

## **1. ACCEPTANCE:**

Seller acknowledges and agrees that these Machinery and Equipment Terms and Conditions are incorporated in, and a part of, this contract and each purchase order, release, requisition, work order, shipping instruction, specification and other document, whether expressed in written form, by electronic data interchange or other tangible format, relating to the goods and/or services to be provided by Seller pursuant to this contract (such documents are collectively referred to as this "Contract"). Seller acknowledges and agrees that it has read and understands these Machinery and Equipment Terms and Conditions. If Seller accepts this Contract in writing or commences any work or services which are consistent with performance of this Contract, Seller will be deemed to have accepted this Contract and these Machinery and Equipment Terms and Conditions in their entirety without modification. Any additions to, changes in, modifications of, or revisions of this Contract (including these Machinery and Equipment Terms and Conditions) which Seller proposes will be deemed to be rejected by Buyer except to the extent that an authorized employee of Buyer expressly agrees to accept any such proposals in writing.

## **2. SHIPPING AND BILLING:**

**2.1 Shipping.** Seller will: (a) properly pack, mark and ship goods as instructed by Buyer or any carriers and in accordance with any applicable laws or regulations; (b) route shipments as Buyer instructs; (c) not charge for costs relating to handling, packaging, storage or transportation (including duties, taxes, fees, etc.) unless otherwise expressly stated in this Contract; (d) provide packing slips with each shipment that identify Buyer's contract and release number and the date of the shipment; and (e) promptly forward the original bill of lading or other shipping receipt with respect to each shipment as Buyer instructs. Seller will include on bills of lading or other shipping receipts the correct classification identification of the goods shipped as Buyer or the carrier requires. The marks on each package and identification of the goods on packing slips, bills of lading and invoices must enable Buyer to easily identify the goods. Unless otherwise specified in writing between the parties, all shipments will be DAP (Incoterms 2000) – Buyer's specified location.

**2.2 Payment Terms.** Seller will: (a) accept payment based upon Buyer's Evaluated Receipt Record/Self-Billed Invoice unless Buyer requests that Seller issue and deliver an invoice; and (b) accept payment by electronic funds transfer. Payment terms are established by this Contract and are measured from the date Buyer receives the goods at its facility or, if Seller is responsible for any installation or testing services or any other service specified in contract, the date that Seller completes such services, provided, however, that Buyer may, in all cases, withhold twenty percent (20%) of the price of goods (or such higher amount as may be otherwise specified in this Contract) until the goods have successfully completed final qualification and acceptance testing at Buyer's facility or until the goods have successfully completed final PPAP approval at Seller's or Buyer's facility. Unless otherwise agreed in writing by Buyer, Buyer will initiate final qualification and acceptance testing within four (4) weeks after delivery of the goods to Buyer's facility. Buyer may also withhold payment for any goods or services until Buyer receives evidence, in such form and detail as Buyer requires, of the absence of any liens, encumbrances and claims on such goods or services.

**2.3 Taxes.** Unless otherwise stated in this Contract, the 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 collect from Buyer. Seller will provide Buyer with whatever information and documentation that is required under local law in order to enable Buyer to recover any sales, value added or similar turnover taxes or charges. Invoices shall also be in the appropriate form as required by local law to permit deduction of payments for income tax purposes by the Buyer.

**2.4 Withholding of Taxes by Buyer.** If Buyer is required by law to make any deduction or withholding from any sum payable to Seller under this Contract, Buyer shall be entitled to deduct or withhold such amount and effect payment thereof to the applicable tax authority. Buyer will, upon request from Seller, provide Seller official tax receipts or other evidence issued by the applicable tax authorities sufficient to establish that any taxes which are withheld have been paid.

**2.5 Waiver of Liens.** Where permitted by law, Seller waives any lien or other rights that Seller might otherwise have on or in any of the goods for work performed on, or utilizing, such goods or otherwise. Further, Seller hereby agrees that it will promptly release any and all liens that it may have on any property of the Buyer or the Buyer's customer (whether or not such property is in Seller's possession) and, upon Buyer's request, provide Buyer with written confirmation that all such liens have been waived or released.

**2.6 Delivery Schedules.** Deliveries will be made to the address, in the quantities, on the dates and at the times specified by Buyer in this Contract or any subsequent releases or instructions Buyer issues under this Contract. Time is of the essence with respect to all delivery schedules Buyer establishes. Buyer will not be required to pay for any goods that exceed the quantities specified in Buyer's delivery schedules or to accept goods that are delivered in advance of the delivery date specified in Buyer's delivery schedules. Seller bears the risk of loss of all goods delivered in advance of the delivery date specified in Buyer's delivery schedules. If the requirements of Buyer's customers or market, economic or other conditions require changes in delivery schedules, Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments without entitling Seller to a price adjustment or other compensation.

**2.7 Late Delivery.** Given that actual damages may be difficult to calculate in the event that Seller fails to deliver the goods or complete services on the date required under this Contract, Seller agrees to pay Buyer liquidated damages equal to two-tenths of a percent (0.2%) of the price of the goods under this Contract (but not more than ten percent (10%) in total) for each business day that delivery or completion of services is late, provided that Buyer reserves the right, at its option, to terminate this Contract and seek any additional actual damages if delivery or completion of services has not occurred within ten (10) business days of the required date.

**2.8 Premium Shipments.** If Seller fails to have goods ready for shipment in time to meet Buyer's delivery schedules using the method of transportation originally specified by Buyer and, as a result, Buyer requires Seller to ship the goods using a premium (more expeditious) method of transportation, Seller will ship the goods as expeditiously as possible. Seller will pay, and be responsible for, the entire cost of such premium shipment, unless Buyer's actions caused Seller to fail to meet Buyer's delivery schedules, in which case Buyer will pay any costs for premium shipment.

**2.9 Volume Forecasts.** Buyer may provide Seller with estimates, forecasts or projections of its future anticipated volume or quantity requirements for goods. Seller acknowledges that any such forecasts are provided for informational purposes only and, like any other forward looking projections, are based on a number of economic and business factors, variables and assumptions, some or all of which may change over time. Buyer makes no representation, warranty, guaranty or commitment of any kind or nature, express or implied, regarding any such forecasts provided to Seller, including with respect to the accuracy or completeness of such forecasts.

### **3. INSTALLATION:**

Unless otherwise agreed in writing by Buyer, Seller agrees that without further charge it shall assist Buyer in the installation of any goods purchased under this Contract. Buyer and Seller shall agree in writing on the schedule for such installation and the role of each party in the installation process.

#### **4. SPECIFICATION, DESIGN AND SCOPE CHANGES:**

Buyer may at any time request Seller to implement changes to the specifications or design of the goods or to the scope of any services or work covered by this Contract, including work related to inspection, testing or quality control. Seller and Buyer will agree upon any adjustment in price or delivery schedules resulting from such changes, which agreement will not be unreasonably withheld or delayed. In order to assist in the determination of any equitable adjustment in price or delivery schedules, Seller will, as requested, provide information to Buyer, including documentation of changes in Seller's cost of production and the time to implement such changes. In the event of any disagreement arising out of such changes, Buyer and Seller will work to resolve the disagreement in good faith; provided, however, that Seller will continue performing under this Contract, including the manufacture and delivery of goods and prompt implementation of changes required by Buyer, while Buyer and Seller resolve any disagreement arising out of such changes.

#### **5. QUALITY AND INSPECTION:**

Under no circumstances will Buyer be deemed to have accepted the goods, and Buyer will continue to have the right to reject the goods, until such time as Buyer has notified Seller in writing that the goods have successfully completed the final acceptance test to be run at Buyer's facility. For purposes of this Contract, acceptance shall be defined as receipt by Seller of written acknowledgement from Buyer's authorized representative of compliance of the goods with all manufacturing specifications. Buyer's manufacturing specifications are hereby incorporated herein. If requested by Buyer, Seller shall provide a pre-acceptance run-off to Buyer at Seller's facility, at no cost to Buyer.

Seller will permit Buyer and its representatives and consultants to enter Seller's facilities at reasonable times to inspect the goods (or portions thereof) and other items and processes related to Seller's performance of this Contract. No such inspection by Buyer will constitute acceptance by Buyer.

#### **6. NON-CONFORMING GOODS:**

Seller will not substitute any goods for the goods covered by this Contract unless Buyer consents in writing. If Buyer rejects any goods as non-conforming, Buyer may, at its option: (a) reduce the quantities of goods ordered under this Contract by the quantity of non-conforming goods; (b) require Seller to replace the non-conforming goods; and/or (c) exercise any other applicable rights or remedies. Seller will bear all risk of loss with respect to all non-conforming goods and will promptly pay or reimburse all costs incurred by Buyer to return, store or dispose any non-conforming goods. Buyer's payment for any non-conforming goods will not constitute acceptance by Buyer, limit or impair Buyer's right to exercise any rights or remedies, or relieve Seller of responsibility for the non-conforming goods.

#### **7. FORCE MAJEURE:**

If Seller is unable to produce, sell or deliver any goods or services covered by this Contract, or Buyer is unable to accept delivery, buy or use any goods or services covered by this Contract, as a result of an event or occurrence beyond the reasonable control of the affected party and without such party's fault or negligence, then any delay or failure to perform under this Contract that results from such event or occurrence will be excused for only so long as such event or occurrence continues; provided, however, that the affected party gives written notice of each such delay (including the anticipated duration of the delay) to the other party as soon as possible after the event or occurrence (but in no event more than three (3) days thereafter). Such events and occurrences may include, by way of example and not limitation, natural disasters, fires, floods, windstorms, severe weather, explosions, riots, wars, sabotage, labor problems (including lockouts, strikes and slowdowns), equipment breakdowns and power failures; provided however, that for non-U.S. contracts, labor problems are not considered an event or occurrence beyond the

reasonable control of Seller and as such will not be an excusable delay under this section. If Seller fails to provide adequate assurances that any delay will not exceed thirty (30) days or if any delay lasts more than thirty (30) days, Buyer may terminate this Contract without any liability to Seller or obligation to purchase raw materials, work-in-process or finished goods.

## **8. WARRANTY:**

**8.1 General.** Seller warrants and guarantees to Buyer, its successors and assigns that the goods and services covered by this Contract will: (a) conform to the applicable specifications, drawings and other descriptions; (b) are sufficient and suitable for Buyer's intended purpose; (c) be merchantable; (d) be of good material and workmanship; and (e) be free from defect. Seller's responsibility under this warranty shall include without limitation, all parts, labor and transportation cost in the event the goods must be returned to Seller for repair or replacement. The foregoing warranties will be considered warranties of future performance that continue for the longer of (a) the period provided by applicable law, or (b) twenty-four (24) months following installation and successful completion of acceptance testing of the goods (or such longer period as may be specified in the Contract). In the case of service or replacement goods, the foregoing warranties will apply and will be considered a warranties of future performance that continue for the longer of (i) the period provided by applicable law, or (ii) twenty-four (24) months following receipt of such goods.

Seller warrants that it will, whenever possible, use commercially available purchase parts of the highest industry quality, and will supply a detailed bill of material listing all parts. Seller further agrees that it will comply with all specific product-sourcing directions of Buyer.

Seller further warrants that all goods supplied to Buyer shall be equipped with approved or appropriate fail-safe safeguarding systems.

**8.2 Warranty Remedies.** If any goods or services fail to conform to the warranties during the applicable warranty period, Seller will service, adjust or replace any non-conforming goods or re-perform non-conforming services at no charge to Buyer as soon as possible upon written notice from Seller. For goods installed by Seller, on-site repair, limited to servicing, adjusting or replacing part(s), will be performed at no additional cost to Buyer. For goods installed by Buyer, non-conforming goods shall be returned by Buyer to Seller, at Seller's cost, and repaired or replacement parts shall be shipped by Seller to Buyer, D.D.P. (Incoterms 2000). The removal by Buyer of goods to be returned to Seller for repair or replacement and the installation by Buyer of replacement or repaired parts shall be at Seller's expense.

**8.3 Remedies and Damages.** In addition to Seller's obligations described in Section 8.2, if any goods are reasonably determined to fail to conform to the warranties set forth in this Contract, Seller shall reimburse Buyer for all reasonable losses, costs and damages caused by such nonconforming goods. Such costs and damages may include, without limitation, costs, expenses and losses of Buyer and/or its customers arising from production interruptions or slowdowns; provided however, that Seller shall not be liable under this Section 8.3 for any costs or damages in an aggregate amount greater than 10 (ten) times the purchase price for the goods covered by this Contract.

## **9. INGREDIENTS AND HAZARDOUS MATERIALS:**

Prior to, and together with, the shipment of the goods, Seller will furnish to Buyer and all carriers sufficient written warning and notice (including appropriate labels on the goods, containers and packing) of any hazardous material that is an ingredient or a part of any of the goods, together with all special handling instructions, safety measures and precautions as may be necessary to comply with applicable law, to inform Buyer and all carriers of any applicable legal requirements and to best allow Buyer and all carriers to prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the goods, containers and packing.

## **10. INSOLVENCY OF SELLER:**

In any of the following, or any similar events, Buyer may immediately terminate this Contract without any liability to Seller or obligation to purchase raw materials, work-in-progress or finished goods: (a) insolvency or financial difficulties of Seller; (b) filing of a voluntary petition in bankruptcy by Seller; (c) filing of any involuntary petition in bankruptcy against Seller; (d) appointment of a receiver or trustee for Seller; (e) execution of an assignment for the benefit of creditors by Seller; or (f) any accommodation by Buyer, financial or otherwise, not contemplated by this Contract, that are necessary for Seller to meet its obligations under this Contract. Seller will reimburse Buyer for all costs Buyer incurs in connection with any of the foregoing whether or not this Contract is terminated, including, but not limited to, all attorney or other professional fees.

## **11. TERMINATION FOR BREACH:**

Buyer may terminate all or any part of this Contract without any liability to Seller if Seller: (a) repudiates, breaches or threatens to breach any of the terms of this Contract, including Seller's warranties; (b) fails to perform or threatens not to perform services or deliver goods in accordance with this Contract; or (c) fails to assure timely and proper completion of services or delivery of goods.

## **12. TECHNICAL INFORMATION:**

**12.1 Information Disclosed by Seller.** Seller will create, maintain, update and provide to Buyer, in compliance with Buyer's drafting and math data standards, all technical information about the goods and their manufacture which is reasonably necessary or requested by Buyer in connection with its use of the goods, including, without limitation, the engineering validation and qualification of the goods for automotive production and other applications and compliance with any legal or regulatory requirements. Such technical information will not be subject to any use or disclosure restrictions.

**12.2 Waiver of Claims.** Seller agrees not to assert any claim (other than a claim for patent infringement) against Buyer, Buyer's customers or their respective suppliers with respect to any technical information that Seller shall have disclosed, or may hereafter disclose, in connection with the goods or services covered by this Contract.

**12.3 Repair and Rebuild.** Seller authorizes Buyer, its affiliates, agents and subcontractors, and Buyer's customers and their subcontractors to repair, reconstruct or rebuild the goods and products delivered under this Contract without payment of any royalty or other compensation to Seller; provided this right does not authorize Buyer to manufacture or sell Seller's goods to any third party.

**12.4 Software.** Seller grants to Buyer a permanent, paid-up, non-exclusive license to use any software incorporated in the goods, in object code only, only with the goods and only for the purpose of operating the goods. Buyer may not modify, adapt, translate, reverse engineer, decompile, disassemble or create a derivative work based upon such software, except and only to the extent that such activity is expressly agreed to by Seller or permitted by applicable law. Buyer shall acquire no rights of ownership in the software.

**12.5 Development, Engineering And Consulting Services.** Engineering, consulting or development services ("**Development Services**") funded under this Contract that result in any idea, invention, concept, discovery, work of authorship, patent, copyright, trademark, trade secret, know-how or other intellectual property ("IP") shall be the sole property of Buyer. Seller agrees to assign all right, title and interest in and to IP that results from Development Services ("**Developed IP**") to Buyer. Seller shall notify Buyer of the existence of Developed IP and assist Buyer in every reasonable way to perfect its right, title and interest in

Developed IP, such as by executing and delivering all additional documents reasonably requested by Buyer in order to perfect, register and/or enforce the same, and Buyer shall reimburse Seller for reasonable costs incurred by Seller in providing such assistance. If an assignment of the Developed IP is not possible under the applicable law, Seller hereby grants an exclusive, royalty-free license to Buyer with respect to such Developed IP.

Drawings, plans, software (including the source code), prototypes, etc. developed and funded under this Contract shall be transferred to Buyer and all Developed IP incorporated in such drawings, plans, software, prototypes shall belong to Buyer.

## **13. INDEMNIFICATION:**

**13.1 Infringement.** Seller will defend, hold harmless and indemnify Buyer and its customers, and their respective successors and assigns, against any claims of infringement (including patent, trademark, copyright, moral, industrial design or other proprietary rights, or misuse or misappropriation of trade secret) and resulting damages and expenses (including, without limitation, attorney and other professional fees and disbursements) relating to the goods or services covered by this Contract, including any claims in circumstances where Seller has provided only part of the goods or services. Seller waives any claim against Buyer that any such infringement arose out of compliance with Buyer's specifications.

**13.2 Activities on Buyer's Premises.** Seller will defend, hold harmless and indemnify Buyer from and against any liability, claims, demands, damages, costs or expenses (including, without limitation, reasonable attorney and other professional fees and disbursements) arising from or in connection with the performance of any service or work by Seller or its employees, agents, representatives and subcontractors ("Personnel") on Buyer's or Buyer's customer's premises or the use of the property of Buyer or any customer of Buyer, except to the extent such liability arises out of the negligence or willful misconduct of Buyer or Buyer's customer. Seller will assure that all Personnel who are performing Services on behalf of Seller are competent to perform the Services. Seller will require all Personnel who are performing any work on Buyer's premises to comply with all of Buyer's regulations and policies. Buyer, in its sole discretion, has the right to: (i) bar any of Personnel from Buyer's premises for failure to observe Buyer's regulations or policies; (ii) require that Seller promptly remove from Buyer's premises any Personnel who violate any of Buyer's regulations or policies; and (iii) require that Seller cease using any Personnel to perform the services who are reasonably unacceptable to Buyer. Buyer will confer with Seller to discuss Buyer's concerns prior to requiring removal of any Personnel. Seller will replace any barred or removed Personnel with Personnel reasonably acceptable to Buyer.

**13.3 Product Liability.** Seller will defend, hold harmless, and indemnify Buyer from and against any liability and expenses (including, without limitation, attorney and other professional fees and disbursements) arising from or in connection with any third party claims or demands to recover for personal injury or death, property damage or economic loss caused by any of the goods or services supplied by Seller (regardless of whether such claim or demand arises under tort, negligence, contract, warranty, strict liability or any other legal theories), except to the extent such injury, damage or loss results from Buyer's specifications as to design or materials or from alteration or improper repair, maintenance or installation by any party other than Seller.

## **14. COMPLIANCE WITH LAWS:**

Seller, and any goods or services supplied by Seller, will comply with all applicable laws, rules, regulations, orders, conventions, ordinances and safety standards of the country(ies) of origin and destination or that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval, performance and/or certification of the goods or services, including, but not limited to, those relating to environmental matters, wages, hours and conditions of employment, subcontractor selection,

discrimination, occupational health/safety and motor vehicle safety. Neither Seller nor any of its subcontractors will utilize slave, prisoner or any other form of forced or involuntary labor in the supply of goods or services under this Contract. Upon Buyer's request, Seller will certify in writing its compliance with the foregoing. Seller will defend, hold harmless and indemnify Buyer from and against any liability, claims, demands, damages or expenses (including reasonable attorney or other professional fees and disbursements) arising from or relating to Seller's noncompliance with this Article 14.

## **15. INSURANCE:**

Seller will maintain insurance coverage as required by applicable law or as reasonably requested by Buyer with carriers reasonably acceptable to Buyer. With respect to any such insurance coverage, Seller will furnish to Buyer either a certificate evidencing satisfaction of the above-mentioned insurance requirements under this Contract or certified copies of all insurance policies within ten (10) days after Buyer requests. The certificate must provide that Buyer will receive thirty (30) days prior written notice from the insurer of any termination or reduction in the amount or scope of coverage. The furnishing of certificates of insurance and purchase of insurance will not limit or release Seller from Seller's obligations or liabilities under this Contract.

## **16. USE OF BUYER'S INFORMATION:**

Seller will: (i) keep all Buyer's Information (as defined below) confidential and disclose it only to its Personnel who need to know such Buyer's Information in order for Seller to supply goods and services to Buyer under this Contract; and (ii) use the Buyer's Information solely for the purpose of supplying goods and services to Buyer under this Contract. Goods manufactured based on Buyer's Information may not be used for Seller's own use or sold by Seller to third parties without prior express written consent from an authorized employee of Buyer. "Buyer's Information" means all information and items provided to Seller by Buyer or its representatives or subcontractors in connection with the business, programs, goods and services covered by this Contract, including, without limitation, pricing and other terms of the Contract, specifications, data, formulas, compositions, designs, sketches, photographs, samples, prototypes, parts, test vehicles, manufacturing, packaging or shipping methods and processes and computer software and programs (including object and source code). Buyer's information also includes any material or information that contain, or are based on, any Buyer's information whether prepared by Buyer, Seller or any other person.

## **17. SERVICE AND REPLACEMENT PARTS:**

For a period of three (3) years following final acceptance of the goods, Seller will sell to Buyer goods (or subcomponents thereof) necessary to fulfill Buyer's service and replacement requirements at Buyer's then current price(s) under this Contract (or Buyer's list prices in effect at the time this Contract is issued). For the following seven (7) year period, Seller will continue to sell goods (or subcomponents thereof) to Buyer to fulfill Buyer's service and replacement requirements at price(s) that are reasonably agreed to by the parties but, in no event, higher than the price offered by Seller to third parties for similar goods (or subcomponents thereof). If requested by Buyer, Seller will also make service literature and other materials available at no additional charge to support Buyer's service activities.

## **18. TRAINING:**

If training is required for the goods to be properly used then Seller shall provide such training for a reasonable number of Buyer's employees. Unless agreed otherwise in writing by Buyer, all costs associated with training, including but not limited to travel, lodging, meals, manuals, schematics and instructors' time shall be totally borne by Seller.

## **19. REMEDIES:**

The rights and remedies reserved to Buyer in this Contract are cumulative with, and in addition to, all other or further remedies in law or equity.

## **20. CUSTOMS AND EXPORT CONTROLS:**

**20.1 Credits and Refunds.** Transferable credits or benefits associated with or arising from goods purchased under this Contract, including trade credits, export credits or rights to the refund of duties, taxes or fees, belong to Buyer. Seller will, at its expense, provide all information necessary (including written documentation and electronic transaction records in Buyer-approved formats) to permit Buyer to receive these benefits, credits or rights. Seller will furthermore, at its expense, provide Buyer with all information, documentation and electronic transaction records relating to the goods necessary for Buyer to fulfill any customs-related obligations, origin marking or labeling requirements and certification or local content reporting requirements, to enable Buyer to claim preferential duty treatment for goods eligible under applicable trade preference regimes, and to make all arrangements that are necessary for the goods to be covered by any duty deferral or free trade zone program(s) of the country of import. Seller will, at its expense, provide Buyer or Buyer's nominated service provider with export documentation to enable the goods to be exported, and obtain all export licenses or authorizations necessary for the export of the goods unless otherwise indicated in this Contract, in which event Seller will provide all information as may be necessary to enable Buyer to obtain such licenses or authorization(s).

**20.2 Customs-Trade Partnership Against Terrorism.** To the extent any good covered by this Contract are to be imported into the United States of America, Seller shall comply with all applicable recommendations or requirements of the Bureau of Customs and Border Protection's Customs-Trade Partnership Against Terrorism ("C-TPAT") initiative. Upon request, Seller shall certify in writing its compliance with the C-TPAT initiative.

## **21. BUYER'S RECOVERY RIGHT:**

With respect to any monetary obligations of Seller or Seller's affiliates to Buyer or Buyer's affiliates, including, without limitation, direct and indirect losses, costs and damages resulting from Seller's failure to timely delivery goods or services, the failure of any goods or service to conform to applicable warranties or other breach by Seller of this Contract, Buyer may at any time, as applicable, recover, recoup or setoff such amounts by deducting such amounts from any sums that are, or will become, owing, due or payable to Seller or Seller's affiliates by Buyer or Buyer's affiliates.

## **22. NO ADVERTISING:**

Seller will not, in any manner, advertise or publish that Seller has contracted to furnish Buyer the goods or services covered by this Contract or use any trademarks or trade names of Buyer in Seller's goods, advertising or promotional materials unless Buyer consents in writing.

## **23. NO IMPLIED WAIVER:**

The failure of either party at any time to require performance by the other party of any provision of this Contract will not affect the right to require such performance at any later time, nor will the waiver by either party of a breach of any provision of this Contract constitute a waiver of any succeeding breach of the same or any other provision. No failure or delay in exercising any right or remedy will operate as a waiver thereof nor will any single or partial exercise thereof preclude other or further exercise thereof. No course of dealing or course of performance may be used to evidence a waiver or limitation of Seller's obligations under this Contract.



## **24. ASSIGNMENT AND CHANGE IN CONTROL:**

Buyer may assign its rights and obligations under this Contract without Seller's prior written consent. Seller may not assign or delegate its rights or obligations under this Contract without prior written consent from an authorized employee of Buyer. In addition, Buyer may terminate this Contract upon giving at least sixty (60) days' notice to Seller, without any liability to Seller or obligation to purchase raw materials, work-in-process or finished goods, if Seller: (i) sells, or offers to sell, a material portion of its assets; (ii) sells or exchanges, or offers to sell or exchange, or causes to be sold or exchanged, a sufficient amount of its stock or other equity interests that effects a change in the control of Seller; or (iii) executes, or otherwise becomes subject to, a voting or other agreement or trust that effects a change in the control of Seller.

## **25. RELATIONSHIP OF PARTIES:**

Seller and Buyer are independent contracting parties. Nothing in this Contract makes either party the agent or legal representative of the other for any purpose whatsoever, nor grants either party any authority to assume or create any obligation on behalf of or in the name of the other party.

## **26. GOVERNING LAW AND JURISDICTION:**

**26.1 U.S. Contracts.** If either: (i) this Contract is issued by Buyer from a location within the United States of America or its territories (as shown by the issuing address of Buyer); (ii) this Contract is issued, in whole or part, for goods to be shipped to a Buyer location within the United States of America or its territories (as shown by the ship to or receiving address of Buyer); or (iii) Seller's applicable shipping location is within the United States of America or its territories (as shown by the shipping address of Seller), then: (a) this Contract is to be construed according to the laws of the United States of America and the State of Michigan, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any choice of law provisions that require application of any other law; and (b) Buyer hereby agrees that the forum and venue for any legal or equitable action or proceeding arising out of, or in connection with, this Contract will lie in the appropriate federal or state courts in the State of Michigan and specifically waives any and all objections to such jurisdiction and venue.

**26.2 Non-U.S. Contracts.** In all cases not covered by Section 26.1 above: (a) this Contract is to be construed according to the laws of the country (and state or province, if applicable) where Buyer's ordering location is located (as shown by the invoice to address of Buyer), excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any choice of law provisions that require application of any other law; (b) any legal or equitable action or proceedings by Buyer against Seller arising out of, or in connection with, this Contract may be brought by Buyer in any court(s) having jurisdiction over Seller or, at Buyer's option, in any court(s) having jurisdiction over Buyer's ordering location, in which event Seller consents to such jurisdiction and venue, including service of process in accordance with applicable procedures; and (c) any legal or equitable actions or proceedings by Seller against Buyer arising out of, or in connection with, this Contract may be brought by Seller only in the court(s) having jurisdiction over the Buyer's ordering location.

## **27. SEVERABILITY:**

If any provision of this Contract is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such provision will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of this Contract will remain in full force and effect.

## **28. RIGHT TO AUDIT AND INSPECT:**

Buyer, at its expense, has the right to audit and review all relevant books, records, income statements, balance sheets, cash flow statements, payroll data, receipts and other related supporting data, including Seller's administrative and accounting policies, guidelines, practices and procedures, in order to: (i) substantiate any charges and other matters under this Contract; and (ii) assess Seller's ongoing ability to perform its obligations under this Contract. Seller will maintain and preserve all such documents for a period of four (4) years following final payment under this Contract. Seller will provide Buyer with reasonable access to its facilities and otherwise cooperate and facilitate any such audits by Buyer.

## **29. ENTIRE AGREEMENT:**

This Contract, together with the attachments, exhibits, supplements or other terms of Buyer specifically referenced in this Contract, constitutes the entire agreement between Seller and Buyer with respect to the matters contained in this Contract and supersedes all prior oral or written representations and agreements. This Contract may only be modified by a written contract amendment issued by Buyer. Notwithstanding anything to the contrary contained herein, Buyer explicitly reserves, and this Contract will not constitute a waiver or release of, any rights and claims against Seller arising out of, or relating to, any fraud or duress in connection with the formation of this Contract or any breach or anticipatory breach of any previously existing contract between Buyer and Seller (whether or not such previously existing contract related to the same or similar goods or subject matter as this Contract). All payments by Buyer to Seller under this Contract are without prejudice to Buyer's claims, rights or remedies.

## **30. TRANSLATIONS:**

Buyer may provide various translated versions of these Machinery and Equipment Terms and Conditions for informational purposes only. However, the original English language version of these Machinery and Equipment Terms and Conditions will apply in the event of any disagreement over the meaning or construction of any provisions of these Machinery and Equipment Terms and Conditions.