any trademark, patentable invention, copyright work, industrial design, or other matter that is the subject of any intellectual property right of Buyer or any of Buyer's affiliates to any party other than Buyer, except where specifically authorized by Buyer in writing.

16. Directed Buy Status. In the event Buyer's Customer requires Buyer to source production of certain goods or services to Seller (each, a "Directed Buy"), Seller acknowledges that, notwithstanding Seller's negotiations with Buyer's Customer, these terms shall apply to all production of such Directed Buy goods or services as between Buyer and Seller. Further, Seller acknowledges and agrees that it shall indemnify and hold Buyer harmless from any commercial issue that arises out of the supply of Directed Buy goods or services, which shall be resolved between Seller and Buyer's Customer directly. Seller shall not be entitled to cease or withhold the timely supply of any goods or services under any circumstances, including, but not limited to, any unresolved commercial issue, including an unresolved commercial issue between Seller and Buyer's Customer on a Directed Buy good or service.

17. Tools. The right, title, and interest to all supplies, materials, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment, designs, drawings, specifications, spare parts, trial parts, ancillary products, items owned by Buyer, and other items ("Tools") for use in manufacturing goods under the Order shall be and remain the property of Buyer. Seller shall bear the costs of maintaining or repairing and the risk of loss of and damage to the Tools. Seller will: (a) properly house and maintain the Tools on Seller's premises; (b) not use the Tools for any purpose other than for performance under the Order; (c) prominently mark the Tools as property of Buyer; (d) refrain from commingling the Tools with property of Seller or with that of a third party; (e) adequately insure the Tools against loss or damage, including, but not limited to, maintaining full fire and extended coverage insurance for replacement value, and naming Buyer as an additional insured; (f) ensure that the Tools do not become subject to any liens or

other claims; and (g) not move the Tools to another location, whether owned by Seller or a third party, without the prior written consent of Buyer (except, in the case of an emergency, Seller may move the Tools provided that it gives Buyer notice that the Tools have been moved and the location of the Tools as soon as practicable). Buyer will have the right to enter Seller's premises at reasonable times to inspect the Tools and Seller's records pertaining thereto. Seller expressly waives and releases any and all statutory, equitable, or other liens, including, but not limited to, any molder liens, special tool liens, builder liens, and the like, that Seller has or might have on or in connection with the Tools for any and all work, including, but not limited to, designing, manufacturing, improving, maintaining, servicing, using, assembling, fabricating, or developing the Tools. Seller hereby agrees to indemnify, defend, and hold Buyer harmless from and against any loss, liabilities, costs, expenses, suits, actions, claims, and all other obligations and proceedings, including, without limitation, all attorneys' fees and any other costs of litigation that are in any way related to releasing, terminating, or otherwise removing any such liens placed on the Tools. Seller will assign to Buyer any claims Seller has against third parties with respect to the Tools. Upon written request, Seller, at its expense, shall immediately deliver the Tools, at Buyer's option, F.O.B. Carrier Seller's facility (Ex Works Loaded) or F.O.B. Buyer's premises (CIF Buyer Plant/Delivered Buyer Plant). The Tools shall be properly packed and marked in accordance with the requirements of the carrier and Buyer. Seller will cooperate fully with Buyer's removal of the Tools from Seller's premises. Seller shall assume all risk of death or injury to persons or damage to property arising from the use, maintenance, repair, and shipment of the Tools. Unless otherwise agreed to in writing by Buyer, Seller, at its own expense, shall keep the Tools in good condition and repair, including repair necessitated by wear and tear and other usage by Seller. In the event that it becomes necessary, as determined by either Buyer or Seller, to replace the Tools due to normal use by Seller, or otherwise, said replacement tools shall be at the sole expense of Seller and said replacement tools shall be the property of Buyer. Buyer does not guarantee the accuracy of any Tools or the availability or suitability of any supplies or material furnished by Buyer. Seller assumes sole responsibility for inspecting, testing, and approving all Tools or other materials supplied by Buyer prior to any use by Seller. Seller shall assume all risk of death or injury to persons or damage to property arising from the use, maintenance, repair, and shipment of the Tools or other materials supplied by Buyer and hereby agrees to indemnify Buyer against the same. If Buyer and Seller enter into a specific tooling agreement with respect to certain Tools, to the extent there is any inconsistency between this section and the terms of the specific tooling agreement, the terms of the specific tooling agreement shall prevail.

18. Seller's Default. Seller will be in default if any of the following occurs (each, a "Seller Default"):

- a. Seller breaches, repudiates, or threatens to breach any term in the Order, or in any Customer Agreement, including, but not limited to, failing to deliver goods or services in accordance with Buyer's required quality and quantity terms;
- b. Insolvency of Seller or filing of a voluntary or involuntary petition in bankruptcy with respect to Seller;
- c. Appointment of a receiver or trustee for Seller; or
- d. Execution of an assignment for the benefit of creditors of Seller.

19. Buyer's Remedies. In the event of a Seller Default, Buyer may exercise any remedies available under applicable law, including, but not limited to:

a. Seller's immediate correction, repair, or replacement of the goods and services at Seller's expense;

b. Suspending payments or performance or canceling all or any part of the balance of any Order with Seller; and

c. Requiring Seller to reimburse Buyer for all damages suffered due to Seller's breach, including, but not limited to, incidental, consequential, and other damages, as well as lost profits, actual attorney fees, and court costs.

d. Obtaining an injunctive order from any court of competent jurisdiction requiring delivery of conforming goods or services on the schedule called for in any agreements between the Buyer and the Seller. In the event that Buyer chooses to invoke this section, Seller hereby stipulates to entry of such an injunction provided only that Buyer will pay for goods and services delivered during the period of injunction at a rate and upon terms as the issuing court may require in the injunctive order, pending resolution of the dispute. Seller further agrees that Buyer may apply for such relief in any state and county where either the Seller or the Buyer transact business on an ongoing basis.

The remedies in this Order shall be cumulative and in addition to any other remedies allowed to Buyer under applicable law, including, but not limited to, the Uniform Commercial Code. No waiver by Buyer of any breach or remedy shall be a waiver of any other breach or remedy.

20. Limitation on Seller's Remedies. If Buyer breaches any term in the Order or in any Customer Agreement, Buyer shall not be liable for any incidental, consequential, indirect, or any other special damages of Seller, including, but not limited to, Seller's lost profits, attorney fees, and any and all costs of any litigation. Any action against Buyer arising out of the Order must be filed within one (1) year after Seller's claim accrues.

21. Intentionally omitted.

22. Service Parts. To the extent the Order relates to production of component parts ("Parts") for Buyer, then, in addition to the number of Parts sold by Seller to Buyer to allow Buyer to meet its requirements to its Customer, Seller also agrees to sell to Buyer the number of Parts necessary to allow Buyer to fulfill its past model service and replacement parts requirements for fifteen (15) years following the Order. Upon request by Buyer, Seller shall make service literature and other materials available at no additional charge to support Buyer's Parts sales activities.

23. Termination.

a. The Order shall be terminable as follows:

i. Breach. Buyer may immediately terminate the Order without further obligation in the event of Seller's breach of or Default under the Order or any breach of or default under any Customer Agreement. Either party may terminate the Order without further obligation in the event the other party fails to perform any material obligation under the Order, through no fault of the non-breaching party, which remains uncured after giving twenty (20) calendar days written notice of such material breach. Delays in delivery or repeated deliveries of non-conforming goods or services, which result in Seller's failure to meet its delivery time or goods or services conformity obligations for all goods or services shipped, shall automatically be deemed a failure to perform a material obligation for the purposes of the Order.

ii. Insolvency, Bankruptcy, or Liquidation. Either party may terminate the Order if the other party: (a) becomes insolvent; (b) makes an assignment immediately or the benefit of creditors; (c) files or has filed against it a petition in bankruptcy; (d) has a receiver appointed for its assets; or (e) is dissolved or liquidated.

iii. Termination by Buyer. Seller acknowledges and agrees that, in addition to any other rights of Buyer to terminate this Order, Buyer may, at its option, immediately terminate all or part of the Order or any other agreement between Buyer and Seller, at any time and for any reason, by giving written notice to Seller. Buyer may elect to terminate some, but not all, Orders or other agreements between Buyer and Seller, at Buyer's discretion. However, upon such termination, Buyer shall pay to Seller the following amounts, without duplication:

1. The contract price for all goods or services that have been completed and delivered in accordance with the terminated Order, or in accordance with any other agreement between Buyer and Seller that is terminated, and not previously paid for; and

2. The actual costs of work-in-process and raw materials incurred by Seller in furnishing the goods and services under the terminated Order, or under any other agreement between Buyer and Seller that is terminated, to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted commercial accounting principles to the terminated portion of the Order, or to any other agreement between Buyer and Seller that is terminated, if any; less, however, the sum of the reasonable value or cost (whichever is higher) of any goods or materials used or sold by Seller with Buyer's written consent, and the cost of any damaged or destroyed goods or materials. Buyer will make no payments for finished goods or services, work-in-process, or raw materials fabricated or produced by Seller in amounts in excess of those authorized, issued by Buyer prior to the date of termination of the Order, nor will Buyer make any payments for any undelivered goods or services that are in Seller's standard stock or that are readily marketable. Payments made under this section shall not exceed the aggregate price payable by Buyer for finished goods or services that would be produced or performed by Seller prior to the date of termination. Except as provided in

this section, Buyer shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by others, including, but not limited to, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, or general and administrative burden charges from termination. Within sixty (60) days from the effective date of termination of the Order, or any other agreement between Buyer and Seller that is terminated, if any, Seller shall submit a comprehensive termination claim to Buyer, with sufficient supporting data to permit Buyer's audit, and shall thereafter promptly furnish such supplemental and supporting information as Buyer shall request. Buyer or its agents shall have the right to audit and examine all books, records, facilities, work, material, inventories, and other items relating to any termination claim of Seller;

b. Intentionally omitted;

c. If any competitor of the Seller offers lower goods or services prices and/or payment or delivery conditions, or if the competitive nature of the Seller no longer exists in terms of price, quality, or time schedule for goods and services under the Order, or if Buyer's Customer cancels a Customer Agreement, Buyer may terminate the impacted Order or any other impacted agreement between Buyer and Seller, without notice. The same shall apply if other technological prerequisites become necessary or there is no further need for the goods or services;

d. No termination of the Order, regardless of the basis for such termination, shall serve to terminate any other Order or any other agreement between Buyer and Seller in effect at the time of such termination. Further, the termination of the Order or of any other agreement between Buyer and Seller, regardless of the basis for such termination, shall not impact, in any way, the enforceability of all other outstanding Orders or other agreements between Buyer and Seller, each of which shall remain in full force and effect; and

e. The Parties agree that clauses 13, 14, 16, 22, 23, 24, 25 and 26 of the terms set forth in these Standard Terms for Purchases of Goods or Services shall survive and continue to apply following the conclusion or an earlier termination of the Order or Customer Agreement.

24. Transition of Supply. Upon the expiration or earlier termination of any Order for whatever reason, Seller agrees to take such action as may reasonably be required by Buyer to accomplish the transition from Seller to an alternative seller, including, without limitation, the actions set forth below. The term "alternative seller" expressly includes, but is not limited to, a Buyer-owned facility.

a. Seller shall provide all notices necessary or desirable for Buyer to resource the Order to an alternative seller; providers covered by the Order to ensure that the transition to any alternative seller chosen by Buyer will proceed with an uninterrupted supply of goods and services. Unless otherwise specified by Buyer on the face of an Order amendment or in a signed writing by Buyer's designated representatives, a six-week goods inventory bank will be deemed sufficient to accomplish the transition. Such "six-week goods bank" will be calculated using the releases of Buyer from the six weeks immediately

preceding the termination/expiry of this Order, not including any temporary interruptions, plant, industry shutdowns, or other reduced schedules;

b. Seller shall provide to Buyer all Tools and any other property furnished by or belonging to Buyer or any of Buyer's customers in as good of condition as when received, purchased, or fabricated by or for Seller;

c. Seller shall, at Buyer's option: (i) assign to Buyer any or all supply contracts or orders for raw materials or components relating to the Order; (ii) sell to Buyer, at Seller's cost, any or all inventory or work-in-process relating to the Order; and (iii) sell to Buyer, at the unamortized portion of the cost of such items, less any amounts Buyer previously paid to Seller for the cost of such items, any or all property owned by Seller (except for Tools, which are or will be, as detailed, above, Buyer's property) related to production under the Order.

25. Records and Financial Audits. Seller acknowledges and agrees as follows:

a. Records. Seller will maintain, in accordance with generally recognized commercial accounting principles and practices, complete and accurate records of all matters relating to Seller's performance under the Order to enable Seller to demonstrate compliance with its obligations under the Order. Seller shall maintain such records for the period of time required by the Order;

b. Right to Audit. Upon reasonable advance notice to Seller, Seller shall provide Buyer and/or its representatives with access to all such Seller records, during normal business hours, for the purpose of auditing Seller's charges under the Order. Seller will cooperate with Buyer and its representatives as reasonably necessary to facilitate the audit process. Buyer shall be entitled to a refund for all amounts determined in good faith in an audit to have been overpaid to Seller by Buyer.

c. Right of Review of Financial Records. Buyer shall have the right to review Seller's audited financial statements prior to issuance of Buyer's purchase order(s) to Buyer and annually thereafter while Buyer's purchase order(s) remain(s) in effect; provided, however that Buyer shall keep any information obtained under this provision confidential and may utilize such information only in its dealings with Seller.

d. Additional Right of Review for Cause. In the event of any interruption or threatened interruption of supply of any goods or services called for in contracts or purchase orders between the parties, or in the event that Buyer has reason to question the financial condition of Seller and its ability to fulfill its contract requirements in the short or long term, Buyer may, in its sole discretion review current financial statements as well as any loan covenant documents between Seller and any of its lenders; provided, however that Buyer shall keep any information obtained under this provision confidential and may utilize such information only in its dealings with Seller.

26. General.

a. Compliance with Laws. Seller warrants that it is and will remain in compliance with all federal, state, and local laws, regulations, and ordinances relating to Seller's ability to perform its obligations under the Order.

b. Setoff. Buyer has the right to deductions or setoffs of any sums due to Buyer or an affiliate of Buyer, under the Order or any other agreement, from Seller (whether or not arising from the Order) against any sums due to Seller from Buyer or an affiliate of Buyer (whether or not arising from the Order).

c. Assignment. The Order is entered into in reliance upon the Seller's personal performance of the duties imposed. Seller will not assign or delegate any of its duties under the Order, or transfer to another any intellectual property right that is licensed to Buyer under any Order, without Buyer's prior and express written approval. Any such assignment or delegation without the prior written consent of Buyer, at the option of Buyer, may effect a cancellation of the Order. Any consent by Buyer to an assignment shall not be deemed to waive Buyer's right to recoupment from Seller and/or its assigns for any claim arising out of any rights under the Order, and shall not prohibit Buyer from enforcing any of its rights against an assignee of the Order. Buyer will have the right to assign any benefit or duty under the Order to any third party upon notice to Seller, with or without Seller's consent.

d. Confidentiality. Seller shall use reasonable care to prevent disclosing to others and shall use only for the benefit of Buyer: (i) the technical information and data furnished by Buyer or acquired by Seller in its work under the Order or Customer Agreement, prior development agreement, or early sourcing agreement for goods or services related to or using such technical information or data; and (ii) information relating to any portion of Buyer's business that Seller may acquire in the course of its activities under the Order or any Customer Agreement, prior development agreement, or early sourcing agreement (collectively, the "Confidential Information"). This obligation shall continue for a period of two (2) years after the expiration of the term of the Order. This obligation will not apply to information that is or becomes publicly known through no fault of Seller. Seller will first obtain the written consent of Buyer if the Seller wants to share Confidential Information with any other party;

e. Independent Contractor. The relationship of Seller to Buyer is that of an independent contractor, and nothing contained in the Order, any Customer Agreement, or otherwise shall be deemed to create any other relationship, including, but not limited to, an employment, partnership, agency, or joint venture relationship between Seller and Buyer.

f. Neither party shall have any authority to employ any person as agent or employee for or on behalf of the other, or to bind, or attempt to bind, the other to any obligation with any third party. Seller has and retains full control and supervision over the performance of its obligations under the Order and over the employment, direction, compensation, and discharge of all of Seller's employees, agents, and subcontractors that Seller utilizes in the performance of such obligations. Each party is and shall be responsible for its own acts and omissions and those of its employees, agents, and subcontractors;

g. Notices. Any notice, communication, or statement required or

permitted to be given under the Order shall be in writing and deemed to have been given when delivered in person or the next business day after being deposited with a nationally recognized overnight mail service such as UPS, or by overnight courier service, addressed to Buyer or Seller at their address set forth in the Order;

h. Remedies. All specific references to remedies available to Buyer in the enforcement of the Order shall be non-exclusive and shall be cumulative together with all legal and equitable remedies available to Buyer, any applicable Customer Agreement, and all applicable laws;

i. Section Headings. All section headings herein are for convenience only and shall not be construed as a limitation of the scope of the particular sections to which they refer;

j. Advertising and Publicity. Seller shall not use the name or any trademark, trade name, logo, or symbol of Buyer or any of Buyer's affiliates or Customers, or disclose any matters relating to the Order or any Customer Agreement to any one in any way, including, but not limited to, any advertising, promotion, press/publicity releases, written articles, or communications, without the prior written consent of Buyer;

k. Entire Agreement and Amendment. The Order contains all terms between Seller and Buyer with regard to the subject matter of the Order and supersedes all prior oral or written representations, agreements, or other communications between Seller and Buyer. The contract evidenced by the Order may be amended only by a writing signed by Seller and an officer of Buyer;

l. Severability. All terms may be enforced to the maximum extent permitted by law. If any term is invalid or unenforceable, all other terms shall remain in effect;

m. State Law. The sale of goods and services in accordance with this Order shall be governed in all respects by the laws of the State of Michigan. The parties expressly agree that the application of the United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded and shall NOT apply to this Order;

n. Jurisdiction and Venue. Seller and Buyer agree that any action arising out of the sale of goods or services related to the Order will be brought, heard, and decided in a court of competent subject matter jurisdiction in a state or federal court located in Kent County, Michigan, and both parties agree to accept personal jurisdiction by such court and the State of Michigan; and

o. Buyer's Right to Attorneys' Fees and Costs. In the event that either Buyer or Seller brings any action against the other arising out of the sale of goods or services under the Order, Buyer, and Buyer only, shall have the right to recover from Seller, and Seller is obligated to pay to Buyer, Buyer's actual attorneys' fees and any and all costs incurred in or for such action to the extent that Buyer is found to be the prevailing party.

27. Maintenance; Support. Seller hereby agrees to provide the following maintenance support to Buyer during the applicable Warranty Period:

a. Ongoing maintenance, training, upgrades and modifications applicable to the goods and services under the Order, including an adequate inventory of spare or replacement parts with respect to any goods or services provided to Buyer;

b. Immediate assistance with any problems or questions concerning the use, installation, operation or function of any goods or services relating to the Order;

c. Operation, maintenance, and training manuals relating to the Order;
and,

d. Copies of the technical and mechanical specifications relating to the Order, including applicable layouts, drawings, diagrams, software and models.