



## Innotec, Corp. Terms and Conditions

*Revised May 11, 2021*

### 1. The Contract

#### 1.1 Offer and Acceptance

These terms and conditions (the "Terms and Conditions") are applicable to all purchase orders or similar procurement instruments (each, a "Purchase Order") issued by Innotec, Corp. or any of its affiliates (collectively, "Buyer"). Each Purchase Order that Buyer issues is an offer to purchase the products ("Products") and/or services ("Services") identified in the Purchase Order from the entity set forth therein ("Seller"). Seller will have accepted a Purchase Order as issued if Seller fails to object to it in writing within 10 business days after receipt, commences any work under the Purchase Order, or engages in any other conduct that recognizes the existence of a contract for the Products and/or Services. Upon acceptance, the Purchase Order will become a binding contract between Buyer and Seller. All references to the term "Purchase Order" shall mean the applicable Purchase Order, any Material Release, these Terms and Conditions, the Supplier Manual and any other documents specifically incorporated in the Purchase Order, and shall include blanket and individual purchase orders, releases, or similar documents issued by Buyer to Seller. The Purchase Order supersedes all prior agreements, quotations, proposals and other communications regarding the Products and/or Services covered by the Purchase Order, except that a mutually signed prior agreement (such as an Award Letter, Statement of Work or Non-Disclosure Agreement) will continue to apply. No course of dealing, custom, course of performance, usage of trade or other understanding that purports to amend or waive terms or conditions of the Purchase Order or these Terms and Conditions shall be binding unless made in writing and signed by Buyer and Seller. **ALL PURCHASE ORDERS ARE EXPRESSLY CONDITIONED UPON SELLER'S ACCEPTANCE OF THE EXCLUSIVE APPLICATION OF THESE TERMS AND CONDITIONS.** Unless otherwise agreed upon in writing by a duly authorized representative of Buyer, Buyer rejects, objects to and is not bound by any terms or conditions that differ from, add to, or modify these terms and conditions including, but not limited to, any terms and conditions proposed by Seller whether contained in any forms, acknowledgements, or Seller's website. Unless otherwise specifically stated in the Purchase Order, the Purchase Order is not exclusive between the parties, and Buyer may purchase similar products and services from third parties.

#### 1.2 Supplier Documents and Modifications

Copies of these Terms and Conditions and the Innotec Supplier Manual (the "Supplier Manual") are accessible at [www.innotecgroup.com/company/suppliers/](http://www.innotecgroup.com/company/suppliers/). Buyer may modify these Terms and Conditions and/or the Supplier Manual at any time by posting a revised document on this website. Modifications will be effective on the date posted. Such revised Terms and Conditions shall apply to all Purchase Order revisions/amendments and new Purchase Orders issued on or after the revision date. Seller shall be responsible to review Buyer's website periodically.

#### 1.3 Changes

By notice to Seller, Buyer may make reasonable changes, within the scope of the Purchase Order, to the drawings, specifications, materials, packaging, testing, quantity, time or method of delivery or shipment, or similar requirements prescribed in the Purchase Order. Seller shall have ten (10) business days to notify Buyer in writing, if such change will affect cost or timing and provide the basis for such determination. Buyer and Seller will then negotiate in good faith an equitable price adjustment (up or down) or other appropriate adjustment. Any changes to the Purchase Order must be in writing and signed by Buyer's authorized representative. Seller shall not make any changes to raw materials, supplies or processes, including without limitations, changes in contents, design, specifications, processing, packaging, marking, or shipping, without Buyer's written instructions or Buyer's written approval. Any changes by Seller to any Purchase Order or to the Products without the prior written approval of Buyer shall constitute a breach of the Purchase Order.

### 2. Delivery/Quantity

#### 2.1 Releases

Quantities and delivery schedules to fulfill the Purchase Order will be as reasonably determined by Buyer and stated in Buyer's firm releases ("Material Releases") issued to Seller. Seller agrees to 100% on-time delivery of the quantities and at the times specified by Buyer, as stated in the Purchase Order and related Material Releases. Buyer shall have no liability beyond the quantities specified in a Material Release. Buyer may return over-shipments to Seller at Seller's expense. Seller is responsible to meet schedule increases up to 15% more than the weekly plan or as otherwise required in the Purchase Order.

## **2.2 Packing and Shipment**

Buyer may specify the method of transportation of Products and the type and number of packing slips and other documents to be provided with each shipment. Seller will pack and ship Products in accordance with Buyer's instructions, including labeling and hazardous materials instructions. If Buyer has not provided packing or shipping instructions, Seller will pack and ship Products in accordance with sound commercial practices. Seller agrees to comply with all national, state, provincial, and local laws, rules and regulations and any applicable standards (collectively, "Laws") pertaining to product content and warning labels.

## **2.3 Delivery Schedules**

Unless otherwise stated in the Purchase Order, Products will be delivered F.C.A. Buyer's dock (Incoterms 2000). Title and risk of loss or damage to the Products shall pass to Buyer upon delivery to such location. If Products are not delivered in time to meet Buyer's delivery schedules, and Buyer determines that Seller is the cause of the delay, Seller will be responsible for additional costs of any resulting expedited or other special transportation. Buyer shall be responsible for additional costs of expedited or other special transportation that Buyer may require as a result of changes to its Material Release or delivery schedules. Time is of the essence under the Purchase Order.

## **2.4 Volume/Duration Projections**

From time to time, Buyer may provide Seller with volume or quantity forecasts or projections for the Products or the anticipated duration of the program for which the Products are being produced. Seller acknowledges that any such volume/duration projections (unlike a Material Release) are neither binding on Buyer nor evidence of a requirements contract and are based upon business variables and assumptions which may change over time or may not have been accurate at the time they were made or later. Buyer makes no representation, warranty or guaranty of any kind or nature as to the accuracy of the volume/duration projections and Seller acknowledges that the actual volumes/duration could be significantly less or more than what was projected.

# **3. Cost and Payment**

## **3.1 Cost**

Prices for the Products set forth on the face of the Purchase Order are not subject to increase, including, without limitation, any increase based upon changes in raw material or component pricing or labor or overhead costs. Unless otherwise stated in the Purchase Order, such prices include all packaging and transportation costs and all costs of insurance, taxes, duties, tariffs and any other fees. Seller represents that the prices charged to Buyer for the Products or Services are at least as low as the price charged by Seller to buyers of a class similar to Buyer and for products and/or services similar to those specified in the Purchase Order. If Seller charges any other customer a lower price for such similar goods and/or services, Seller shall notify Buyer and apply that price to the Products and Services under the Purchase Order.

## **3.2 Supplier Expectations**

Seller, at all times, must provide world class Products competitive with top providers of similar goods and/or services as to price, quality, delivery, technology and customer support. Seller's failure to meet the requirements of this subsection is a basis for termination under **Section 13.2** below.

## **3.3 Payment Terms**

Buyer will pay proper invoices on the payment terms set forth in the Purchase Order. Seller will promptly submit correct and complete invoices in a format specified by Buyer with appropriate supporting documentation and other information reasonably required by Buyer after delivery of Products and/or performance of Services. Buyer may withhold payment until a correct and complete invoice or other required information is received and verified. Seller will accept payment by check or other cash equivalent, including electronic funds transfer. Buyer will pay Seller in the currency specified on the Purchase Order (or if not specified, then in U.S. Dollars).

## **3.4 Directed Supplier Payment Terms**

If Buyer's customer directed or otherwise identified Seller as the source from whom Buyer is to obtain the Products: (a) Buyer will pay Seller for the Products using the same payment terms for the Products that Buyer's customer uses for the goods in which the specific Products are incorporated, and any lengthening of the customer's payment terms to Buyer will automatically lengthen the payment terms between Buyer and Seller by an identical amount of time; (b) Seller will notify Buyer in writing within three business days of any change in price, specifications or other terms negotiated between Seller

and the customer and will immediately adjust its invoices to reflect any price change, provided that no change will be binding on Buyer without Buyer's specific written consent.

### **3.5 Insolvency of Customer**

In the event that Buyer's customer files or has filed against it a petition in bankruptcy or insolvency and in the course of such proceeding and in connection with an actual or threatened termination by customer of its purchase orders with Buyer, and if Buyer permits a reduction in the price paid to Buyer for goods sold to such customer to prevent a termination of a purchase order with customer, then Buyer has the right to proportionally adjust Seller's price for Products incorporated in such goods upon 60 days' notice to Seller. The Purchase Order will otherwise remain in effect without modification. By written notice to Seller, Buyer may elect to have the provisions of this Section prevail over any conflicting term between Buyer and Seller.

### **3.6 Setoff**

In addition to any right of setoff or recoupment permitted by law, all amounts due Seller shall be considered net of indebtedness or obligations of Seller to Buyer. Buyer may set off against or recoup from Seller amounts due at any time.

## **4. Product Warranties**

### **4.1 Seller's Warranties**

Seller warrants to Buyer that during the warranty period specified in **Section 4.3**, the Products will be free from defects in workmanship, materials, and design, and will conform to the specifications, drawings, samples, and performance requirements specifically incorporated in the Purchase Order or otherwise specified or provided by Buyer. The Products shall be merchantable and safe and fit for the Buyer's intended purposes. The Products and Services will conform to all applicable Laws. Buyer will receive title to the Products free of all liens, encumbrances, and rights of third parties (except those created by Buyer). Buyer's inspection or approval of any design, drawing, material, condition, process or specifications will not relieve Seller of these warranties. The foregoing warranties, and all other warranties, express or implied, shall survive delivery, inspection, acceptance and payment and shall extend to Buyer's customers at whatever tier.

### **4.2 Seller's Quality Warranties**

Seller warrants conformity to the quality control standards and inspection system, as well as related standards and systems (including quality control policies, QS 9000, ISO 9000 and TS16949:2002) that are established or directed by Buyer. Seller agrees to meet the full requirements of industry Production Part Approval Processes (PPAP) as specified by Buyer and (as applicable) Buyer's customer and agrees to present this information to Buyer upon request, at the level requested. Seller will participate and comply with the Supplier Manual. In the event of any discrepancy between any part of the above programs or standards and an express provision of these Terms and Conditions, these Terms and Conditions will take precedence.

### **4.3 Warranty Period**

The warranty period shall be the longer of three years from the date Buyer accepts the Products, the warranty period provided by applicable law, or the warranty period offered by Buyer or Buyer's customer to its end-users. For the avoidance of doubt, if the warranty period offered by Buyer or Buyer's applicable customer to its end-users is extended, the warranty period under the Purchase Order shall be automatically extended by the same period.

## **5. Inspection/Non-Conforming Products**

### **5.1 Inspection**

Buyer may, with reasonable advance notice to Seller, inspect Seller's production processes and property and conduct testing at Seller's premises for the sole purpose of verifying Seller's performance under the Purchase Order. Seller may restrict Buyer's access as necessary to protect proprietary information in connection with such access. Buyer is not required to inspect Products delivered or Services performed, and no inspection or failure to inspect will reduce or alter Seller's obligations under the Purchase Order.

### **5.2 Non-Conforming Products**

In the event that any Products or Services do not conform to the warranties in **Section 4**, Buyer may, at its option and Seller's expense (including applicable shipping costs): (1) reject the nonconforming Products or Services and return them to Seller for full credit, repair or replacement at Seller's sole risk and expense, including transportation charges, (2) require Seller, at Buyer's option and Seller's expense (including applicable shipping costs), to either repair or replace the nonconforming Products or Services, and (3) if Buyer reasonably determines (through statistical sampling or other quality assessments) that a material amount of incoming Products are non-conforming or if Buyer receives subsequent defective material, require Seller to implement at its expense containment, inspection, sorting, and other quality assurance procedures. To the extent practicable, Buyer will provide Seller access to available warranty data related to the Products

and to any available field-returned Products. Payment for nonconforming Products is not an acceptance, and does not limit or impair Buyer's right to assert any legal or equitable remedy, and does not relieve Seller's responsibility for any non-conforming Products or Services. If, after the implementation of the above, Buyer is still not satisfied with the quality of the Products or Services from Seller, then Buyer shall have the right to terminate the Purchase Order without liability.

### **5.3 Counterfeit Parts**

(a) As used herein, "Part" means any material, product, component, device, module, assembly, subassembly, or the like sold or delivered by Seller to Buyer either as Products or as a constituent part of a Products. "Counterfeit Part" means a Part that is (i) an unauthorized copy or substitute that has been identified, marked, and/or altered by a source other than the Part's legally authorized source and/or has been misrepresented to be an authorized item of the legally authorized source, and/or (ii) previously used parts provided or represented as "new." A Part is a "Suspect Counterfeit Part" if visual inspection, testing, or other information provides reason to believe that the Part may be a Counterfeit Part. As used herein, "authentic" means (i) genuine; (ii) from the legitimate source claimed or implied by the marking and design of the Part offered; and (iii) manufactured by, or at the behest and to the standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the Part.

(b) Seller represents and warrants that only new and authentic Parts and materials are used in Products ordered by Buyer and that such Products contain no Counterfeit Parts. No other Part other than a new and authentic Part shall be used unless approved in advance in writing by Buyer's duly authorized representative. To further mitigate the possibility of the inadvertent use of Counterfeit Parts, Seller shall only purchase authentic parts/components directly from original equipment or component manufacturers (collectively, "OEMs") or through the OEM's authorized distributors. Seller shall make available to Buyer, at Buyer's request, OEM documentation that authenticates traceability of the Parts to the applicable OEM. Purchase of Parts from independent distributors is not authorized unless first approved in writing by Buyer's duly authorized representative.

(c) Should Seller become aware of a confirmed or Suspect Counterfeit Part that, by any means, has been delivered to Buyer or acquired for the Purchase Order whether or not delivered to Buyer, Seller shall notify Buyer in writing as soon as possible but not later than five (5) days of such discovery. Seller shall verify receipt of this notification by Buyer. This requirement shall survive expiration or completion of the Purchase Order. Seller shall be liable for cost of Counterfeit Parts and Suspect Counterfeit Parts and the cost of rework or corrective action that may be required by Buyer to remedy the use or inclusion of such Parts. Seller shall quarantine remaining Suspect Counterfeit Parts and Counterfeit Parts, in inventory and make them available for investigation by appropriate government authorities. Seller shall flow the requirements of this **Section 5.3** to its subcontractors and suppliers at any tier for the performance of the Purchase Order.

### **5.4 Supply Chain Security**

Buyer supports internationally recognized initiatives to secure the commercial supply chain (e.g., C-TPAT, WCO SAFE Framework of Standards, or relevant equivalent standards) so as to assure freight and/or merchandise is not compromised contrary to applicable Laws. Upon Buyer's request, Seller agrees to inform Buyer of Seller's status regarding any such initiatives. Seller shall use reasonable commercial efforts to (i) implement reasonable security control standards to ensure the integrity and correctness of merchandise and accompanying commercial documentation related to relative to the Purchase Order; (ii) implement procedures to protect against un-manifested material being introduced into the supply chain; (iii) implement safeguards to resist unlawful entry to Seller's facilities and to protect against outside intrusion; (iv) implement measures for positively identifying employees, visitors, and vendors and to prevent unauthorized access to information technology systems; (v) to the extent required by applicable Laws, conduct employment screening of prospective employees to include periodic background checks and application verifications; (vi) provide security awareness education and training for employees covering cargo integrity and determining and addressing unauthorized access and communications protocols for notifying policing agencies when suspected or known illegal activities are present; and/or (vii) implement reasonable steps to protect against the introduction of unauthorized personnel and material in conveyance (e.g., containers, trucks, drums, etc.) destined to Buyer. If, as a result of facilitating a shipment to Buyer, Seller suspects a supply chain security breach or concern after dispatch from its facility, Seller is obligated to notify Buyer immediately. Buyer shall cooperate with Seller's assessment of its supply chain security and review of security measures.

## **6. Recall**

"Recall" means any voluntary or government-mandated offer or action by Buyer to remedy an alleged defect that affects safety, quality or performance or to address an alleged failure to comply with any applicable safety standard, requirement or guideline. Unless otherwise stated in the Purchase Order, Seller will be liable for all costs and damages resulting from a Recall if the Recall results in whole or in part from (1) a failure of the Products to conform to the warranties in **Section 4** (even if the warranty period has expired), (2) the acts or omissions of Seller, (3) any negligence by Seller, (4) any defects in the Products or (5) any failure of the Products to comply with any relevant specifications (even if any of the foregoing is not a breach of warranty). Buyer shall fully control any Recall activities, but Buyer will notify Seller as soon as practicable after Buyer learns in writing that a Recall being considered that implicates the Products, and thereafter provide Seller with

all data relating to the potential Recall, and give Seller a reasonable opportunity to participate in inquiries and discussions among Buyer, its customer, and governmental agencies relating to such Recall, and consult with Seller about the most cost-effective method of modifying or replacing the Products in order to remedy the alleged defect or non-compliance. In the event Seller is liable for the Recall as provided above, Buyer may set-off the costs of the Recall against any amounts due to Seller.

## **7. Service Requirements**

During the period in which Buyer uses certain Products in production of products (the "Production Period") and for 10 years thereafter (or such longer period as may be required by Buyer's customers, the "Service Period"), Seller will sell Products (or components or parts thereof) to Buyer or its customers to fulfill service requirements. Unless otherwise agreed in writing by Buyer, the price(s) for the Products during the initial five years of the Service Period will be the price(s) that were in effect at the end of the Production Period and the parties shall negotiate in good faith the price(s) for Products for the remaining five years of the Service Period. Seller's obligations hereunder are in addition to the warranty obligations set forth in **Section 4** hereof.

## **8. Tooling/Capital Equipment**

Buyer and Seller agree that all tooling, dies, gauges, fixtures, molds, and other equipment and property ("Property") needed to produce the Products will meet and/or be made to Buyer's specifications. Any exception to such specifications must be stated in writing on the Purchase Order or otherwise in a signed writing by Buyer. To the extent the Purchase Order states that it is for tooling or capital equipment and unless otherwise stated in the Purchase Order, freight terms are FCA (loaded) Origin - Freight Collect, and Seller agrees to not prepay or add freight charges. Seller shall give Buyer access to Seller's premises, prior and subsequent to payment, to inspect work performed and to verify charges for tooling and equipment submitted by Seller against the Purchase Order or any amendment. The price set forth in the Purchase Order or amendment will be adjusted so as to credit Buyer in the amount, if any, by which the price exceeds Seller's actual cost as verified. Seller agrees to retain all cost records for a period of two years after receiving final payment of the charges and Buyer shall have the right to audit such records to verify the amounts.

## **9. Property**

### **9.1 Buyer's Property**

Buyer shall own or have the right to possess all Property used by Seller to manufacture, store, and transport Products or provide Services if Buyer or Buyer's customer has provided or paid for the Property ("Buyer Group Property"). Seller will hold Buyer Group Property on a bailment basis and will be responsible for loss or damage to any Buyer Group Property while in Seller's possession or control. Seller shall fully insure all Buyer Group Property at its replacement value and name Buyer as a loss payee. To the extent permitted by law, Seller waives any lien or similar right it may have with respect to all Buyer Group Property. Buyer shall be responsible for personal property taxes assessed against Buyer Group Property. Seller will (1) at its expense maintain all Buyer Group Property in good condition and repair, (2) use Buyer Group Property only for the manufacture, storage, and transport of Products for Buyer, unless Buyer otherwise approves in writing, (3) mark all Buyer Group Property as belonging to Buyer or its customer, and (4) not remove any Buyer Group Property (other than shipping containers and the like) from Seller's premises without Buyer's prior written approval. Seller will immediately release to Buyer, upon request, all Buyer Group Property at any time, with or without cause and without payment of any kind unless otherwise provided in the Purchase Order. Seller will release the requested Buyer Group Property and other property to Buyer F.C.A. Seller's plant (Incoterms 2000), properly packed and marked in accordance with the requirements of Buyer's carrier.

### **9.2 Seller's Property**

Seller will own all Property that is not Buyer Group Property. Seller shall, at its expense, furnish, maintain in good condition, and replace when necessary Seller's Property needed to perform the Purchase Order. Seller grants Buyer an irrevocable option to purchase any or all of Seller's Property used to produce the Products at the federal taxation unamortized acquisition cost, less any amounts Buyer has previously paid to Seller for the cost of such Property. Buyer shall have the right to audit Seller's financial records to verify the amounts due hereunder.

## **10. Intellectual Property Rights**

### **10.1 Buyer's Intellectual Property**

Buyer shall retain all rights in, and Buyer does not transfer to Seller, any tangible and intangible property including, but not limited to, information or data of any description, drawings, computer software, know-how, documents, patents, trademarks, copyrights, or other intellectual property right of Buyer ("Buyer's IP") through information, documents or

property made available to Seller other than the right to use Buyer's IP to produce and supply Products and Services to Buyer.

### **10.2 Seller's Intellectual Property**

Buyer and Seller will work together to identify any of Seller's technical information as Seller's intellectual property ("Seller's IP") in the Purchase Order. Without such agreement, Seller's technical information will not be considered Seller's IP. If the Purchase Order is terminated, Seller grants to Buyer a perpetual, irrevocable, non-exclusive, worldwide right and license to use any of Seller's IP to obtain from alternate sources products and services similar to the Products and Services covered by the terminated Purchase Order. There will be no fee for this license if (1) Buyer terminates the Purchase Order by reason of Seller's Default, or (2) Seller terminates the Purchase Order other than for Buyer's Default. Otherwise, the parties shall negotiate a reasonable fee for Buyer's use of Seller's IP.

### **10.3 Intellectual Property Under the Purchase Order**

Seller agrees to assign to Buyer any invention, improvement, discovery, idea, work of authorship, or data, whether or not patentable, conceived or reduced to practice in the performance of the Purchase Order by any person employed by or working under the direction of Seller, and Buyer shall own exclusively all rights thereto, including all patent rights, copyrights, moral rights, rights in proprietary information, trademark rights, and other intellectual property rights. All such intellectual property that is protectable by copyright (i) shall be considered work(s) made for hire for Buyer; or (ii) Seller shall grant Buyer "first owner" status related to the work(s) under local copyright law where the work(s) was created, or (iii) if applicable Law does not allow Buyer to gain ownership of such intellectual property, Seller agrees to grant to Buyer an exclusive, perpetual, royalty-free, irrevocable, transferable license for such intellectual property. Seller agrees to cooperate with Buyer as Buyer may direct in enforcing any Buyer's rights under this Section 10.3, including, without limitation, executing and filing such instruments and other documents as Buyer may request, without cost to Buyer.

### **10.4 Infringement**

Seller expressly warrants that all Products manufactured for, or Services provided to, Buyer under the Purchase Order will not and do not infringe on any license, franchise, patent, trademark, copyright, or other proprietary right, now or hereafter in effect. Seller will indemnify and defend Buyer and its customers, their respective subsidiaries and affiliates and their respective officers, directors, managers, members, employees, and agents and representatives, and their respective successors and assigns, against claims, liabilities, losses, damages, costs, and expenses, including reasonable legal fees (collectively, "Damages"), arising out of the actual or alleged infringement by any Products of a third-party intellectual property right in any jurisdiction. If a claim under this **Section 10.4** results in, or is likely to result in an injunction or other order that would prevent Seller from supplying Buyer with Products, or Buyer from using Products for their intended purpose, Seller will, at its option and sole expense, either (1) secure a license of the Intellectual property that permits Seller to continue supplying the Products to Buyer or permits Buyer to continue using Products for their intended purpose, or (2) modify the Products so that they become non-infringing, so long as the modification does not materially alter the operation or performance of the Products, or (3) replace the Products with non-infringing but practically equivalent Products.

## **11. Confidential Information**

Trade secrets, specifications, drawings, notes, instructions, engineering data and financial data, intellectual property, customer information, and other technical, business or other data supplied or disclosed by Buyer to Seller in connection with the Purchase Order that are marked or otherwise identified as confidential ("Confidential Information") or where their confidential nature is apparent at the time of disclosure, will be deemed confidential and proprietary to, and remain the sole property of, Buyer. Seller may not disclose Confidential Information or use Confidential Information for any purpose other than as specified under the Purchase Order without the prior written consent of Buyer. Seller will use the same degree of care to safeguard Buyer's Confidential Information that it uses to protect its own confidential information from unauthorized access or disclosure, but in any case, at least a reasonably diligent degree of care. Upon request by Buyer, Seller will promptly return or destroy the original and all copies of Confidential Information received.

## **12. Assignment; Subcontracting**

Seller may not assign or subcontract its duties or responsibilities under the Purchase Order without Buyer's prior written consent, which consent Buyer may grant or withhold for any reason or no reason in its sole discretion. For purposes of the Purchase Order, "assign" shall be construed broadly and shall include, but not be limited to, any transfer or any sale of all or substantially all of Seller's assets or changes in control of Seller occurring as the result of any merger, consolidation, operation of law, change of more than 50% of the direct or indirect ownership of Seller, or change of the controlling managers, directors or partners of Seller. An approved assignment does not relieve Seller of its duties or obligations under the Purchase Order or its responsibility for non-performance or default by its assignee or subcontractor. If Buyer requires Seller to subcontract all or a portion of its duties or obligations under the Purchase Order to a designated

subcontractor, Seller shall not be responsible for a breach of the Purchase Order caused by that subcontractor's failure to meet its warranty, delivery, or other contractual obligations.

### **13. Termination**

#### **13.1 Term of the Purchase Order**

Unless a Purchase Order expressly references this **Section 13.1** and states on its face that such Purchase Order is for a more limited period of time or for a specific or limited quantity, the Purchase Order will remain in effect for the length of the applicable OEM program production life (including model refreshes as determined by the OEM customer), regardless of whether (1) the Purchase Order specifies a quantity, (2) the Purchase Order is reissued annually or otherwise, (3) the parties agree to change price or other terms, (4) the Purchase Order numbers change, or (5) the Purchase Order has a date range. Both Buyer and Seller acknowledge the risk of the program production life being cancelled or extended by the OEM, or until cancelled pursuant to the terms of this **Section 13**. Seller may not terminate or cancel the Purchase Order or suspend performance of the Purchase Order for any reason except for breach of a payment obligation by Buyer as outlined in **Section 13.2**.

#### **13.2 Termination for Breach or Convenience**

Buyer may terminate all or part of the Purchase Order, without liability to Seller, if Seller (1) breaches or threatens to breach any terms of the Purchase Order, (2) fails to fix a breach or nonperformance under the Purchase Order within 10 business days of its receipt of written notice thereof, (3) admits in writing its inability to pay its debts as they become due, begins a bankruptcy, insolvency, receivership, or similar proceeding, or makes a general assignment for the benefit of creditors, (4) becomes a debtor in a bankruptcy, insolvency, receivership, or similar proceeding commenced by a third party that is not dismissed within 30 days, (5) fails to provide adequate assurance of performance under the Purchase Order within five business days after written demand by Buyer, (6) dissolves, or (7) assigns or subcontracts the Purchase Order in violation of **Section 12**. In addition to any other right of Buyer to terminate or cancel the Purchase Order, Buyer may, at its sole discretion terminate all or any part of the Purchase Order at any time and for any reason upon 14 days prior notice to the Seller. Upon notice of termination, Seller shall, unless otherwise directed by Buyer and subject to Seller's obligations under **Section 13.4** (1) terminate all or the specified portion of the work under the Purchase Order; (2) transfer title to and deliver to Buyer the useable and merchantable Products, work in process and raw materials that Seller has produced and or purchased based upon the Material Releases issued by Buyer; (3) settle all claims by subcontractors approved by Buyer for reasonable direct and actual costs that are rendered unrecoverable by the termination; (4) upon request, cooperate with transition to an alternate supplier specified by Buyer. Seller may terminate the Purchase Order only for non-payment of properly submitted invoices for Products that are 60 days past due and material in amount, and then only if (a) Seller first provides Buyer with written notice specifying the amounts past due and Seller's intent to terminate the Purchase Order if the past due amount is not paid and (b) Buyer, within sixty (60) days of such notice does not either pay the past due amounts or notify Seller that the amounts claimed to be unpaid are disputed by Buyer.

#### **13.3 Buyer's Obligations under Termination**

Upon any termination of the Purchase Order under **Section 13.2**, Buyer's sole obligation to Seller is payment of the following documented amounts: (1) the Purchase Order price for completed and delivered Products and Services and the actual cost of any work-in-process and raw materials in Seller's possession based upon firm Material Releases (which will become Buyer's property upon payment in full), and (2) reasonable claims of subcontractors of Seller if such claims are directly caused by termination of the Purchase Order. Buyer shall not be obligated to pay Seller for loss of anticipated or direct or indirect profits, liquidated or consequential Damages, unabsorbed overhead, product development or engineering costs, unamortized depreciation, or general and administration burden resulting from termination of the Purchase Order. Seller's claim for any amounts payable pursuant to this **Section 13.3** must be submitted to Buyer within thirty days after the effective date of the termination. Buyer shall have the right to audit the records of Seller to verify the amount sought by Seller.

#### **13.4 Transition of Supply**

In connection with termination of the Purchase Order under **Section 13.2** by either party (including Buyer's decision to change to an alternate Supplier), Seller will cooperate in the transition of supply of Products and/or Services to another provider, including the following: (1) Seller will continue production and delivery of all Products 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 alternate supplier, such that Seller's action or inaction causes no interruption in Buyer's ability to obtain Products as needed. (2) Seller will promptly provide all information and documentation reasonably requested by Buyer regarding Seller's manufacturing process for the Products including on-site inspections, bill of material data, tooling, process detail and samples of components. (3) 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 estimates of such costs. Buyer shall have the right to audit the records of Seller to verify transition support expenses.

## 14. Remedies

### 14.1 *Remedies – Seller's Default*

The rights and remedies reserved to Buyer under the Purchase Order are cumulative with and in addition to all other legal or equitable remedies allowed by law. In addition to any direct Damages sustained by Buyer on account of Seller's breach of the Purchase Order or by delivering nonconforming products, Seller will also be liable for Buyer's indirect, special, consequential (including lost profits, interest, lost market share or damage to brand value), incidental, punitive, and exemplary Damages. In the event Buyer must commence legal action for the production or delivery of the Products or for transition support, Seller acknowledges that Buyer has no adequate remedy at law and Buyer shall be entitled to an immediate order of specific performance of Seller's obligations under the Purchase Order and injunctive equitable relief as a remedy for any such breach.

### 14.2 *Remedies – Buyer's Property*

If Seller does not release or deliver any Buyer Group Property in accordance with **Section 9.1**, Buyer may at Seller's cost (1) obtain an immediate court order for possession without notice and without posting a bond, and (2) enter Seller's premises, with or without legal process, and take immediate possession of such Buyer Group Property. To the extent permitted by law, Seller waives any right to object to Buyer's repossession of Buyer Group Property in a bankruptcy or other proceeding.

### 14.3. *Limitations of Damages*

In no event will Buyer be liable to Seller for its indirect, special, consequential (including lost profits, interest, lost market share or damage to brand value), incidental, punitive, and exemplary Damages, whether or not foreseeable, irrespective of whether Buyer has or has not been advised of the possibility of such Damages. This limitation of liability applies notwithstanding the type of Purchase Order or the nature of Seller's claim in contract, tort or equitable proceeding.

### 14.4 *Indemnification*

Seller agrees to indemnify and hold harmless Buyer, its subsidiaries and affiliates and their respective officers, directors, managers, members, employees, and agents and representatives, and their respective successors and assigns, from any and all Damages of any kind or nature, reasonable costs or reasonable expenses (including attorneys' or other professional fees) incurred in connection with any claims (including lawsuits, administrative claims, regulatory actions and other proceedings to recover for personal injury or death, property damage or economic loss) that are related in any manner to or arise in any way from (a) the Products, Services or any defect therein, (b) any breach of the Purchase Order, (c) the negligence of, or acts or omissions by, Seller or its affiliates, officers, directors, managers, members, employees, or agents or representatives. Seller's indemnification obligation will apply (x) regardless of whether the claim arises in tort, contract, or otherwise, except to the extent of any liability arising solely out of the gross negligence of Buyer, (y) even if Buyer furnishes all or a portion of the design and specifies all or a portion of the processing used by Seller, and (z) even if the warranty period provided under the Purchase Order has expired.

## 15. Force Majeure

A delay or failure by either Buyer or Seller to perform its obligations under the Purchase Order will be excused, and will not constitute a default, only to the extent (1) caused by an event or occurrence beyond the reasonable control of that party and without its fault or negligence such as: acts of God, embargoes, fires, natural disasters or riots (each, a "Force Majeure Event") and (2) the party unable to perform gives the other party written notice of the Force Majeure Event (including its anticipated duration and proposed steps to mitigate its impact on the other party) within 3 days after becoming aware that it has occurred or will occur. If Seller is unable to perform for any reason, Buyer may purchase Products and Services from other sources and reduce its purchases from Seller accordingly without liability to Seller. Within three business days after written request by the other party, the non-performing party will provide adequate assurances that the non-performance will not exceed 30 days. If the non-performance exceeds 30 days, the other party may cancel the Purchase Order. None of the following shall be a Force Majeure Event: (a) changes in the cost or availability of power, transportation, raw materials, components or services, (b) disputes with suppliers or (c) labor disputes, strikes, walkouts or other disruptions. During the period of any Force Majeure Event, Seller shall fulfill Material Releases using existing on-hand stock and Seller's actual output prior to fulfilling orders for the same or similar Products for any of Seller's other customers.

## 16. Labor Contracts

Seller shall notify Buyer in writing of the expiration of a current labor contract that has not been extended or replaced at least six months prior to such expiration. Buyer may thereafter direct Seller in writing to manufacture up to 30 days of additional inventory of Products, specifying the quantities of Products required and any packaging and storage



requirements. By authorizing the additional inventory, Buyer commits to buy the entire quantity of conforming Products requested and produced. Seller is responsible for carrying costs and any additional costs of manufacture.

## 17. Customs

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

## 18. Insurance

During the term of the Purchase Order, Seller shall maintain and upon request furnish to Buyer a certificate evidencing (1) general liability insurance and products liability with coverage limits reasonably acceptable to Buyer and naming Buyer as an additional insured, (2) all risk property perils insurance covering the full replacement value of all Buyer Group Property while in Seller's care, custody, or control and naming Buyer as loss payee, and (3) worker's compensation insurance as required by applicable law. Seller shall provide Buyer with at least 30 days of prior written notice of any cancellation, non-renewal or material change in the insurance policies required under this **Section 18**.

## 19. Dispute Resolution

### 19.1 *Negotiation and Mediation*

Buyer and Seller will first endeavor to resolve through good faith negotiations any dispute arising under the Purchase Order. If a dispute cannot be resolved through good faith negotiations within 45 days of a claimed breach of the Purchase Order, either party may request non-binding mediation by a mediator approved by both parties or, absent that approval, by the National Center for Dispute Resolution.

### 19.2 *Arbitration*

If mediation fails to resolve the dispute within 30 days after the first mediation session, either party may submit the dispute to binding arbitration by notice to the other party. Any arbitration shall be conducted in Grand Rapids, Michigan. The arbitration will be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association and this **Section 19**. The parties agree that a court of competent jurisdiction may render judgment on and enforce any arbitration award. The cost of any arbitration shall be borne evenly by the parties and each party shall bear its own attorneys' fees and other expenses in resolving any dispute related to the Purchase Order. While arbitration proceedings are pending, the parties shall fulfill their obligations under the Purchase Order without setoff for any matters being contested in the arbitration proceeding.

### 19.3 *Litigation*

The parties have selected binding arbitration as the sole means to resolve a dispute between them over monetary claims that cannot be resolved through mediation. Either party may pursue through litigation claims that also involve third parties who have not consented to arbitration, claims in litigation commenced by third parties, and claims for injunctive or other non-monetary relief.

## 20. Insolvency

Buyer, or a third party designated by Buyer may, at any time, review the financial health of the Seller. Seller will fully cooperate with such review and provide all requested financial documentation after mutually agreed upon procedures have been established. Subject to **Section 11**, Buyer will use the financial information provided under this **Section 20** only to determine Seller's ability to perform under the Purchase Order. In the event that Buyer, in its sole discretion, determines that Seller may be unable to perform under the Purchase Order, Buyer may require the Seller to post a performance bond, to grant Buyer a security interest in the assets of the Seller, or to provide other adequate assurance of ability to perform as Buyer may deem appropriate or required, on such terms and conditions as Buyer may in its sole discretion determine. In the event the Seller is unable to provide such adequate assurance, then Buyer may then terminate the Purchase Order on the terms set forth in subsection (5) of **Section 13.2**.

## **21. Export Compliance**

The shipment of Products, provision of Services, and delivery and use of technical information under the Purchaser Order is subject to all Laws that govern export, reexport, or otherwise pertain to the export controls of the United States and any other country in which the Products are manufactured, transferred, sold, shipped, or exported, including, but not limited to, (i) the U.S. Department of Commerce Export Administration Regulations (EAR) and (ii) the U.S. Department of State International Traffic in Arms Regulations (ITAR). Seller hereby agrees to indemnify Buyer for all liabilities, penalties, losses, damages, costs, or expenses that may be imposed on or incurred by Buyer in connection with any violations of such Laws by Seller. Seller agrees to provide Buyer with applicable Export Control Classification Number(s) (ECCN) and ECCN, Harmonized Tariff Code, country of origin, and, upon Buyer's request, eligibility for NAFTA or other trade agreements.

## **22. Conflict Minerals**

Upon request of Buyer, Seller shall determine whether any Products contain tin, tantalum, tungsten, gold or any other materials that are designated under applicable rules of the United States Securities and Exchange Commission ("SEC") as a "conflict mineral". If no Products contain one or more conflict minerals that are necessary to the functionality or production of such Products within the meaning of applicable SEC rules and interpretations, Seller shall, upon request, certify same to Buyer. If any Products contain one or more conflict minerals, Seller shall certify to Buyer the country of origin of any such conflict mineral(s) or that the conflict mineral(s) came from recycled or scrap sources within the meaning of those terms under applicable SEC rules. If Seller is unable to identify the country of origin, and the conflict mineral(s) in question did not come from recycled or scrap sources, Seller shall in good faith conduct an inquiry of its relevant suppliers as to the country of origin of such conflict mineral(s), and such inquiry shall comply with then-existing standards under SEC rules for the conduct of a reasonable country of origin inquiry. In the event that Seller is or becomes aware that any conflict mineral(s) that are necessary to the functionality or production of any Products originated from a "covered country" within the meaning of the SEC's conflict minerals rules and did not come from recycled or scrap sources, Seller shall make a good faith effort to determine whether such conflict minerals came from a processing facility certified as conflict free by a recognized industry group that requires an independent private sector audit of the smelter or from an individual processing facility that has obtained an independent private sector audit that is publicly available, and to provide written documentation of such determination. Seller shall also take such additional actions and provide such additional information requested by Buyer as may be necessary in order for Buyer to be or remain compliant with applicable Laws.

## **23. Miscellaneous**

### **23.1 Advertising**

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

### **23.2 Taxes**

Unless otherwise stated in the Purchase Order, the Purchase Order price includes all applicable federal, state, provincial, and local taxes other than sales, value added, or similar turnover taxes or charges. The Products purchased under the Purchase Order are identified as industrial processing and may be exempt from sales taxes. In such case, the tax identification number and/or other exemption information shall be stated in the Purchase Order or are otherwise provided by Buyer.

### **23.3 Compliance with Laws**

Seller is in compliance with and will comply, and the provision and shipment of Products and/or the provision of Services or work to be performed by Seller under the Purchase Order will comply with, all applicable Laws, including those of the country where the Products are manufactured or the Services are performed and including all reporting requirements. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Purchase Order or these Terms and Conditions. Seller will provide Buyer with material safety data sheets regarding the Products and, upon Buyer's request, will provide Buyer with other information reasonably required in order to comply with applicable Laws.

### **23.4 Relationship of the Parties**

Buyer and Seller are independent contractors, and nothing in the Purchase Order makes either party the agent or legal representative of the other party for any purpose. Neither party has authority to assume or to create any obligation on behalf of the other party.

### **23.5 Waiver**

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

**23.6 Severability**

A finding that any provision of the Purchase Order is invalid or unenforceable in any jurisdiction will not affect the validity or enforceability of any other provision of the Purchase Order or the validity or enforceability of that provision in any other jurisdiction.

**23.7 Notices**

Any legal notice or other communication required or permitted under the Purchase Order must be in writing, in English and will become effective on the date of actual receipt if the date of actual receipt is a business day or on the next business day.

**23.8 Governing Law; Venue**

Unless otherwise agreed in writing, the Purchase Order will be governed by and interpreted according to the internal laws of the state of Michigan. The exclusive venue for all disputes litigated under the Purchase Order shall be the Circuit Court for the State of Michigan located in Kent County, Michigan or the United States District Court for the Western District of Michigan. The parties irrevocably submit to the personal jurisdiction of such courts and waive all rights to object to such venue, including for inconvenience.

**23.9 Electronic Signatures**

Unless agreed otherwise, the parties shall conduct all legal transactions between them (including delivery of notice, document delivery, offer and acceptance, changes, etc.) electronically. The parties agree that any document which bears a signature which is sent by the sender and received by the recipient via email attachment in pdf format shall constitute a legally valid document under the Michigan Uniform Electronic Transaction Act (MCLA 450.831 et seq.).

**23.10 Order of Precedence**

The following order of precedence shall apply in the event of an inconsistency within the Purchase Order and its related documents, as applicable: (i) the Purchase Order; (ii) the Terms and Conditions; (iii) the Supplier Manual; and (iv) any other documents or agreements executed by the parties.