



## DETROIT THERMAL SYSTEMS, LLC PURCHASING TERMS AND CONDITIONS

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**These Terms apply when incorporated by reference in a Buyer Purchase Order or in other applicable documentation.**

**1. Offer; Acceptance; Exclusive Terms.**

A. Each purchase order or purchase order revision issued by Buyer ("Purchase Order" or "Order") is an offer to the seller identified in the Purchase Order ("Seller") by Buyer for the purchase of goods and/or services (collectively, "Goods") and includes and is governed by these Detroit Thermal Systems, LLC Purchasing Terms and Conditions, as they may be amended from time to time ("Terms"). The Purchase Order does not constitute an acceptance of any offer or proposal made by Seller, and the Purchase Order, when accepted supersedes all prior agreements, purchase orders, quotations, proposals and other communications regarding the Goods covered by the Purchase Order, except that a prior agreement signed by authorized representatives of both parties (such as an award letter, statement of work or non-disclosure agreement -- but not prior purchase orders for the same part(s) and vehicle program) will continue to apply to the extent not directly in conflict with the Purchase Order including these Terms. Any reference in a Purchase Order to any offer or proposal made by Seller is solely to incorporate the description or specifications of Goods in the prior offer or proposal, but only to the extent that the description or specifications do not conflict with the description and specifications in the Purchase Order. Seller's written acceptance of a Purchase Order, Seller's commencement of any work under a Purchase Order or any other conduct by Seller that recognizes the existence of a contract with respect to the subject matter of the Purchase Order constitutes Seller's acceptance of the Purchase Order, including the Terms only. Each Purchase Order is limited to and conditional upon Seller's acceptance of the Purchase Order including the Terms, exclusively. Any additional or different terms and conditions proposed by Seller, whether in Seller's quotation/proposal, acknowledgement, invoice or otherwise, are unacceptable to Buyer, are expressly rejected by Buyer, shall not become part of a Purchase Order, but shall not operate as a rejection of the Purchase Order if Seller accepts Buyer's offer by commencement of work, shipment of the Supplies, or by other means acceptable to Buyer, in which case the Purchase Order shall be deemed accepted by Seller without any additional or different terms or variations whatsoever. THE TERMS OF THE AGREEMENT ARE EXCLUSIVE. Any modification of these Terms must be expressly stated in the Purchase Order. The Purchase Order can be modified only under Section 41. Buyer is Detroit Thermal Systems, unless a different affiliate is identified as the purchaser in a Purchase Order. The Terms are available on Buyer's web site so at [www.detroitthermalsystems.com](http://www.detroitthermalsystems.com). SELLER SPECIFICALLY WAIVES ANY REQUIREMENT FOR SIGNED ACCEPTANCE OF A PURCHASE ORDER, AND SELLER AND BUYER EACH WAIVE ANY DEFENSE TO THE VALIDITY AND ENFORCEABILITY OF THE PURCHASE ORDER ARISING FROM ELECTRONIC SUBMISSION OF THE ORDER TO SELLER AND SELLER'S ACCEPTANCE OF THE PURCHASE ORDER IN ACCORDANCE WITH THIS CLAUSE 1.

B. As and to the extent that the Goods covered by a Purchase Order (incorporating by reference these Terms) include Equipment (as defined below), the terms and conditions set forth in the Detroit Thermal Systems, LLC Equipment Purchase Order Addendum ("Equipment Purchase Order Addendum" or "Addendum") (available on Buyer's web site so at [www.detroitthermalsystems.com](http://www.detroitthermalsystems.com)) are hereby also made applicable to the Purchase Order. "Equipment" as used herein means, collectively, one or more items of equipment, machinery and/or Tooling (as "Tooling" is defined in Section 5(b) of these Terms), and related services (including for example, installation services), as identified in the related Purchase Order.

**2. Quantity and Duration.**

A. Subject to Buyer's termination rights, the agreement formed by the Purchase Order is binding on the parties for the length of the applicable Original Equipment Manufacturer ("OEM") vehicle program production life (including model refreshes as determined by the applicable OEM customer), and both Buyer and Seller acknowledge the risk of the vehicle program production life being cancelled or extended by the OEM. If the Goods are not utilized by Buyer for the production of automotive parts or systems, the agreement formed by the Purchase Order will be binding for one year from the date the Purchase Order is transmitted to Seller. In such case, subject to Buyer's termination rights, the Purchase Order will automatically renew for successive one-year periods after the initial term unless Seller provides written notice at least 180 days prior to the end of the current term of its desire that the Purchase Order not be renewed. Notwithstanding the foregoing, if an expiration date is stated in a Purchase Order or related agreement signed by Buyer, the term of the Purchase Order will continue until that date. Unless specifically waived in writing by an authorized representative of Buyer or unless Buyer removes Tooling from Seller necessary for the production of service and replacement parts, Seller's obligations with respect to service and replacement parts will survive the termination or expiration of the Purchase Order for any reason.

B. From time to time, Buyer may provide Seller with estimates, forecasts or projections of its future volume or quantity requirements for the Goods and/or the term of a program ("**Projections**"). Projections are not binding on Buyer and Buyer makes no representation, warranty, guaranty or commitment regarding any Projections. Buyer will issue releases to Seller to specify the quantities needed, delivery locations and shipment dates for the Goods (each a "**Release**" and together "**Releases**"). Buyer will only be obligated to purchase quantities of Goods specified in a Release to the extent the Release provides a definite date on or by which delivery is required.

C. (1) Unless otherwise expressly stated in the Purchase Order or other agreement signed by an authorized representative of Buyer, if no other quantity is stated on the face of the Purchase Order or if the quantity is blank or specifies the quantity as zero, "blanket", "blanket order", "as released", "as scheduled", "as directed", "subject to Buyer's production releases", or similar terms, then, subject to the applicable terms and conditions including these Terms, Buyer will purchase from Seller, and Seller will supply to Buyer, all of Buyer's requirements for Goods. Seller will deliver Buyer's requirements pursuant to firm orders in material authorization releases, manifests, broadcasts or similar releases ("Material Authorization Releases") that are transmitted to Seller during the term of the Purchase Order, and Seller shall deliver Buyer's requirements on such

dates and times at the price and on the other terms specified in the Purchase Order or Material Authorization Releases. All references herein to a "Purchase Order" shall include any related Material Authorization Releases, and such material Authorization Releases are not independent contracts. If the Purchase Order covers services, Buyer is required to purchase such services to the extent expressly stated in a Statement of Work signed by Buyer. Buyer may require Seller to participate in electronic data interchange or similar inventory management program, at Seller's expense, for notification of Material Authorization Releases, shipping confirmations and other information. (2) Lead times for Goods, as and to the extent set forth in a Purchase Order, should be considered by the Buyer in all of Buyer's requirements. Unless otherwise expressly stated in the Purchase Order or other agreement signed by an authorized representative of Buyer, Seller shall organize its production operations and inventory to be able to meet variations of up to +/- 15% with less than the lead time(s) stated in the Purchase Order, without any change in price. Variations of more than +/- 15%, made with less than applicable lead times may be addressed under Section 11 below. Seller acknowledges and agrees to accept the risk associated with lead times of various raw materials and/or components and Goods if they are beyond those provided in the Purchase Order and authorized Material Authorization Releases. (3) Seller must have a tooling and production plan in place that will enable Seller to supply Buyer's peak daily, weekly and annual requirements for the Goods, including service parts, and Seller capacity as stated in a Purchase Order will be based on such tooling and production plan. In the event that Buyer's peak requirements exceed Seller's capacity as stated in the Purchase Order, Buyer and Seller will, upon the request of either party, discuss what, if any, additional capital investments, together with expenses directly related to such increased demands, are reasonably required by Seller, and what changes in price or tooling are reasonably required, for Seller to continue to meet such peak requirements. Buyer will have the right to verify all claims regarding additional capital investment and the sole discretion to determine whether to accept applicable changes or to source peak requirements beyond Seller's capacity stated in the Purchase Order elsewhere. No changes to the Purchase Order or these Terms, other than changes in price or tooling requests directly tied to the need for additional capital investments mutually agreed between Seller and Buyer pursuant to this Section 4(b)(3) are contemplated here.

### **3. Price.**

**A. Prices charged** for Goods will be stated in the Purchase Order and are not subject to increase for any reason including, but not limited to, increases in raw material or component costs, labor costs, or overhead costs. Prices may be subject to mandatory decreases if so provided in the Purchase Order. Seller is solely responsible for any and all transport and unloading charges and costs, customs charges and costs, taxes, tariffs, duties, insurance charges and costs, and any fiscal contribution related to the Goods, unless otherwise expressly stated in the Purchase Order.

B. Seller represents and warrants that the price charged to Buyer for the Goods is at least as low as the price charged by Seller to other buyers under conditions similar to those specified in the Purchase Order and that all prices comply with all applicable governmental laws and regulations in effect at the time of quotation, sale and delivery. Seller also represents and warrants that the Goods will remain competitive in terms of price and related commercial terms and conditions, as well as in terms of technology, quality and delivery, with substantially similar goods and services available to Buyer from other suppliers.

C. Seller will participate in Buyer's cost savings and productivity programs and initiatives and will implement Seller's own cost savings and productivity programs and initiatives to reduce Seller's prices.

### **4. Invoices.**

A. All invoices and/or advance shipping notices for Goods shipped pursuant to each Purchase Order must reference the Purchase Order number, Purchase Order amendment or Release number, Buyer's part number, Seller's part number (if different), quantity of pieces in the shipment, number of cartons or containers, Seller's name, and bill of lading number.

B. All invoices and/or advance shipping notices for Goods shipped pursuant to each Purchase Order must include all information appearing in the Purchase Order which is necessary for identification and control of the Goods including, but not limited to, information required by any applicable taxing authority or under any applicable tax law or regulation, and any applicable import declaration number and/or number of any temporary import program.

C. Seller will provide all invoices and/or advance shipping notices for Goods shipped pursuant to each Purchase Order to Buyer at the invoicing address identified in the Purchase Order.

D. No invoice may reference any term separate from or different than these Terms and Conditions or the terms in the Purchase Order. Any terms referenced in any invoice different than the Purchase Order (including these Terms) are void. Buyer reserves the right to return any invoice or related documents submitted incorrectly. Any payment by Buyer of a nonconforming invoice is not an acceptance of any non-conforming element or terms on such invoice.

## **5. Payment Terms.**

A. Unless otherwise stated in the Purchase Order, Seller's invoices will be payable on the first Friday which is the later of sixty (60) days following the date of Buyer's receipt of the (i) Goods or (ii) Seller's invoice. All invoicing will be made through electronic data interchange and all payments will be made by electronic funds transfers or checks. If a payment date falls on a non-business day, payment will be made on the following business day. No payment will be due from or made by Buyer prior to Buyer's receipt of (i) the Goods corresponding to such payment and (ii) Seller's invoice in accordance with Section 4.

B. Notwithstanding the particular payment terms applicable to a Purchase Order: (i) in no event will Seller have a right to payment for Tooling before Buyer is paid by its customer for such Tooling; and (ii) Buyer may, at its option, upon written notice to Seller, revise its payment terms for Goods to take into account any change in the payment terms of Buyer's customer(s) applicable to the Goods. "Tooling" means, collectively, all prototype and production tools, dies, fixtures/assembly fixtures, jigs, gauges, castings, molds, patterns, casting patterns, cavities, filters, returnable containers, specifications, related documentation/test reports, and all intellectual property embodied in the foregoing, paid for or to be paid for or otherwise furnished by Buyer (or Buyer's Customer) (with all accessions, appurtenances, modifications, repairs, refurbishments, and replacements to the Tooling) and is included in Buyer's Property. Tooling also includes, as applicable, Seller's Property of any of the foregoing types for which Buyer has an option to purchase under Section 20 below, unless the context requires otherwise.

C. Any amount paid by Buyer for Goods will not be deemed to be a waiver of any breach of the Purchase Order by Seller or any amount otherwise due to Buyer. Any waiver by Buyer of any breach by Seller on one occasion will not preclude Buyer from seeking any recovery from Seller, nor will it preclude Buyer from terminating the Purchase Order for, or constitute a waiver of, any other breach at another time.

D. Buyer may, at any time in its sole discretion, remit payments directly to Seller's subcontractors or suppliers for materials, parts, components, and other goods and services ordered by Seller from such subcontractors or suppliers in connection with Seller's production of the Goods. If Buyer makes such direct payments to Seller's subcontractors or suppliers, Buyer will permanently reduce its next payments to Seller for the Goods, dollar-for-dollar, by the amount of all such direct payments.

**6. Quality.** Seller will meet all quality requirements of Buyer and all quality requirements of Buyer's customer(s). Seller will assure that all Goods conform to all specifications, standards, drawings, samples and descriptions including, without limitation, as to quality, performance, fit, form, function and appearance under the Purchase Order. Seller is responsible for the quality, performance, fit, form, function and appearance of all Goods and components and sub-components provided by any sub-tier and subcontractor manufacturers and suppliers used by Seller. Seller will, at its expense, furnish, keep in good condition, and replace when necessary all Tooling, machinery and equipment and other items necessary for the production of the Goods.

## **7. Delivery; Premium Shipping Costs; Risk of Loss.**

A. Deliveries will be made in quantities and at the times specified on the Purchase Order or on Releases. Time and quantity of delivery are of the essence of each Purchase Order and Release. Seller will adhere to shipping directions specified on the Purchase Order or Releases. Buyer will not be required to make payment for Goods delivered to Buyer that are in excess of quantities and delivery schedules specified in Buyer's Releases or in a Purchase Order.

B. Premium shipping expenses and/or other related expenses necessary to meet delivery schedules set forth in Releases will be Seller's sole responsibility unless: (i) the delay or expense was solely the result of actions by Buyer which materially breach Buyer's obligations in the Purchase Order (if such material breach was not caused by Seller); and (ii) Seller provides Buyer with written notice of any claim against Buyer within ten (10) days after the occurrence of the alleged actions of Buyer giving rise to such claim.

C. Notwithstanding any agreement concerning payment of freight expenses, delivery will not have occurred and the risk of loss will not have shifted to Buyer until the Goods have been received at the specified delivery location and have been accepted by Buyer at that location.

## **8. Intellectual Property.**

A. All information, materials, inventions, and intellectual property (including without limitation Tooling) created, developed or acquired by or on behalf of Seller, along with all intellectual property rights relating thereto, as requested by Buyer in connection with any Purchase Order (including without limitation, as paid for or to be paid for by Buyer under a Purchase Order), are the sole and exclusive property of Buyer. Seller will promptly disclose in an acceptable form and assign to Buyer all such information, materials, inventions, and intellectual property. Seller will cause its employees to perform any act, including without limitation, executing and delivering any papers necessary to enable Buyer to confirm Buyer's title to the foregoing and to seek intellectual property protection throughout the world. To the extent that any works of authorship (including, without limitation, software) are created by or on behalf of Seller and are paid for or to be paid for by Buyer under a Purchase Order, such works shall be

considered "work made for hire". To the extent that such works do not qualify as "work made for hire," Seller hereby assigns to Buyer all right, title, and interest in all copyrights and moral rights therein.

B. Seller acknowledges and agrees that Buyer, or Buyer's designee(s) (including their affiliates and subcontractors) have the worldwide, irrevocable right to repair, reconstruct, rebuild and relocate, and to have repaired, reconstructed, rebuilt or relocated, Goods delivered under an Order without payment of any royalty or other compensation to Seller.

C. Seller hereby grants Buyer, and Buyer's present and future affiliates, an irrevocable, non-exclusive, worldwide, royalty-free, paid-up, license, including the right to sublicense, under any and all proprietary rights controlled by Seller or its affiliates, including, without limitation, any patent, copyright, moral, industrial design right, trademark, technical information, know-how or other proprietary right ("Seller Proprietary Rights"): (i) in the event that this Agreement is terminated by Buyer under Sections 13, 15(A), or 33, and/or (ii) in the event that Seller for any reason (including without limitation requirements imposed on Buyer by Buyer's Customer) is unable to satisfy the quality, quantity, delivery or related requirements of Buyer for Goods under the Purchase Order and/or additional orders (including, for example and without limitation, in the event of force majeure, or increased demand due to volume requirements for a corrective field service action/recall, or by reason of Seller's insolvency, or in the event of a required change or expansion in relation to the country(ies) of manufacture or delivery): (A) to make, have made, use, sell, offer to sell, and import the Goods, (B) to copy, modify, use, distribute, publicly display/perform, prepare derivative works of, reproduce in the case of a mask work, and import or distribute in the case of a semiconductor chip product in which a mask work is embodied, any copyrighted or copyrightable portions of such Seller Proprietary Rights relating in any way to Goods, and (C) to do all other things and exercise all other rights in the Seller Proprietary Rights necessary or useful to avoid, remedy and mitigate, as Buyer reasonably determines to be appropriate, all or any portion of any consequences to Buyer, and to any direct and indirect customers of Buyer, arising from any situation under subparagraphs (i) or (ii) above. Seller shall also cooperate with Buyer in the exercise of such license including providing, without restriction on use, reproduction or disclosure, all information and data deemed necessary by Buyer. At no additional cost, Seller hereby grants Buyer an irrevocable, nonexclusive, worldwide license under Seller Proprietary Rights that is necessary or incident to the reasonably intended use or application of the Goods. Rights under this Section 8(C) are intended to be subject to 11 USC Section 365(n) and are supplementary to any other rights of Buyer under existing Orders and other agreements with Seller.

D. All Goods or other deliverables provided under an Order (including, for example, computer programs, technical specifications, documentation and manuals), shall be original to Seller and shall not incorporate, or infringe upon, any intellectual property rights (including, without limitation, copyright, patent, trade secret, mask work or trademark rights) of any third party, unless otherwise expressly agreed to in writing by Buyer. Seller agrees: (i) to defend, hold harmless and indemnify Buyer, its successors and Customers against any suit, claim or action for actual or alleged infringement of any proprietary right (including any patent, trademark, copyright, moral, industrial design right or other proprietary right or misuse or misappropriation of trade secret) and against any resulting damages or expenses (including attorney's and other professional fees, royalties, settlements and judgments) arising in any way in relation to sale or use of Goods covered by the Purchase Order (including without limitation their manufacture, purchase, use and/or sale), including such claims where Seller has provided only part of Goods (and Seller expressly waives any claim against Buyer that such infringement arose out of compliance with Buyer's specifications), (ii) to waive any claim (whether known or unknown, and including without limitation contingent or latent claims) against Buyer or Buyer's Customer(s), including any hold harmless or similar claim, in any way related to a third-party claim asserted against Seller or Buyer or Buyer's Customer(s) for infringement of any proprietary right (including any patent, trademark, copyright, moral, industrial design right or other proprietary right or misuse or misappropriation of trade secret), including claims arising out of specifications furnished by Buyer, and (iii) that if the sale or use of the Supplies is enjoined or, in Buyer's sole judgment, is likely to be enjoined, Seller will, at Buyer's election and Seller's sole expense, procure for Buyer the right to continue using the Goods, replace the same with equivalent non-infringing goods or modify such Goods so they become non-infringing.

E. Seller will not assert or transfer to any third party a right to assert against Buyer or its customers any Intellectual Property Rights that Seller has or may have that are applicable to the Goods used or furnished under the Purchase Order.

F. Seller will not sell or otherwise dispose of any Goods that incorporate any Intellectual Property Rights of Buyer to any party other than Buyer unless specifically authorized by Buyer in advance and in writing.

## **9. Warranty.**

A. Seller warrants that all Goods covered by each Purchase Order will conform to all specifications, standards, drawings, samples and/or descriptions, quality requirements, performance requirements, and fit, form and function requirements furnished to Seller by Buyer, and all industry standards, laws and regulations in force in countries where the Goods or vehicles equipped with such Goods are to be sold. Seller warrants that all Goods will be merchantable, safe, of good material and workmanship and free from defects. In addition, Seller acknowledges that Seller knows of Buyer's intended use of the Goods and expressly warrants that all Goods will be fit and sufficient for the particular purpose intended by Buyer.

B. Seller warrants that Seller will convey good title to the Goods to Buyer, free and clear of all liens, claims, interests and other encumbrances.

C. All warranties will be effective for the longer of (i) the period provided by applicable law or (ii) the warranty period provided by Buyer to its customer; provided, however, that if Buyer or its customer, voluntarily or pursuant to a government mandate, makes an offer to owners of vehicles (or other finished products) on which the Goods or any parts, components or systems incorporating the Goods are installed to provide remedial action to address a defect or condition that relates to motor vehicle safety or the failure of the vehicle to comply with any applicable law, safety standard or guideline, whether in connection with a recall campaign or other customer satisfaction or corrective service action (a “**Remedial Action**”), the warranty will continue for such time period as may be dictated by Buyer’s customer or the federal, state, local or foreign government where the Goods are used or provided. Notwithstanding any expiration of a warranty period set forth in this Section 9, Seller will nonetheless be liable for costs and damages associated with any Remedial Action to the extent that such Remedial Action is based upon a reasonable determination that the Goods fail to conform to the warranties set forth in the Purchase Order. Where applicable, Seller will pay all reasonable expenses associated with determining whether a Remedial Action is necessary.

D. All warranties are intended to provide Buyer with protection from any and all warranty claims brought against Buyer by its customer. This includes, but is not limited to, meeting any customer-required warranties relating to the Goods or products into which the Goods are incorporated. All such customer-required warranties are incorporated by reference.

E. The warranties provided for in this Section 9 are in addition to all other warranties, express, implied or statutory, and will survive Buyer’s inspection, test, delivery, acceptance, use and payment of and for the Goods, and inure to the benefit of Buyer, its successors and assigns, and Buyer’s Customers and the users of Buyer’s or its Customers’ products. The warranties provided for in this Section 9 may not be limited or disclaimed by Seller. Buyer’s approval of Seller’s designs, materials, processes, drawings, specifications or the like will not be construed to relieve Seller of any warranties, nor will a waiver by Buyer of any required specification as to any particular Goods constitute a waiver of any such requirements for the remaining Goods to be delivered unless so stated by Buyer in writing.

F. Seller will immediately notify Buyer in writing if Seller learns of any facts, circumstances or conditions, the existence of which causes or threatens to cause imminent breach of any warranties or interruption in Seller’s production of Goods.

G. To mitigate its damages, Buyer may defend any claim that any Goods supplied by Seller are defective, in breach of warranty, or otherwise do not meet applicable legal or contractual requirements because such claim may attempt to hold Buyer responsible for problems caused in whole or in part by Seller. Such defense is in the interest of both Seller and Buyer. Seller waives the right to argue that the fact that Buyer took any such position in any way limits Buyer’s right to assert a claim against Seller by Buyer for breach of warranty, contribution, indemnification or other claim that may arise from or be related to the subject matter of any of the foregoing.

## **10. Indemnification.**

A. To the fullest extent permitted by law, (i) Seller hereby assumes the entire, sole responsibility for any injury to person, including death, or damage to property of any kind or nature caused by, resulting from or in connection with the furnishing of Goods by Seller, its subcontractors, officers, agents, or employees; (ii) Buyer shall not be responsible for any injury to person or damage to property resulting from use, misuse or failure of any apparatus or other property of Buyer furnished to Seller by Buyer, and the use by Seller of any such apparatus or other property of Buyer furnished by Buyer to Seller shall constitute acceptance by Seller of all responsibility for any claims for such injury or damage; and (iii) Seller will defend, indemnify and hold harmless Buyer, Buyer’s Customers (both direct and indirect, including manufacturers of vehicles in which Supplies are incorporated), and dealers and users of the products sold by Buyer (or the vehicles in which they are incorporated), including their respective agents, customers, invitees, subsidiaries, affiliates, successors and assigns, against any and all claims, damages, losses, liabilities, and expenses (including actual attorneys’ fees and other professional fees, settlements and judgments) arising out of or resulting in any way from any defective Goods, or from any negligent or wrongful act or omission of Seller, or Seller’s agents, employees or subcontractors, or any breach or failure by Seller to comply with any of Seller’s representations or other terms and conditions of a Purchase Order (including any part of these Terms) -- including without limitation the cost of recall campaigns, customer field service actions or other corrective service actions that, in Buyer’s reasonable judgment, are required because of nonconformities in some or all of the Goods provided by Seller hereunder. 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. Buyer has the right to be represented by and actively participate through its own counsel in the defense and resolution of any indemnification matters, at Seller’s expense. The indemnification obligations of Seller set forth in this Agreement, including this Section, are independent of and in addition to any insurance and warranty obligations of Seller.

B. If Seller performs any work on Buyer’s or Buyer’s Customer’s premises or utilizes the property of Buyer or Buyer’s Customer, whether on or off Buyer’s or Buyer’s Customer’s premises: (i) Seller will examine the premises to determine whether they are safe for the requested services and will advise Buyer promptly of any situation it deems to be unsafe; (ii) Seller’s employees, contractors and agents will comply with all regulations that apply to the premises and may be removed from Buyer’s premises at Buyer’s discretion; (iii) Seller’s employees, contractors and agents will not possess, use, sell, transfer or be under the influence of alcohol or unauthorized, illegal or controlled drugs or substances on the premises; and (iv) to the fullest extent permitted by law, Seller will indemnify and hold Buyer and Buyer’s Customer (and their respective officers, directors, employees, agents, successors and assigns) harmless from and against any and all liability claims, demands or expenses (including actual attorney’s fees and

other professional fees, settlements and judgments) for damages to the property of or personal injuries to Buyer, its Customer, their respective employees or agents or any other person or entity if the claims arise from or in connection with Seller's work on the premises or Seller's use of Buyer's or Buyer's Customer's property, except for any liability, claim or demand arising out of the sole negligence of Buyer.

C. Buyer will notify Seller after Buyer becomes aware of the basis for a claim against Seller under this Section 10. Seller will immediately begin to work cooperatively with Buyer to determine the root cause of a defect in or failure of the Goods (and related systems and components).

#### **11. Changes.**

A. Buyer reserves the right at any time to direct changes, or cause Seller to make changes, to the Goods under any Purchase Order or Purchase Order amendment including, but not limited to, changes in the design (including drawings and specifications), processing, methods of packing and shipping and the date or place of delivery of the Goods covered by the Purchase Order or to otherwise change the scope of the work covered by the Purchase Order including work with respect to such matters as inspection, testing or quality control, and Seller agrees to promptly make such changes. Price and/or timing for delivery of Goods resulting from changes pursuant to this Section will be equitably adjusted by Buyer following Buyer's receipt from Seller of sufficient documentation regarding Seller's costs and/or production timing resulting from such changes. In order for Seller to request a reasonable difference in price or time for performance as a result of a change, Seller must notify Buyer of its request in writing within ten (10) days after receiving notice of a change. Buyer can request additional documentation from Seller to the need for a different price or time for performance, and Buyer has the right to verify all claims or requests hereunder by auditing relevant records, facilities, work or materials of Seller. If Seller does not provide timely notice to Buyer that a requested change may result in a difference in price or time for performance, Buyer's requested change will not affect the price or time for performance.

B. Seller will not make any change in the Goods, including, without limitation, design, drawings, specifications, materials, processing, packing, marking, shipping, or date or place of delivery except at Buyer's written instruction or with Buyer's written approval. The foregoing restriction applies, among other matters, to any proposed change in the sourcing, or in the nature, type or quality of any services, raw materials or goods used by Seller or its suppliers in connection with the Purchase Order, or in the place or manner of manufacture or processing of raw materials or components used in the Goods, or of any Goods themselves, or in the fit, form, function, appearance or performance of any Goods covered by the Purchase Order. Any changes by Seller to any Purchase Order or to the Goods covered by the Purchase Order without the prior approval of Buyer's authorized representative shall constitute a breach of the Purchase Order.

**12. Financial and Operational Condition of Seller.** Seller represents and warrants to Buyer as of the date of each Purchase Order that it is not insolvent and is paying all debts as they become due; that it is in compliance with all loan covenants and other obligations; that all financial information provided by Seller to Buyer concerning Seller is true and accurate; that such financial information fairly represents Seller's financial condition; and that all financial statements of Seller have been prepared in accordance with generally accepted accounting principles, uniformly and consistently applied.

**13. Seller's Insolvency.** Buyer may immediately terminate each Purchase Order without any liability of Buyer to Seller upon the occurrence of any of the following or any other similar or comparable event: (i) insolvency of Seller; (ii) Seller's inability to promptly provide Buyer with adequate and reasonable assurance of Seller's financial and operational capability to perform timely any of Seller's obligations under any Purchase Order; (iii) filing of a voluntary petition in bankruptcy by Seller (or a comparable insolvency event); (iv) filing of an involuntary petition in bankruptcy against Seller (or a comparable insolvency event); (v) appointment of a receiver or trustee for Seller/Seller's assets; or (vi) execution of any assignment for the benefit of creditors of Seller.

#### **14. Remedies for Breach by Seller.**

A. Without limiting any of Buyer's rights and remedies at law or in equity (all of which are preserved), should any Goods fail to conform to any applicable warranties, Seller will reimburse Buyer for any and all actual, special, incidental and consequential damages caused by nonconforming Goods including, without limitation, costs, expenses and losses incurred by Buyer: (i) in inspecting, sorting, testing, repairing or replacing such nonconforming Goods; (ii) resulting from production interruptions; (iii) in conducting Remedial Actions; and (iv) in connection with claims for personal injury (including death) or property damage caused by nonconforming Goods.

B. Seller acknowledges and agrees that money damages will not be a sufficient remedy for any actual, anticipatory or threatened breach of any Purchase Order by Seller with respect to Seller's delivery of Goods to Buyer and that, in addition to all other rights and remedies which Buyer may have, Buyer will be entitled to specific performance and temporary, preliminary and permanent injunctive and other equitable relief as a remedy for any such breach, without proof of actual damages and without bond or other security being required.

## 15. Termination.

A. Buyer reserves the right to terminate all or any part of a Purchase Order, or any other Purchase Order or agreement between Buyer or Buyer's affiliate(s) and Seller or Seller's affiliate(s), without liability to Seller and Seller's affiliate(s), (1) if Seller: (a) repudiates, breaches or threatens to breach any of the terms of the Purchase Order, including without limitation Seller's warranties, (b) fails to perform or threatens not to perform services or deliver Goods as and when specified by Buyer, (c) fails to make progress or to meet reasonable quality requirements so as to endanger timely and proper completion or delivery of Supplies and does not correct the failure or breach within ten (10) days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from Buyer specifying the failure or breach, (d) sells or offers to sell a substantial portion of its assets used for the production of Goods for Buyer, or sells or exchanges or offers to sell or exchange an amount of its stock or other equity interests that would result in a change in control of Seller, or (e) fails to remain competitive with respect to quality, technology, delivery and pricing of the Supplies, or (2) if Seller or Seller's affiliate repudiates, breaches or threatens to breach any of the terms of any other Purchase Order or agreement between Buyer or Buyer's affiliate(s) and Seller or Seller's affiliate(s). Seller shall notify Buyer within ten (10) days after entering into any negotiations that could lead to the situation specified in subsection (d) above; upon Seller's request, Buyer will enter into an appropriate nondisclosure agreement related to information disclosed to Buyer in relation to such transaction.

### B. Buyer's Right to Terminate for Convenience.

(1) In addition to any other rights of Buyer to cancel or terminate a Purchase Order, Buyer may, at its option, upon at least thirty (30) days' written notice, or, if applicable, such shorter period as may be required by Buyer's Customer, and in its sole discretion, terminate all or any part of a Purchase Order at any time and for any reason, and notwithstanding the existence of any event of force majeure under Section 33.

(2) Upon receipt of notice of termination pursuant to this Section 15(B), Seller, unless otherwise directed in writing by Buyer, will: (i) immediately terminate all work under the Purchase Order; (ii) upon Buyer's written request, transfer title and deliver to Buyer the usable and merchantable finished Goods and raw materials/components that Seller produced or acquired in accordance with Release amounts under the Purchase Order and which Seller cannot reasonably use in producing goods for itself or for others; (iii) take actions reasonably necessary to protect property in Seller's possession which Buyer has an interest; and (iv) upon Buyer's request, cooperate with Buyer in effecting the resourcing of the Goods covered by the Purchase Order to an alternative supplier designated by Buyer.

(3) Upon termination by Buyer under this Section 15(B), Buyer will be obligated to pay Seller only the following: (i) the Purchase Order price for all finished Supplies in the quantities ordered by Buyer that conform to the requirements of the Purchase Order and for which Seller has not been paid, (ii) Seller's reasonable actual cost of work-in-process and the parts and materials transferred to Buyer in accordance with subsection (b)(2)(ii) above, (iii) Seller's reasonable actual costs of settling regarding its obligations to subcontractors required under the Purchase Order, to the extent directly caused by termination, but limited to the amount of any firm quantities of Supplies and raw materials / components specified in related Material Releases issued by Buyer and then outstanding; (iv) Seller's reasonable actual cost of carrying out its obligation under subsection (b)(2)(iii), and (v), if applicable, amounts due in connection with Transition Support under Section 15(D) below. Notwithstanding any provision to the contrary, Buyer shall have no obligation for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, tooling, facilities and equipment rearrangement costs or rental, unamortized capital or depreciation costs, finished goods, work-in-process or raw materials that Seller fabricates or procures in amounts that exceed those authorized in the Material Authorization Releases, or general administrative burden charges from termination of the Order, unless otherwise expressly agreed to in writing by Buyer in a separate Order issued by Buyer.

(4) Buyer's obligation upon termination under this Section 15(B) shall not exceed the obligation Buyer would have had to Seller in the absence of termination.

(5) Seller will furnish to Buyer, within one (1) month after the date of termination under this Section 15(B) (or such shorter period as may be required by Buyer's Customer), its termination claim, which shall consist exclusively of the items of Buyer's obligation to Seller that are listed in subsection 15(B)(3) above. Buyer may audit Seller's records before or after payment to verify amounts requested in Seller's termination claim.

(6) Buyer will not have any obligation under subsections 15(B)(3), (4), or (5) above if Buyer terminates Buyer's obligations under the Purchase Order under Section 15(A), or Section 13, or Section 33, and any termination shall be without prejudice to any claims which Buyer may have against Seller.

C. Because Buyer's commitments to its customers are made in reliance on Seller's commitments under each Purchase Order, Seller has no right to terminate any Purchase Order except as follows: Seller may terminate the Purchase Order only for non-payment of the purchase price for Goods which are thirty (30) or more days past due and material in amount, and then only if: (1) Seller first provides Buyer written notice specifying the amounts past due (including the relevant Purchase Order and invoice numbers and date) and Seller's intent to terminate the Purchase Order if



the past due amount is not paid; and (2) Buyer, within sixty (60) days of such notice, does not either: (A) pay the past due amounts, or (B) notify Seller that the amounts claimed to be unpaid are disputed by Buyer. Seller may not terminate or cancel the Purchase Order for any reason except as permitted under this Section. Seller may not suspend performance of the Purchase Order for any reason.

D. In connection with the expiration of any Purchase Order, or the termination of any Purchase Order by either party, in whole or in part, or Buyer's other decision to change to an alternate source of Goods (including but not limited to a Buyer-owned or -operated facility)("alternative supplier"), Seller cooperate with Buyer and will take such actions as may be reasonably required or requested by Buyer to transition production of the Goods from Seller to an alternative supplier including, without limitation, the actions set forth below (collectively, "Transition Support"):

- (1) Seller will continue production and delivery of all Goods as ordered by Buyer, at the prices and other terms stated in the Purchase Order, without premium or other condition, during the entire period reasonably needed by Buyer to complete the transition to the alternative supplier(s), such that Seller's action or inaction causes no interruption in Buyer's ability to obtain Goods as needed;
- (2) at no cost to Buyer, Seller will (A) promptly provide all requested information and documentation regarding and access to Seller's manufacturing process, including on-site inspections, bill-of-material data, tooling and process detail and samples of Supplies and components, and (B) will provide all notices necessary or desirable for Buyer to resource the Purchase Order to an alternative supplier;
- (3) when requested by Buyer, will return to Buyer all Buyer's Property in as good conditions as when received by Seller (reasonable wear and tear excepted);
- (4) will comply, and cause Seller's subcontractors to comply, with Seller's obligations relating to Seller Proprietary Rights and Seller's Property under the Order including these Terms (see, e.g., Section 8 and Section 20) and with comparable subcontractor obligations (see Section 20 below), as applicable;
- (5) subject to Seller's reasonable capacity constraints, Seller will provide special overtime production, storage and/or management of extra inventory of Supplies, extraordinary packaging and transportation and other special services as expressly requested by Buyer in writing; and
- (6) at Buyer's option: (i) assign to Buyer or an alternative supplier any or all supply contracts or orders for raw material or components relating to the Purchase Order; and (ii) sell to Buyer, at Seller's cost, any or all inventory and/or work in process relating to the Purchase Order.

If the transition occurs for reasons other than Seller's termination or breach, Buyer will, at the end of the transition period, pay the reasonable, actual cost of Transition Support as requested and incurred, provided that Seller has advised Buyer prior to incurring such amounts of its estimate of such costs. If the parties disagree on the cost of Transition Support, Buyer will pay the agreed portion to Seller and pay the disputed portion into third-party escrow for disbursement in accordance with the dispute resolution provisions of this Agreement or as otherwise mutually agreed by the parties in writing.

**16. Limitation of Damages.** In no event will Buyer be liable to Seller or Seller's subcontractors for anticipated profits or for special, incidental or consequential damages.

**17. Assignment.**

A. Seller may not assign or delegate any of its duties or obligations under any Purchase Order without the prior written consent of Buyer, which may be withheld in Buyer's sole discretion. Any sale, assignment or other transfer of stock, securities, or other interests of Seller that would result in a change in control of Seller will be deemed to be a purported assignment of the Purchase Order, with respect to which Buyer reserves the right to withhold its consent.

B. Buyer may assign the Purchase Order and/or any of its rights and interests in the Purchase Order, without Seller's consent, to any person or entity whomsoever or whatsoever including, without limitation, any of Buyer's affiliates (including, without limitation, any parent, subsidiary or division), or to any purchaser of or successor to all or any portion of Buyer's business or assets.

**18. Bailed Property/ Buyer's Property; Tooling.**

A. All supplies, materials, Tooling, blueprints, designs, specifications, drawings, photographic negatives and positives, artwork, copy layout, electronic data, consigned material for production or repair, proprietary information of Buyer or its Customers, and other items furnished by Buyer (or Buyer's customers), either directly or indirectly, to Seller or to any sub-supplier of Seller in connection with or related to any Purchase Order, or for which Seller has been at least partially reimbursed by Buyer (collectively, "**Bailed Property**" or "**Buyer's Property**") will be and remain the property

of Buyer (or Buyer's customers, as applicable) and be held by Seller on a bailment at-will basis. Any and all goods manufactured by Seller with the use of Buyer's Property may not be used for Seller's own use or manufactured or provided (or offered to be manufactured or provided) to third parties without Buyer's express written authorization. Seller acknowledges and agrees that Buyer's Property may be covered by one or more patents, patent applications or copyrights owned by Buyer.

B. Bailed Property will be held by Seller or by a third party, to the extent that Seller has transferred possession of Bailed Property to a third party, on a bailment basis, as a bailee-at-will. Seller bears the risk of loss of and damage to Bailed Property, and Seller, at its own expense, will keep Bailed Property fully insured for the benefit of Buyer, naming Buyer as the loss payee and an additional insured. The Bailed Property will at all times be property housed, maintained, repaired and replaced by Seller at Seller's expense, will not be used by Seller for any purpose other than the performance of the Purchase Order, will be deemed to be personal property, will be conspicuously marked by Seller to identify it as the property of Buyer and indicate Buyer's name and address, will not be commingled with the property of Seller or with that of a third person, and will not be moved from Seller's premises without the prior written approval by Buyer. Seller will maintain a written inventory of all Bailed Property that sets forth a description of the location of all Bailed Property, and provide a copy of this index to Buyer upon request. Seller, at its expense, will maintain, repair and refurbish Bailed Property. All replacement parts, additions, improvements and accessories for such Bailed Property will automatically become Buyer's property upon their incorporation into or attachment to the Bailed Property. Any missing components of or inserts to any Bailed Property will be replaced by Seller.

C. Buyer may, at any time, for any reason and without payment of any kind, retake possession of or request return of any Bailed Property, without the necessity of obtaining a court order and without payment of any kind. Upon Buyer's request, the Bailed Property will be immediately released to Buyer or delivered to Buyer by Seller, either (i) F.O.B. transport equipment at Seller's plant, properly packaged and marked in accordance with the requirements of the carrier selected by Buyer to transport such property, or (ii) to any location designated by Buyer, in which event Buyer will pay to Seller the reasonable cost of delivering such Bailed Property to such location. Notwithstanding anything in these Terms and Conditions to the contrary, Buyer may commence an injunctive action or proceeding to obtain possession of the Bailed Property in any federal or state court having competent jurisdiction. Only Buyer (and, if applicable and directed by Buyer, Buyer's Customer) has any right, title or interest in Bailed Property, other than for Seller's right, subject to Buyer's unfettered discretion, to use Bailed Property in the manufacture of Goods under a Purchase Order issued by Buyer. Seller agrees to cooperate with Buyer if Buyer elects to take immediate possession of Tooling or other Bailed Property. Buyer shall be entitled to institute and prosecute proceedings in a court to obtain temporary and/or permanent injunctive or other equitable relief to enforce any provision hereof without necessity of posting bond or proof of actual injury or damage.

D. TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER WAIVES ANY LIENS, INTERESTS, OR OTHER RIGHTS OR INTERESTS THAT SELLER MIGHT OTHERWISE HAVE ON ANY OF THE BAILED PROPERTY, INCLUDING WITHOUT LIMITATION FOR WORK PERFORMED ON SUCH PROPERTY AND FOR THE PURCHASE PRICE OF ANY GOODS MANUFACTURED OR PRODUCED UNDER A PURCHASE ORDER.

E. Seller acknowledges and agrees that (i) Buyer is bailing the Bailed Property to Seller for Seller's benefit; (ii) Buyer does not guarantee the accuracy of, or the availability or suitability of, the Bailed Property and HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF THE BAILED PROPERTY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE; (iii) Seller agrees carefully to check and approve, for example, all Bailed Property (including, for example, dies or materials supplied by Buyer) prior to using it, including that it is suitable and fit for its intended purpose; (iv) Seller shall assume all risk of death or injury to persons or damage to property arising from the use of Bailed Property; (v) (iii) Buyer will not be liable to Seller or anyone claiming by or through Seller for any loss, damage, injury (including death) or expense of any kind or nature caused, directly or indirectly, by the Bailed Property including, without limitation, its use or maintenance, or its repair, service or adjustment, or by any interruption of service or for any loss of business whatsoever or howsoever caused, and including, without limitation any anticipatory damages, loss of profits or any other indirect, incidental, special or consequential damages; and (vi) SELLER WAIVES, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, ALL CLAIMS OF NEGLIGENCE AND STRICT LIABILITY.

F. Seller authorizes Buyer to file a financing statement or similar document with the appropriate filing authority(ies) to give notice of Buyer's ownership interest in the Bailed Property. Failure to file a financing statement will not alter or affect Buyer's ownership rights to the Bailed Property. Seller will provide Buyer, upon Buyer's request, with a written inventory of all Bailed Property.

G. In the event of any dispute between Buyer and Seller regarding whether any Bailed Property is owned by Buyer or Seller, the Bailed Property subject to the dispute will be presumed to be owned by Buyer pending resolution of the dispute, and Buyer will have the right to immediate possession of the Bailed Property pending resolution of the dispute (and Seller may not withhold delivery of possession of the Bailed Property subject to the dispute to Buyer pending such resolution), but will remain subject to any claim or right to payment of Seller for the disputed amounts (despite Seller's relinquishment of possession).

H. Unless a Purchase Order is issued on a fixed-price basis, the price of the Tooling will not exceed the lowest of: (a) the maximum amount reimbursable specified on the Purchase Order; (b) the Seller's actual verified costs of acquiring the Tooling from a toolmaker without markup; or (c) the Seller's actual verified costs of fabrication of the Tooling (subject to applicable Buyer's guidelines). Buyer shall have access to Seller's premises,

prior or subsequent to any payment, to inspect work performed and to verify charges submitted by Seller against a Purchase Order or amendment. Seller further agrees to retain all cost records for a period of two (2) years after receiving final payment of the charges.

I. To the extent permitted by applicable law, any payments made by Buyer for Tooling are expressly intended by Buyer to be held in trust for the benefit of any subcontractor(s) used by Seller to produce the Tooling that are covered by such payments and Seller agrees to hold such payments as trustee in express trust for such subcontractor(s) until Seller has paid the subcontractor(s) in full for the Tooling. Seller acknowledges and agrees that such subcontractor is an intended third party beneficiary of the terms of this Section 18(I) relating to the express trust and as such, such Tooling subcontractor shall have the right to enforce these terms of this Section 18(I) directly against Seller in subcontractor's own name. Seller agrees that Buyer has no obligation to Seller or Seller's tooling subcontractor under this Section other than making the payment to Seller in accordance with a Tooling order. In the event Seller's subcontractor brings an action against Seller under this Section, Seller agrees that it will not join Buyer in any such action.

J. If the Buyer issues a Purchase Order for Tooling, the Seller will design and fabricate, rework, or acquire Tooling that fully conforms to the specifications and other requirements of the Buyer. The Tooling must be capable of producing the appropriate volume projections for the Goods during the life of the part as well as satisfying the requirements for Service and Replacement Parts under Section 34. Tooling may not contain or be marked in any manner with the name of any person or entity other than the Buyer (or if applicable and as directed by Buyer, with the name of Buyer's Customer). The Buyer, at any time, including prior to payment, may ask the Seller to provide status reports on the construction or acquisition of the Tooling. Each status report will identify the Tooling, identify any subcontractors working on the Tooling, state the percentage of completion of the Tooling, and state the percentage of sunk costs already expended. The Tooling is subject to inspection by Buyer at any time during normal business hours. If, at any time, the Seller believes that the Tooling might not be completed by the completion date specified in the Purchase Order (or at the time required consistent with any other order, for example relating to Goods to be produced using the Tooling), the Seller will notify the Buyer as soon as practicable. Sending this notice will not relieve the Seller of either its obligation to complete the Tooling on the completion date or its liability for any additional costs incurred by the Seller or the Buyer as a result of any delay. The Seller, at its own expense, will manufacture the requisite number of sample Goods or other goods using the Tooling in order to successfully complete the Buyer's approval process, and this shall be done in sufficient time to permit subsequent correction by Seller of any faults or defects before the completion date specified in the Purchase Order. Prior to shipment, Seller, at Seller's expense, shall inspect samples manufactured from the Tooling to be supplied hereunder and shall certify results in the manner requested by Buyer. Unless otherwise stated in the Purchase Order, the Seller has no claim for payment for Tooling until the Buyer has approved the Tooling. The Seller's warranties for Tooling are the warranties for Goods under this Purchase Order (including these Terms), including Section 9. Buyer expressly disclaims liability for damage to persons or property, resulting from the use of the Tooling, and Buyer's warranty disclaimers and the limitation of liability under Section 18(E) for Buyer's Property are applicable to Tooling. If all or part of the fabrication, modification, repair or refurbishment of the Tooling will be subcontracted to a third-party toolmaker, the Seller will: (a) inform and obtain the approval of the Buyer in advance; (b) inform the toolmaker in writing that it is a bailee-at-will, through the Seller, of Tooling owned by the Buyer; (c) obtain a written agreement from the subcontractor to be bound by these Terms and make Buyer a third party beneficiary to such agreement and (d) be solely responsible for payments to the toolmaker. The Seller will defend and indemnify the Buyer for all costs incurred (including actual fees for attorneys, consultants and experts) in connection with any claim that challenges the Buyer's sole right, title and interest in the Tooling, or right to possession of the Tooling, brought by any third party, including toolmakers, subcontractors, and lending institutions. The Seller will at its expense: (i) use the Tooling in compliance with all applicable laws, regulations, orders, and standards; and (ii) maintain the Tooling, including its repair or replacement, in the condition necessary to produce the Goods in accordance with any and all standards, specifications or instructions furnished by Buyer and be responsible for all wear and tear. In the event the Seller fails to comply with any of the requirements of a Purchase Order, and the Buyer determines that it is necessary to either take possession of the Tooling or have it relocated, the Seller will provide the Buyer or its designees with any technical information for the Tooling requested by the Buyer or its designees that is required for the relocation, installation, assembly, maintenance, certification, or use of the Tooling. Nothing herein contained or capable of being inferred from any possession of Tooling by Seller shall obligate Buyer in any way to purchase Goods or other goods from Seller or to create any defense in favor of Seller, whether by setoff, contract, or otherwise, to any demand by Buyer for possession of the Tooling.

**19. Transfer of Title to Purchased Property.** Seller transfers to Buyer title to all Tooling and other Goods which are subject to the Purchase Order ("Purchased Property") upon the earlier to occur of (i) Seller's commencement of manufacture, production, or fabrication of such Purchased Property, or (ii) acquisition of such Purchased Property by Seller from Seller's subcontractor or supplier of the Purchased Property, as applicable. Title to all Purchased Property will transfer to Buyer even if Seller has not been paid (in full or in part) for the Purchased Property; provided that Buyer will not be relieved of its obligation to pay for the Purchased Property pursuant to the Purchase Order. Purchased Property is identified to the Purchase Order at the time that manufacture, production, or fabrication of the Purchased Property is commenced. To the fullest extent permitted by law, Seller waives, releases and discharges all liens, claims, interests and encumbrances it has or may have with respect to Purchased Property, other than Seller's right to be paid for the Purchased Property pursuant to the Purchase Order. Seller authorizes Buyer (in Buyer's discretion) to file any financing statements or other documents on behalf of Seller evidencing that Seller's interest in Purchased Property is strictly a bailment interest in accordance with Section 18 above. Seller grants to Buyer a continuing security interest in any alleged right or interest it may have in the Purchased Property. Any payments made by Buyer for Purchased Property are expressly intended by Buyer to be held in trust for the benefit of any subcontractors or suppliers used by Seller to manufacture, produce, or fabricate the Purchased Property that relate to such payments; and Seller agrees to hold such payments as trustee in express trust for such subcontractors or suppliers until Seller has paid the subcontractors or suppliers in full for the Purchased Property.

**20. Seller-Owned Tooling.** If Tooling required to support production under a Purchase Order is to be funded or provided by Seller ("Seller-Owned Tooling"), the following provisions apply:

A. Seller acknowledges that the price for the Goods includes an amount for Seller to recover the cost of Seller-Owned Tooling. Seller-Owned Tooling will be properly maintained by Seller at its own expense for the term of the Purchase Order and any period Seller is obligated to provide service or replacement parts, unless otherwise specified in the Purchase Order or another written agreement between Buyer and Seller. If Seller finances any portion of Seller-Owned Tooling, Seller will obtain for Buyer the rights granted in this Section 20 from its financing source/lender.

B. Unless agreed to in writing by Buyer, Seller will not use Seller-Owned Tooling to produce goods for other customers, including aftermarket customers.

C. In consideration of Buyer's Purchase Order for Goods to be produced using Seller-Owned Tooling, Seller grants Buyer an exclusive, irrevocable option to purchase Seller-Owned Tooling for an amount equal to the outstanding discounted unrecovered cost at the time Buyer exercises the option. The term "**discounted unrecovered cost**" means the actual cost of Seller-Owned Tooling (without mark-up for profit or allocated overhead) minus the aggregate per-part amortization for all Goods manufactured using the tools and delivered to Buyer, discounted for early payment based upon the remaining portion of the originally-quoted program life using a discount rate of twelve percent (12%) per annum. Buyer may exercise this option at any time and not just in the case of termination, expiration or cancellation of a Purchase Order. Upon exercise by Buyer of its option to acquire Seller-Owned Tooling, at Buyer's request, Seller will cooperate with Buyer in its removal of the property from Seller's facility.

D. Seller grants Buyer an exclusive, irrevocable option to purchase any or all Seller-Owned Tooling for an amount equal to the lesser of net book value or fair market value of the Seller-Owned Tooling to be purchased, less any amounts Buyer has previously paid Seller for the cost of such items.

**21. Rights of Entry, Reclamation and Inspection.** Buyer will have the right to enter Seller's facilities during normal business hours at reasonable times to inspect the facilities, Goods, any Bailed Property and, without the necessity of a court order, remove property belonging to Buyer or any customer of Buyer including, without limitation, Bailed Property and Goods, inventory or Seller's property that has been or is agreed to be sold to Buyer. Buyer's inspection of the Goods whether during manufacture, prior to delivery or within a reasonable time after delivery, will not constitute acceptance of any work in process or finished Goods.

**22. Customer Requirements; Subcontracting.**

A. Seller agrees to comply with the applicable terms and conditions of any agreements ("Customer Purchase Orders") received by Buyer from a third party (Customer"), or directly or indirectly applicable to Buyer, pursuant to which or in respect to which Buyer agrees to supply to Customer, or incorporate into goods supplied to Customer, Goods purchased by Buyer from Seller. The terms "Customer" and "Customer Purchase Orders" shall also include the final equipment manufacturer of goods or services into which the Goods are or will be incorporated, as well as any intermediate entities in the supply chain between Buyer's direct Customer and such final equipment manufacturer, and related terms and conditions of such Customers. Buyer may in its discretion supply Seller with information regarding the Customer Purchase Orders, but Seller shall be responsible for ascertaining any terms and conditions contained in Customer Purchase Orders that may affect Seller's obligations under an Order. Buyer will determine, in its sole and absolute discretion, which terms will supersede and apply to Seller, including without limitation, cost and productivity terms and price reductions. Seller will do everything within its control to meet, and to enable Buyer to meet, the terms and conditions of the Customer Purchase Orders. If this Section conflicts with any other paragraph or Section in an Order, Buyer by written notice to Seller has the right to have the provisions of this Section prevail over any conflicting term between Buyer and Seller.

B. In the event that a Customer files or has filed against it a petition in bankruptcy or insolvency and, in the course of such proceeding and in connection with actual or threatened termination (by rejection or otherwise) by the Customer of its contract(s) with Buyer or contracts relating to Supplies purchased by Buyer from Seller, Buyer permits a reduction in the price(s) paid to Buyer for products incorporating the Supplies, the price paid to Seller for the Supplies from and after the date of such reduction will be automatically adjusted proportionally by the same percentage as the price paid to Buyer by its direct Customer and the Purchase Order will otherwise remain in effect without modification.

C. If Buyer's direct or indirect Customer directed, recommended, requested, suggested or otherwise identified Seller as the source from which Buyer is to obtain the Goods ("Directed Supply Relationship"), then notwithstanding the particular payment terms otherwise applicable to the Purchase Order or anything to the contrary in the Purchase Order: (i) in no event will Seller have a right to receive payment from Buyer for the Goods except following, and in proportion to, Buyer's actual receipt of payment from its Customer for the Goods or, as applicable, the goods in which the Goods are incorporated, (ii) any extension of such customer's payment terms to Buyer for Buyer's component parts or assembled goods into which the Goods are incorporated will automatically extend, by the same amount of time, the payment terms between Buyer and Seller, and Buyer may, at its option and on notice to Seller, otherwise revise its payment terms for Goods to take into account any other change in the payment terms of Buyer's Customer for the Goods under the Purchase Order; and (iii) within three (3) business days following any reduction in price or change in other terms with respect to the Goods negotiated or proposed between Seller and Buyer's direct or indirect Customer, Seller will notify Buyer, in writing,

of such reduction or change and immediately adjust its invoices to reflect any price reduction – provided that no change in other terms (except price reductions) will be binding on Buyer without Buyer’s prior written consent; and (iv) (without limiting any other rights and remedies of Buyer) Seller will indemnify and hold harmless Buyer from any liabilities, claims, demands, losses, damages, costs and expenses (including without limitation attorneys’ fees and other professional fees) incurred by Buyer arising from or relating to the Goods supplied by Seller and/or the Directed Supply Relationship, and including without limitation any charges or set-offs (including without limitation interim field service action cost recovery debits) taken by Customer against Buyer by reason of alleged defects in Goods, even if such set-offs by Customer are before final determination of (and subject to adjustment based upon) whether and to what extent defects in Goods were a cause of the related remedial action undertaken and related costs/damages incurred by Customer. In the event that any requirement imposed by any Purchase Order on Seller is found to be unenforceable or a gap otherwise exists or is created in the terms applicable to any Purchase Order through operation of law, conflict in terms or otherwise, the parties agree that the corresponding requirement of Customer(s) shall be applicable to and binding on Seller for the benefit of Buyer. Seller acknowledges that it is familiar with the automotive industry and the applicable terms of Customer(s) that would apply in such event.

D. Seller will not subcontract any of its duties or obligations under any Purchase Order without prior written approval by Buyer. Seller will ensure that any subcontractor so approved complies with all production part approval process (PPAP) requirements of Buyer’s Customer and any other requirements of Buyer. Buyer or Buyer’s representative will be afforded the right to verify at any subcontractor’s premises and Seller’s premises that subcontracted Goods conform to specified requirements.

**23. Nonconforming Goods.** Buyer, at its option, may reject and return, at Seller’s risk and expense, Goods received pursuant to any Purchase Order that fail to conform to the requirements of the Purchase Order even if the nonconformity does not become apparent to Buyer until the manufacturing, processing or assembly stage or later. To the extent Buyer rejects Goods as nonconforming, the quantities under the Purchase Order will not be reduced by the quantity of nonconforming Goods unless Buyer so notifies Seller in writing. Seller will replace nonconforming Goods with conforming Goods, unless otherwise notified in writing by Buyer, including without limitation by way of a termination notice from Buyer under Section 15 above. Seller will reimburse Buyer for (i) any amounts paid by Buyer on account of the purchase price of any rejected nonconforming Goods, and (ii) any costs incurred by Buyer in connection with the nonconforming Goods including, but not limited to, inspection, sorting, testing, evaluations, storage and rework. Payment by Buyer for nonconforming Goods will not constitute an acceptance, limit or impair Buyer’s right to seek any legal or equitable remedy, or relieve Seller’s responsibility for latent defects.

**24. Insurance.** Seller will obtain and maintain, at its sole expense, insurance coverage customary in the automotive supply industry and as otherwise required by law or reasonably requested by Buyer with such insurance carriers and in such amounts as are set forth in Buyer’s Insurance Policy for Suppliers and On-Site Subcontractors, a copy of which will be provided to Supplier upon Supplier’s written request. This includes, without limitation, providing full fire and extended coverage insurance for the replacement value of (i) all of Seller’s Property and (ii) any Bailed Property, both for their full replacement value. All such insurance coverage will name Buyer as loss payee and additional insured. Upon request, Seller will furnish to Buyer certificates of insurance setting forth the amount of coverage, policy number and date(s) of expiration for insurance maintained by Seller and such certificates must provide that Buyer will receive not less than thirty (30) days prior written notification from the insurer of any termination or reduction in the amount or scope of coverage. Seller’s furnishings of certificates of insurance or purchase of insurance will not release Seller of its obligations or liabilities under any Purchase Order. If Seller fails to maintain any insurance under any Purchase Order, Buyer will have the right to procure such insurance and Seller will reimburse Buyer on demand, for all actual costs and expenses of procuring such insurance.

**25. Customs Requirements and Export Controls.**

A. Seller will promptly furnish to Buyer all documents required for customs drawback purposes, properly completed in accordance with all applicable laws and regulations. Seller will also, at Seller’s sole expense, provide all information (including written documentation and electronic transaction records) relating to the Goods which is necessary for Buyer to fulfill any customs-related or other governmental agency-related obligations, origin marking and labeling requirements, and certification and local content reporting requirements, to enable Buyer to claim preferential duty treatment at the time of entry for Goods eligible under trade preference regimes, and to make all arrangements necessary for the Goods to be covered by any applicable duty deferral or free trade zone program(s) of the country of import.

B. To the extent that Goods are to be imported into the United States of America, Seller will comply with all applicable recommendations or requirements of the Bureau of Customs and Border Protection’s Customer-Trade Partnership Against Terrorism (“C-TPAT”) initiative. Upon request, Seller will certify in writing its compliance with the C-TPAT initiative.

C. Export licenses or authorizations necessary for the export of Goods will be the responsibility of Seller unless otherwise expressly stated in the Purchase Order, in which case Seller will, at Seller’s expense, provide all information and documentation necessary or desirable to enable Buyer to obtain necessary or appropriate licenses or authorizations. Credits or benefits resulting or arising from any Purchase Order including trade credits, export credits, customs drawbacks, and the refund of duties, taxes or fees, will belong to Buyer. Seller will indemnify and hold Buyer and Buyer’s Customers and their respective successors, assigns, representatives, employees and agents harmless from and against any costs, expenses or liabilities arising from Seller’s provision of incorrect information or non-compliance with customs regulations.

## 26. Certificates of Origin.

A. Upon request, Seller will promptly furnish Buyer with all certificates of origin and domestic value-added and other information relating to the costs and places of origin of the Goods and the materials contained therein or used in the performance thereof, as may be required by Buyer to comply fully with all customs, tariffs and other applicable governmental regulations. Seller will comply with all such regulations. Seller will indemnify and hold Buyer, Buyer's customers and their respective successors, assigns, representatives, employees and agents harmless from and against all liabilities, demands, claims, losses, costs, damages and expenses of any kind or nature (including attorneys' fees and costs, fines and penalties) arising or resulting from (i) Seller's delay in furnishing such certificates or other information to Buyer, (ii) any errors or omissions contained in such certificates, and (iii) any noncompliance by Seller with such regulations.

B. Seller will provide a completed North American Free Trade Agreement (NAFTA) Certificate(s) of Origin for all NAFTA qualifying Goods sold to Buyer pursuant to the Purchase Order. For Goods not qualifying for NAFTA treatment, Seller will provide Buyer with correct Country of Origin information for each such item. If Seller does not provide the required Certificate(s) or correct Country of Origin information, Buyer may charge-back to Seller any duties, penalties, or other liabilities or expenses (including reasonable attorneys' fees) charged to or imposed or assessed against Buyer.

**27. Compliance with Laws.** Seller will not (i) utilize forced or involuntary labor, regardless of its form, (ii) employ any child, except as part of a government approved job training, apprenticeship or similar program, or (iii) engage in abusive employment or corrupt business practices in the supply or provision of Goods under any Purchase Order. If Seller subcontracts any of its duties or obligations under any Purchase Order in accordance with Section 22, Seller will ensure that all subcontractors comply with the requirements under this Section 27.

**28. Identification of Goods.** All Goods supplied pursuant to each Purchase Order that are construed as a completed part will permanently bear information such as Buyer's part number and name or code name, lot number, Seller's name or code name, and/or date of manufacture by Seller in a manner directed by Buyer.

## 29. Packaging and Shipping.

A. All packaging must conform to Buyer's standard packaging requirements. Seller will: (i) properly pack, mark and ship Goods in accordance with Buyer's requirements and the involved carrier in a manner to secure the lowest transportation cost; (ii) route shipment in accordance with Buyer's instructions; (iii) make no charge for handling, packaging, storage, transportation (including duties, taxes, fees, etc.), cost of vehicle or other transport expenses unless otherwise approved by Buyer in writing; (iv) provide Buyer with shipment papers showing the Purchase Order number, Purchase Order amendment or Release number, Buyer's part number, Seller's part number where applicable, quantity of pieces in shipment, number of cartons or containers in shipment, Seller's name, the bill of lading number and the country of origin; and (v) promptly forward to Buyer the original bill of lading or other shipment receipt for each shipment identification of the Goods on packing slips, bills of lading and invoices will be sufficient to enable Buyer to easily identify the Goods purchased.

B. Seller will promptly provide Buyer with the following information in the form requested: (i) a list of all ingredients and materials in Goods, (ii) the amount of all ingredients, and (iii) information concerning any changes in or additions to the ingredients.

C. Before and at the time the Goods are shipped, Seller will give Buyer sufficient warning in writing (including appropriate labels on all Goods, containers and packing, together with disposal and recycling instructions, material safety data sheets and certificates of analysis) of any hazardous or restricted material that is an ingredient or part of the Goods, together with any special handling instructions that are needed to advise carriers, Buyer and their employees how to take measures to prevent bodily injury or property damage while handling, transporting, processing, using or disposing of the Goods, containers and packing. Seller agrees to comply with all federal, state, provincial and local laws and regulations pertaining to product content and warning labels, including without limitation, the U.S. Toxic Substances Control Act and European Union Directive 2000/53/EC.

D. Seller will reimburse Buyer for any liabilities, expenses and costs incurred as a result of improper packing, marking, routing, shipping or any other noncompliance with the requirements of this Section 29.

E. In no event will shipping documents attached to or contained in the shipment display pricing information or any of Buyer's proprietary information.

F. In the event that no packing requirements are provided by Buyer, Seller will pack the Goods in accordance with the applicable automotive Industry Action Group (AIAG) packing requirement.

### **30. Setoff and Contractual Recoupment.**

A. In addition to any right of setoff or recoupment provided or allowed by law, Buyer and any of its affiliates, subsidiaries and divisions (“**Detroit Thermal Systems Group**”) may setoff against or recoup from any amounts owing to Seller or any of its affiliates, subsidiaries and divisions (“**Seller Group**”) any amounts owing to any member of the Detroit Thermal Systems Group by any member of the Seller Group including, without limitation, for damages resulting from breaches by Seller of its obligations under this or any other Purchase Order.

B. If an obligation of any member of the Seller Group is disputed, contingent or unliquidated, payment by any member of the Detroit Thermal Systems Group of all or any portion of the amount due may be deferred until such dispute contingency is resolved or the obligation is liquidated. Without limiting the generality of the foregoing and by way of example only, in the event of a bankruptcy of Seller, if all of the Purchase Orders between Buyer and Seller have not been assumed, then Buyer may withhold payment to Seller for Goods previously delivered (via an administrative hold or otherwise) until the risk of potential rejection and other damages is eliminated.

### **31. Audit Rights and Financial Information.**

A. If requested by Buyer, Seller will permit Buyer and/or its designees to: (i) examine all pertinent documents, data and other information relating to the Goods, Tooling, Seller’s obligations under the Purchase Order, any payment made to Seller, any claim made by Seller and any quotes, invoices or similar materials from Seller’s own suppliers or subcontractors; (ii) view any facility or process relating to the Goods or the Purchase Order, including those relating to production quality; and (iii) audit any facility or process to determine compliance with the requirements of the Purchase Order. If requested by Buyer, Seller will provide to Buyer its most current income statements, balance sheets, cash flow statements and supporting data and schedules.

B. Seller agrees that if Seller experiences any delivery or operational problems, Buyer may, but is not required to, designate a representative to be present in Seller’s applicable facility to observe Seller’s operations. Seller agrees that if Buyer provides to Seller any accommodations (financial or other) that are necessary for Seller to fulfill its obligations under an Order, Seller will reimburse Buyer for all costs, including attorneys’ and other professionals’ fees, incurred by Buyer in connection with such accommodation and will grant access to Buyer to use Seller’s premises and machinery, equipment, and other property necessary for the production of the Goods covered by the Order. Notwithstanding anything contained in this Section 31 to the contrary, financial information provided by Seller to Buyer hereunder pursuant to a Directed Supply Relationship may be provided to the Customer if Seller fails to provide Buyer with adequate reasonable assurance of Seller’s financial capability to perform any of Seller’s obligations under the Order on a timely basis.

**32. Advertising.** Seller will not refer to Buyer in advertising or public releases without Buyer’s prior written approval and will not use Buyer’s trademarks or trade names in advertising or promotional materials.

### **33. Force Majeure; Labor Disruptions.**

A. Any delay or failure of Buyer or Seller to perform its obligations under the Purchase Order will be excused if, and to the extent that, the party is unable to perform specifically due to an event or occurrence beyond its reasonable control and without its fault or negligence, such as: acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority; embargoes; fires; explosions; natural disasters; riots; or wars. During any delay or failure to perform by Seller, Buyer may, at its option: (a) purchase the Goods from other sources and reduce its Releases to Seller by such quantities without liability of Buyer to Seller, and require Seller to reimburse Buyer for any additional costs to Buyer of obtaining the substitute Goods compared to the prices set forth in the Purchase Order; (b) require Seller to deliver to Buyer, at Buyer’s expense, all finished Goods, work in process and/or parts and materials produced or acquired for work under the Purchase Order; or (c) require Seller to provide Goods from other sources in quantities and at a time requested by Buyer and at the price set forth in the Purchase Order.

B. Seller’s inability to perform as a result of, or delays caused by, Seller’s insolvency or lack of financial resources is deemed to be within Seller’s control. Notwithstanding anything to the contrary herein, the change in cost or inability to obtain power, materials, components, labor, equipment or transportation based on market conditions, supplier actions, contract disputes or any labor strike or other labor disruption applicable to Seller or any of its subcontractors or suppliers, will not excuse Seller’s performance (under theories of force majeure, commercial impracticability or otherwise), and Seller assumes these risks.

C. Written notice of such delay (including the anticipated duration of the delay) must be given to the other party as soon as possible after the occurrence (but no more than ten (10) days after).

D. In addition, Seller at its expense shall take all necessary actions to ensure the supply of Goods to Buyer for a period of at least forty (40) days, or such longer period as Buyer’s Customer shall require, during any anticipated force majeure event or anticipated labor disruption or resulting from the expiration of Seller’s labor contracts, and if Buyer requests, Seller shall, within ten (10) days of Buyer’s request, provide adequate assurance that the delay will cease within such period. If the delay lasts more than 30 days or Seller does not provide adequate assurances that the delay will

cease within 30 days, Buyer may immediately terminate the Order and any funds previously paid by or on behalf of Buyer shall be promptly returned to Buyer, without prejudice to Buyer's other remedies under this Purchase Order or applicable law.

#### **34. Service and Replacement Parts.**

A. From time to time, upon receipt of Buyer's Release for such Goods, Seller will sell to Buyer all Goods necessary for Buyer to fulfill Buyer's and its customer's service and replacement parts requirements for its current model year at the then current production prices plus any actual net cost differential for required unique packaging, provided that sufficient evidence of such packaging costs is provided to Buyer. If the Goods are systems, modules or assemblies, Seller will sell the components or parts of such systems, modules or assemblies at prices that will not in the aggregate exceed the then current production price of the system, module or assembly less the costs of labor involved in connection with the system, module or assembly plus any actual net cost differential for required unique packaging.

B. After termination of the current model production of the vehicle model(s) for which the Goods are produced, Seller will sell to Buyer additional Goods necessary for Buyer to fulfill Buyer's and its customer's service and replacement parts requirements for past model years at the prices then specified in the last Purchase Order for current model production plus any actual net cost differential for required unique packaging for the first five (5) years of past model service. For the following ten (10) years of past model service or such longer period as Buyer's customer requires service parts, the prices will be as specified in the last Purchase Order for current model production plus any actual net cost differential for required unique packaging plus any actual net cost differential for manufacturing costs as mutually agreed by Buyer and Seller.

**35. Claims from Seller.** Any legal action by Seller against Buyer arising under or relating to any Purchase Order must be commenced within one (1) year after the breach or other event giving rise to such claim.

**36. Severability.** If any terms(s) of the Purchase Order is invalid or unenforceable under any statute, regulation, ordinance, Executive Order or other rule of law, such term(s) 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 the Purchase Order will remain in full force and effect.

**37. Notices.** All notices, claims and other communications to Buyer required or permitted under the Purchase Order will be made in writing and will be effective only upon receipt by Buyer. Seller's failure to provide any notice, claim or other communication to Buyer in the manner and within the time periods specified in the Purchase Order will constitute a waiver by Seller of any and all rights and remedies that otherwise would have been available to Seller upon making such notice, claim or other communication.

**38. Electronic Communication.** Seller will comply with the method of electronic communication specified by Buyer, including requirements for electronic funds transfer, purchase order transmission, electronic signature, and other communications.

**39. Relationship of Parties.** Seller and Buyer are independent contracting parties and nothing in these Terms and Conditions will make either party the agent or legal representative of the other for any purpose, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

#### **40. Confidentiality.**

A. Seller will (i) keep all Buyer's Information, Buyer's Property, and the terms of this agreement confidential and disclose it only to its employees who need to know such information in order to fulfill Seller's obligations hereunder and who have agreed to keep such information confidential, (ii) prevent any of such Buyer's Information, Buyer's Property and the terms of this Agreement from being divulged to third persons not employed by Seller without the prior written consent of Buyer, including having recipients acknowledge the confidential status of such information and agree to similar restrictions, and (iii) use Buyer's Information and Buyer's Property solely for the purpose of supplying Goods to Buyer. "**Buyer's information**" means all confidential information provided to Seller by Buyer or its representatives or subcontractors in connection with the business, programs, and Goods, including without limitation data, formulas, compositions, designs, sketches, photographs, samples, prototypes, test vehicles, manufacturing, packaging or shipping methods and processes and computer software and programs (including object code and source code). Buyer's Information also includes any materials or information that contains, or is based on any Buyer's Information, whether prepared by Buyer, Seller or any other person.

B. The obligations in this Section 40 shall survive termination of the Purchase Order and will continue for a period of five (5) years thereafter, or for as long as Buyer's Information or Buyer's Property remains confidential, whichever is longer. Notwithstanding anything to the contrary in a Purchase Order, any confidentiality or non-disclosure agreement between the parties that predates the Purchase Order will remain in effect except as expressly modified by the Purchase Order, and to the extent of a conflict between the express terms of such an agreement relating to Buyer's confidential information and this Section 40, the terms of that agreement will control with respect to Buyer's confidential information.



**41. Entire Agreement; Modifications; No Implied Waiver:**

A. Except as described in Section 1, a Purchase Order including these Terms, together with any attachments, exhibits, supplements, or other terms of Buyer specifically referenced in the Purchase Order, constitutes the entire agreement between Seller and Buyer with respect to the matters contained in this Purchase Order and supersedes all prior oral or written representations and agreements. A Purchase Order may only be modified by a written amendment executed by authorized representatives of each party, or by a revision to the Purchase Order issued by Buyer on Buyer's purchase order form through Buyer's standard purchasing protocol and accepted by Seller as provided in Section 1, or, in the case of changes within the scope of Section 11, by a purchase order revision issued by Buyer or by specific conditions described in the Purchase Order. In the event of any conflict between the terms specified in a Purchase Order and these Terms, the terms specified in the Purchase Order shall govern – subject to the following: in the event and to the extent that the Equipment Purchase Order Addendum also applies (see Section 1(B) above), and in the event of any conflict between the terms of the Purchase Order, these Terms, and the Addendum, the terms of the following shall prevail, in the following order of priority: the Purchase Order, the Addendum, and then these Terms. Any clerical errors contained in the Purchase Order are subject to correction by Buyer.

B. The term "Goods" as defined in Section 1 of these Terms includes, without limitation, any Tooling and/or Equipment ordered by Buyer under a Purchase Order, and these Terms in their entirety apply to the purchase of Tooling and/or Equipment subject to a Purchase Order. Within these Terms, in the event of a conflict between Section 18 ("Bailed Property/Buyer's Property; Tooling") and any other portion of these Terms, the conflict shall be resolved by giving effect to Section 18, and by giving effect to the other provisions of these Terms to the fullest extent possible consistent with giving effect to Section 18.

C. Buyer may modify these Terms and/or the Equipment Purchase Order Addendum with respect to future Purchase Orders at any time by posting revised Terms and/or a revised Equipment Purchase Order Addendum, as applicable, to its internet web site as listed in Section 1, or at such other internet web site as is specified in writing by Buyer to Seller, and such revised Terms and (if applicable) revised Equipment Purchase Order Addendum will apply to all Purchase Orders and Purchase Order amendments issued thereafter. It is the responsibility of Seller to review and obtain a copy of the current version of the Terms and the Equipment Purchase Order Addendum. The Terms and (if applicable) the Equipment Purchase Order Addendum applicable to a Purchase Order or Purchase Order amendment shall be the version of the Terms and Equipment Purchase Order Addendum in effect on the date of the Purchase Order, or the date of the amendment to the Purchase Order, whichever date is later.

D. The failure of either party at any time to require performance by the other party of any provision of a Purchase Order shall in no way affect the right to require performance at any later time, nor shall the waiver of either party of a breach of any provision of a Purchase Order constitute a waiver of any later breach of the same or any other provision of a Purchase Order.

**42. Governing Law; Jurisdiction; Venue.** Each Purchase Order will be governed by the laws of the State of Michigan without regard to any otherwise applicable conflict of laws provisions. The United Nations Convention on the International Sale of Goods is expressly excluded. Buyer and Seller agree that (i) any actions or proceedings brought by Buyer (including without limitation lawsuits seeking monetary relief or equitable relief) concerning any and all disputes between them may be brought by Buyer in any court(s) having jurisdiction over Seller or, at Buyer's option, in any state court located in Metropolitan Detroit, Michigan or in the United States District Court for the Eastern District of Michigan, Southern Division, in which event Seller consents to jurisdiction and service of process in accordance with applicable procedures, and (ii) any actions or proceedings brought by Seller against Buyer (including without limitation lawsuits seeking monetary relief or equitable relief) shall be brought by Seller only in the a state court located in Metropolitan Detroit, Michigan or in the United States District Court for the Eastern District of Michigan, Southern Division, in which event Buyer consents to jurisdiction and service of process in accordance with applicable procedures.

**43. Waiver of Jury Trial.** BUYER AND SELLER ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH OF BUYER AND SELLER, AFTER CONSULTING (OR HAVING THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO ANY PURCHASE ORDER OR ANY OTHER DOCUMENT PERTAINING TO ANY PURCHASE ORDER.

**44. Continuing Obligations.** These Terms and Conditions will survive expiration, non-renewal or termination of the purchasing relationship between Buyer and Seller.

[End of Detroit Thermal Systems Purchasing Terms and Conditions]