

**Hitachi Astemo**  
**TERMS AND CONDITIONS OF PURCHASE**

Version: 2022-10-04

**1 Relationship**

1.1 The Materials. Subject to the exclusive terms and conditions of these Terms and Conditions of Purchase (“T&C”), Seller agrees to sell to Hitachi Astemo Indiana, Inc. or its subsidiary(ies) (“Buyer”) the goods, services, or material (“the Material”) identified in the Requirements Contract or other order (together with these T&Cs, “the Agreement”). As to regular production goods only, this is a requirements contract.

1.2 Acceptance of the Agreement. The Agreement shall be deemed an offer by Buyer. Seller accepts the Agreement upon its written acceptance or upon commencement of any required work or service. Seller’s acceptance shall be limited to the express written terms of the Agreement. Any new or additional terms contained in Seller’s acceptance documents, or otherwise proposed by Seller, shall be considered nonconforming terms and are unacceptable and expressly rejected by Buyer and shall not become a part of the Agreement. Seller acknowledges that: (i) a request for quotation or similar document issued by Buyer is not an offer by Buyer; and (ii) any response by Seller to a request for quotation or similar document issued by Buyer or any other quote from Seller is not an offer by Seller. The Agreement may be modified or amended only as specified in the Agreement.

**2 Quality**

2.1 Qualification Audit. Prior to start of business with Buyer, if requested by Buyer, Seller shall participate in a Qualification Audit (“Audit”). The Audit shall include an on-site review of Seller’s facilities by member(s) of Buyer’s organization. If there is a determination that an unsatisfactory condition exists with respect to any matter covered by the Audit, then Seller shall receive written notice of the condition and, within fourteen (14) days upon receipt of such notice, shall provide Buyer with a written corrective action plan reasonably satisfactory to Buyer. The parties agree that if Seller fails to timely provide or implement an acceptable corrective action plan to the reasonable satisfaction of Buyer, then Buyer may rescind or terminate the Agreement for cause.

2.2 Compliance to Quality Procedures.

2.2.1 Seller shall comply with Buyer’s Supplier Quality Manual located at [https://am.hitachiastemo.com/sites/default/files/2022-10/Hitachi-Astemo-Indiana-Supplier-Quality-Manual\\_0.zip](https://am.hitachiastemo.com/sites/default/files/2022-10/Hitachi-Astemo-Indiana-Supplier-Quality-Manual_0.zip) and additional requirements upon which both parties mutually agree in writing. Seller acknowledges and understands that the Manual and the Standard may be periodically updated, revised and amended and that it is Seller’s obligation to comply with the Manual and the Standard at all times. Seller's certification regarding the Standard is incorporated by reference into the T&C.

2.2.2 Seller must ensure that its quality assurance system is certified to ISO 9001:2015 or IATF 16949, as modified from time to time, or similar standards applicable to the Materials as specified by Buyer. Seller acknowledges that Buyer maintains conformance with ISO/IATF 16949 as well as other quality programs and Seller agrees to take actions reasonably requested by Buyer to assist Buyer in maintaining such compliance. Buyer and its customers shall have the right during reasonable business hours and upon at least two (2) days prior written notice to inspect the Seller’s facilities and to perform quality audits with respect to the Materials provided. Seller agrees to participate in all Buyer supplier quality and development programs and implement recommended outcomes. A positive outcome of a compliance audit or implementation of quality recommendations shall not relieve Seller of any liability under this part.

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2.3 Verification. The Buyer's customer or customer's representative shall be afforded the right to verify at the Seller's premises and the Buyer's premises that product and process conforms to specified requirements.

2.4 Inspection and Rejection. Buyer shall have the right to inspect any goods or services after delivery and before acceptance and reject any goods or services which are non-conforming. If goods are rejected, the quantities will automatically be reduced unless Buyer otherwise notifies Seller. Seller shall not replace goods rejected by Buyer as non-conforming unless directed by Buyer to do so. Non-conforming goods will be held by Buyer for disposition in accordance with Seller' instructions, and at Seller's cost, within three (3) days after notification of rejection, or such shorter period as may be commercially reasonable under the circumstances. If Seller fails to provide timely disposition instructions, Buyer may, at its option, charge Seller for storage and handling or dispose of such goods without liability for such goods. Payment for non-conforming goods shall not constitute an acceptance, or impair, limit or otherwise restrict Buyer's right to claim any legal or equitable right, nor shall it relieve Seller of any responsibility or liability for defects or breach of warranty that are discovered after delivery, payment or acceptance.

2.5 Corrective Action. In the case of any defective or damaged Material, including but not limited to non-compliance with Seller's Quality System requirements as set forth in this Section 2, Seller agrees: (i) to initiate any required corrective action within 24 hours from the date that Buyer requests such action, (ii) to provide Buyer with a written report explaining the cause of the defect or damage within 5 business days of such date, and (iii) to provide Buyer with a written report identifying the short and long term action being taken by Seller to prevent or avoid similar defects or damage in the future within 15 working days of such date. The short-term action is defined as the immediate corrective action to ensure the defective, damaged or otherwise not in conformity Material is contained within 24 hours of the occurrence. The long-term action is defined to be the root cause analysis and resulting actions to ensure the occurrence will not reoccur. Notwithstanding anything in the T&C to the contrary, the parties agree that if Buyer is not reasonably satisfied that the short and long term corrective action as set forth above will be sufficient to prevent or avoid similar defects or damage in the future, or if Seller fails to take the short and long term corrective action in the manner and the time period set forth in the submitted report, Buyer may terminate the Purchase Order with respect to the particular part numbers of Material as applicable or the entire Agreement by providing written notice 30 days prior to termination.

### **3 Specifications, Confidential Information, Intellectual Property**

3.1 Confidential Information. The following shall be considered Confidential Information of Buyer: (i) any written specifications for the Material and processing of the Material covered under the T&C which Buyer has or later does provide to with regard to the Materials covered under the T&C ("Purchase Specifications"); (ii) any other business or technical information, including without limitation, all oral or written information relating to the Materials, or information relating to Buyer's customers, suppliers, business practices, products, designs, inventions, or research and development; and (iii) the terms and conditions of the T&C. However, "Confidential Information" shall not include any information that Seller can establish by written documentation was: (i) in the public domain at the time of disclosure or thereafter through no fault of Seller; (ii) independently developed by Seller; or (iii) obtained by Seller without restriction from a third party. Seller agrees to safeguard the Confidential Information by using reasonable efforts, consistent with those used in the protection of its own proprietary information of a similar nature, to prevent its disclosure to third parties. Seller agrees to cause its employees, "contractors", officers, directors, agents and representatives to be bound by and comply with the foregoing restrictions regarding the use or disclosure of such confidential and proprietary information. Seller further agrees not to assert any claims with respect to any technical information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the Materials.

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3.2 Intellectual Property. Buyer remains the owner of Confidential Information and any drawings, models, patterns, tools, dies, jigs, specifications of delivery or other documents (collectively “Intellectual Property”) that Buyer provides to Seller. Without Buyer's written consent, such Intellectual Property may not be used for the Seller's own purposes or for any other purpose or made available to third parties and may be used only for the purpose of the delivery of Materials to Buyer. Buyer may request at any time that such Intellectual Property be returned. Seller shall not, without first obtaining the written consent of Buyer, in any manner publish Buyer’s name or otherwise indicate that Seller has furnished or contracted Materials to Buyer.

3.3 Production Rights. Buyer does not grant or convey to Seller and Buyer reserves all rights to use tooling, drawings, designs, patterns or materials or other information belonging to Buyer or supplied by or on behalf of Buyer in the production, manufacture or design of goods for third parties or for the manufacture or production of larger quantities than those specified in the Agreement. This, however, does not preclude Seller from producing, manufacturing or designing goods for anyone other than Buyer if such goods are not of Buyer’s design or specifications and if tooling is owned by Seller.

3.4 Customer Relationships. Seller agrees that it will not solicit any business from any customer of Buyer where such business has already been sourced to Buyer, nor will it submit quotes to any customer of Buyer regarding any business that has been sourced to Buyer, unless otherwise approved in writing by Buyer. This provision applies to current business of Buyer and to replacement business on programs that were sourced to Buyer. Seller agrees that during the course of the Agreement, it will have no communication with Buyer's customers that is in any way damaging to Buyer, and further agrees that it will immediately report to Buyer any communication that Seller's representatives have with any of Buyer's customers relating in any way to Buyer.

#### **4 Process Change**

Seller agrees to process and package all Materials in conformity with any purchase specifications supplied. At the request of Buyer and prior to delivery of any new or changed Materials, the Seller shall provide samples to Buyer for the purposes of inspection and testing. Once purchase specifications or a sample has been approved, Seller may not alter the function, appearance, characteristics, material or production method or processes, manufacturing location, subcontractors, or material suppliers without advance written approval from Buyer. For all changes, Seller shall comply with Production Part Approval Process requirements and/or other applicable industry requirements. Buyer's final approval of samples shall not affect the Seller's liability for any defects in the Materials.

#### **5 Delivery**

5.1 Delivery Date. The delivery date shall be the date designated by Buyer in written material releases or other writing. The parties agree that in the event that Seller fails to deliver any order/release for Material on the delivery date, Buyer, in addition to other rights or remedies it may have, shall be entitled, at its option, to cancel the order/release for the Material which was not timely delivered without any obligation or liability to Seller and to purchase such Material from a third party.

5.2 Performance Obligation. As time is of the essence, Seller shall deliver all orders for Material 100% "on time." The term "on time" shall mean on the delivery date.

5.3 Corrective Action. Should at any time Seller fail to deliver required Materials per the delivery date, Seller shall incur all costs of expedited delivery and any other reasonable cost incurred by Buyer that may be made necessary to make such a delivery to Buyer and Buyer's customer.

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5.4 Material Surplus. Material Surplus is defined to be manufacture by Seller in advance of normal flow time or delivery of any good in advance of Buyer's schedule. Should at any time Seller have a Material Surplus made to Buyer's specification, Seller shall not sell the Material Surplus to anyone but Buyer. If Buyer chooses to not purchase said Material Surplus product, Seller guarantees to destroy Material Surplus within 30 days of Buyer's decision to not purchase. Seller will certify the destruction of the Material Surplus, specifying the quantity of product destroyed and method of destruction, within 3 days of occurrence of destruction. Seller shall be responsible for all costs incurred as a part of said destruction.

5.5 Capacity. Seller represents that the production capacity quoted to Buyer is based on a tooling and production plan capable of supplying goods to support Buyer's peak daily and annual requirements.

## **6 Forecasts**

From time to time, Buyer may issue forecasts of its anticipated Material Requirements. The parties acknowledge that any forecast is an estimate only and is subject to change at any time. Seller will not manufacture Materials or procure raw materials in excess of that required to fill Buyer's firm releases, unless earlier procurement is agreed to and authorized in writing by Buyer in advance. Subject to this paragraph, at the expiration of the Agreement, Buyer agrees to purchase conforming Materials and raw materials in Seller's possession and built in accordance with a firm release. If authorized by Buyer in writing, however, Seller will use its best efforts to resell this inventory, with the resale price credited against any amount otherwise due under this paragraph. Seller acknowledges that notwithstanding any quantity estimates provided, Buyer's requirements are determined largely by Buyer's Customer and consumer demand, and accordingly, Seller may not rely on any estimates, and instead shall reserve enough production capacity for Buyer's actual requirements, regardless of quantity.

## **7 Productivity and Price Competitiveness**

7.1 Base Price. The base price and any future year over year cost reductions for each part number of Material ordered by Buyer during the term from Seller shall be the price set forth in the Agreement. Unless otherwise stated, the purchase price: (i) is a firm fixed price for the duration of the Agreement and not subject to increase for any reason, including increased raw material costs, increased labor or other manufacturing costs, increased development costs, or changes in volumes or program length from those estimated or expected; (ii) is inclusive of all federal, state, provincial, and local taxes and any duties applicable to provision of the Supplies; and (iii) is inclusive of all storage, handling, packaging and all other expenses and charges of Seller.

7.2 Maintaining Price Competitiveness. Seller shall be, at all times, competitive in price, quality, performance and fulfillment of obligations. If Seller is determined by the Buyer not to be competitive, especially on pricing, Buyer shall be entitled to re-source any or all parts to a more competitive source.

7.3 Productivity. Seller agrees to lower its price at the end of each one (1) year period during the term of this Agreement.

## **8 Shipment and Payment Terms**

8.1 Premium Charges. Seller shall be responsible for any premium freight charges required in order for Seller to deliver an order by the applicable delivery date or remedy a past due situation found to be the responsibility of Seller.

8.2 Invoices. Seller shall invoice Buyer upon shipment of an order unless implementing Evaluating Receipt System (ERS) or other non-invoice process. Invoices and packing lists must be sent to locations

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identified by Buyer. For shipments that will cross national borders (exports) the required documentation must be provided to parties identified by the Buyer no later than the time of shipment.

8.3 Payment. Buyer shall make payment for conforming Materials at the price stated in the Agreement. Payment terms shall be net 60 days following receipt of a valid invoice, unless otherwise agreed between the parties in writing. The price of any releases shall be the limit of the liability of Buyer for the Materials. Any cash discount or payment privilege to Buyer shall be extended until such invoice and compliance certification are received. Unless otherwise stated in the Agreement, all payments are in U.S. Dollars and include all storage, handling, packing, freight, insurance, taxes, duties and any other charge of any nature. Seller represents and warrants that the prices charged to Buyer shall be no less favorable than those which Seller extends to its most-favored-customers for like goods and services. In addition to any other remedy which may be available, Buyer shall have the right of set off with respect to any sums due Seller by Buyer with any sums payable by Seller to Buyer under any agreement between the parties.

**9 Warranty**

9.1 Warranty. The Seller warrants that the Materials:

- 9.1.1 will conform to drawings, materials, descriptions and specifications designated by Buyer and with all samples approved by Buyer;
- 9.1.2 will be of merchantable quality and fit and sufficient for the particular purposes intended, new, best available technology, safe, of first-class materials and workmanship and free from defects, contamination and rust;
- 9.1.3 will be packaged and marked correctly.
- 9.1.4 if designed by Seller, free from defects in design.
- 9.1.5 will comply with all Laws, in accordance with Section 15.1.
- 9.1.6 will not infringe any patents, copyrights or other proprietary rights of Seller or others, and
- 9.1.7 will be free from all liens and encumbrances.

9.2 Warranty Period. All warranties of Seller extend to future performance of the Materials and are not modified, waived or discharged by delivery, inspection, tests, acceptance and payment. Buyer's approval of any design, drawing, material, process or specifications will not relieve Seller of these warranties. Seller waives any right to notice of breach. The warranty period is the longest of: four years from the date Buyer accepts the Materials, the warranty period provided by applicable law, or the warranty period offered by Buyer or its Customer to end-users for the products into which the Materials are incorporated.

9.3 Non-conformity. In the event that Buyer determines that any Material is defective, damaged or otherwise not in conformity, Buyer may reject the Material and in such case, Buyer shall not be obligated for payment of the purchase price and may cancel the order/release without obligation or liability. Should Seller not make whole on promised goods and services or, if Buyer has already paid for the Material in question, Seller shall, at Buyer's option, either: (i) replace or reprocess the Material; or (ii) reimburse Buyer for the purchase price of the Material. In addition, Seller shall pay for Buyer's reasonable costs including but not limited to, Buyer's cost of repackaging, manufacturing and transporting the defective Material and/or replacement Material to and from Buyer's or Buyer's customer's facility and cost to cover by purchase of equivalent material from a third party.

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9.4 Damages. The Seller is liable for all direct, incidental and consequential damages, losses, costs, and expenses incurred by the Buyer resulting from Seller's failure to deliver conforming and non-defective Materials or to comply with the shipping and delivery or other requirements of the Buyer, even if the Seller has cured the failure. This includes but is not limited to compensating Buyer for:

- 9.4.1 any amounts charged by Customer(s) to Buyer;
- 9.4.2 all costs of containment, sorting, repair, replacement, cure, cover, or any other costs incurred by Buyer, determined in such manner and in such amount as reasonably determined by Buyer;
- 9.4.3 all costs of any recall campaign, corrective service action, or other voluntary or involuntary action in which Buyer or any Customer participates related to the Materials

## **10 Insurance**

Without limiting Seller's liability, Seller agrees to furnish and agrees to cause its subcontractors to furnish certificates from their insurance carriers showing that they carry Worker's Compensation, Commercial General Liability, including Products Liability (at a minimum of \$5,000,000 per occurrence), Completed Operations and Contractual Liability, "All Risks" Property (including, but not limited to, coverage for tooling and material maintained by Seller and owned by Buyer), and Comprehensive Automobile insurance coverage within 10 days of Buyer's written request. Certificates must show the amount of coverage, number of policy, and date of expiration, and in respect to Product Liability coverage, must name Buyer as an additional named insured. Seller may not terminate or modify insurance coverage without informing Buyer in advance and showing new equivalent coverage.

## **11 Bailed Property**

11.1 Property Damage. Seller bears all responsibility for loss of and damage to any property owned by Buyer and in Seller's possession or control for use in performing under the Agreement, including responsibility for loss and damage which occur despite Seller's exercise of reasonable care. Seller will: (i) Properly house and maintain all Buyer owned property on Seller's premises; (ii) Prominently mark it property of Buyer; (iii) Adequately insure such property against loss or damage; and (iv) Refrain from commingling it with the property of Seller or with that of a third party.

11.2 Liens. Seller affirmatively waives any lien, whether based in statute or common law, that Seller might otherwise have on any Materials or Buyer's property for work done thereon or otherwise. Seller will assign to Buyer any claims against third parties with respect to Buyer's property. Upon request, Seller will immediately deliver such property at Buyer's option, F.O.B. Buyer's premises or C.I.F. Buyer's Plant/Delivered Buyer's Plant, properly packed and marked in accordance with the requirements of the carrier and Buyer. Seller will cooperate with Buyer's removal of the property from Seller's premises. Seller's cooperation with delivery and removal of Buyer's property is not contingent on final payment unless final payment is both undisputed and overdue.

11.3 Tooling. Special dies, jigs, tools and patterns and/or other equipment that is dedicated to the production of Materials (collectively "Tooling") used in connection with the Materials for which Buyer has agreed to pay Seller (whether paid separately or amortized in the price of the Materials) shall be or become the property of Buyer upon fabrication or acquisition by the Seller, regardless of payment.

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**12 Indemnification and Products Liability**

12.1 General. Seller shall indemnify and hold Buyer and Buyer's customers harmless from and against any and all claims, damages, recall and other costs, liabilities and expenses (including without limitation, reasonable attorneys' fees) incurred by reason of any breach of warranty made by Seller or other obligation by Seller under the T&C or other defect or unsafe condition with respect to any Material. If Seller is obligated to indemnify under this Section, then Buyer may at its option participate in the defense of any claim with its own counsel, at Seller's expense.

12.2 Infringement. The Seller shall defend, indemnify and hold Buyer and Buyer's customers harmless against any and all liabilities, damages or expenses (including reasonable attorney fees) which may be incurred in connection with any suit, claim, judgment or demand asserting that any Material purchased by Buyer infringes upon any patent or other intellectual property rights, whether such infringement is caused by the manufacture, purchase, use or disposition of the Material along or in combination with use of the Material with other products except to the extent that such infringement or alleged infringement arises from a solely from a design furnished by Buyer. Tolerance modifications to Seller's design shall be considered Seller's design. Buyer shall notify the Seller of any written claim or notice of any infringement of third party intellectual property rights in connection with the Agreement. The Seller shall immediately take all steps to prevent or settle such dispute on its own authority and shall hold the Buyer harmless against all effects whatsoever in respect thereof. Buyer may retain counsel of its choice at its expense to participate in any suit, claim, or proceeding. Seller shall have the right to settle or compromise any suit, claim or proceeding at its discretion, provided that the terms of the settlement or compromise provide for the unconditional release of Buyer, Buyer's customer and any other downstream customer, and the settlement or compromise only requires the payment of monetary damages by Seller. Seller shall not settle, without Buyer's prior written consent, any suit, claim or proceeding which imposes upon Buyer any obligation, or in any way prejudices the rights of Buyer, other than as set forth herein. Any other settlement or compromise requires prior written approval from Buyer.

**13 Term and Termination**

13.1 Term. The Agreement shall commence upon acceptance under Section 1.2. Subject to Buyer's termination rights, the Agreement is binding on the parties for the length of the applicable Original Equipment Manufacturer ("OEM") vehicle program production life (including model refreshes and service part obligations 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 Material is not utilized by Buyer for the production of automotive parts or systems, the agreement formed by any purchase order or similar document referencing these T&Cs (the "Order") Order will be binding for one year from the date an Order is transmitted to Seller. In such case, subject to Buyer's termination rights, the 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 Order not be renewed. Notwithstanding the foregoing, if an expiration date is stated in the Order, the term of the Order will continue until that date. Unless specifically waived in writing by an authorized representative of Buyer, Seller's obligations with respect to service and replacement parts will survive the termination or expiration of the Agreement as set forth below.

13.2 Termination by Buyer. In addition to any other termination right which Buyer has, it may terminate the Agreement, any order issued under the Agreement or any Order:

13.2.1 for convenience, with thirty days advance notice. Advance notice is not required if Buyer's customer terminates for any reason, or if Buyer exits the business and/or closes a plant which is the recipient of the Material.

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13.2.2 for breach or threatened breach by Seller of any term of the Agreement if such breach is not corrected, or such threatened breach is not satisfactorily repudiated and adequate assurances of performance provided, within ten (10) calendar days (or shorter period of time if required under the circumstances) of notice by Buyer.

13.2.3 Seller fails to make progress toward delivery of Materials, goods or services so as to endanger timely and proper delivery of goods and fails to provide adequate assurances of performance within ten (10) calendar days (or shorter period of time if required under the circumstances) of notice by Buyer.

13.3 Declaring a default or breach under this Paragraph 13 shall be in addition to any other remedy available to Buyer and shall not relieve Seller of its obligations under the Agreement or imposed by law.

13.4 Termination by Seller. The Seller may terminate the Agreement only for non-payment of the purchase price for Materials which are sixty or more days past due and material in amount, and then only if: (i) Seller first provides Buyer written notice specifying the amounts past due and Seller's intent to terminate if the past due amount is not paid; and (ii) Buyer, within 60 days of such notice, does not either: (x) pay the past due amounts; or (y) notify Seller that the amount claimed to be unpaid are disputed by Buyer. Seller shall terminate under this Section by delivering a Termination Notice to Buyer. Seller may not terminate or cancel for any reason except as permitted under this Section. Seller may not suspend performance for any reason.

13.5 Obligations on Termination. In the event of any termination, other than termination for cause under Clauses 13.2.2 or 13.2.3 or termination as a result of force majeure under Clause 15.5 and unless otherwise agreed by Buyer and Seller, Buyer shall pay to Seller the following amounts, without duplication: a) the Agreement price for all goods or services that have been completed and delivered in conformance with the Agreement and not previously paid for, and b) the actual and reasonable costs of work-in-process and raw materials incurred by Seller, as permitted under Section 6, less, the sum of the reasonable value or costs (whichever is higher) of any goods or materials used or sold by Seller with Buyer's written consent, and the cost of any damaged or destroyed goods or materials. Buyer will make no payment for finished goods, work-in-process or raw materials fabricated or procured by Seller in amounts in excess of those authorized or necessary to meet the then existing delivery schedules nor for any undelivered goods that are in Seller's standard stock or that are readily marketable. Buyer's maximum liability for payments pursuant to this paragraph shall not exceed the total of all required payments under the Agreement for firm releases minus those actually made. In no event shall Buyer be liable for payments owed to Seller's subcontractors or for loss of anticipated profits, unabsorbed overhead, interest, product development or engineering costs, facilities and equipment costs or rental, unrecovered depreciation costs, or general and administrative burden charges. Seller shall submit its claim for payments under this paragraph, with supporting documentation, within 60 days of the effective termination date. Buyer shall have the right to audit the relevant books and records, facilities, work, material, inventories and other items relating to Seller's claim.

13.6 Transition of Materials Following Termination or Expiration. Following expiration or notice of termination of the Agreement by either party for any reason (including termination by Seller) and notwithstanding any claimed or actual breach of any obligation by Buyer, Seller will cooperate in the transition of supply to a successor supplier, including the following, which will collectively be referred to as "Transition Support":

13.6.1 Seller will continue production and delivery of all Materials as ordered by Buyer, at the prices and other terms stated in the Agreement, without premium or other condition, during the entire period reasonably needed by Buyer to complete the transition to the alternate



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supplier(s), such that Seller's action or inaction causes no interruption in Buyer's ability to obtain Materials as needed;

13.6.2 At no cost to Buyer, Seller will 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 Materials and components; and

13.6.3 Seller will provide overtime production, storage and/or management of extra inventory of Materials, extraordinary packaging and transportation and other special services as expressly requested by Buyer in writing. If the transition occurs for reasons other than Seller's termination for Default, Buyer will, at the end of the transition period, pay the reasonable, actual cost of the assistance under this Section, 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 Seller will accept the agreed portion without prejudice to Seller's right to seek to recover any disputed amounts, and complete Transition Support.

## **14 Remedies**

14.1 The rights and remedies reserved to Buyer will be cumulative with and in addition to all other legal or equitable remedies.

14.2 In any action brought by Buyer to enforce Seller's obligations in connection with the production or delivery of Materials or transition support, or for possession of property, the parties agree that Buyer does not have an adequate remedy at law and Buyer is entitled to an immediate order for specific performance of Seller's obligations (including related temporary and preliminary injunctive relief).

14.3 Seller shall reimburse Buyer for all actual attorney's fees (including the cost of in-house counsel) in any action arising out of this Order, unless Seller is the prevailing party.

## **15 Other Provisions**

15.1 Compliance with Laws. Seller and its subcontractors shall comply with all applicable laws, regulations, directives, guidelines, rules, orders, conventions, ordinances and standards of the country(ies) of origin and destination or that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval or certification of the goods or services, including, but not limited to, those relating to environmental matters, data protection and privacy, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety (collectively, "Laws"). Seller further represents that neither it nor any of its subcontractors will utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in abusive worker treatment or corrupt business practices, in the supply of goods or provision of services under the T&C. At Buyer's request, Seller shall certify in writing its and its subcontractors compliance with the foregoing. Seller shall indemnify and hold the Buyer harmless from and against any liability claims, demands or expenses (including attorney's or other professional fees) arising from or relating to Seller or Seller's subcontractor's non-compliance.

15.2 Notice. Whenever written notice is required or permitted to be given hereunder, it shall be deemed given on the date the same is delivered, personally or by Federal Express or comparable commercial service, or three (3) working days after the mailing thereof, to the party to whom the notice is to be given at its last known address

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15.3 Directed Seller. If Buyer's customer directed, recommended, requested, suggested or otherwise identified Seller as a source of the Materials: (a) Buyer will pay Seller for the Materials only following and to the extent of Buyer's actual receipt of payment from that customer for those goods in which the specific Materials are incorporated; (b) within three business days of any change in price, specifications or other terms negotiated or proposed between Seller and the customer, Seller will notify Buyer in writing and will immediately adjust its invoices to reflect any price reduction, provided that no change will be binding on Buyer without Buyer's specific written consent.

15.4 No Agency. Nothing in the T&C shall constitute or be deemed to constitute an agency relationship between the parties. No party hereto is authorized or empowered to act as an agent for the other.

15.5 Force Majeure. Except as set forth herein, neither party shall be liable for failure to perform or delay in performance hereunder if such failure or delay is due to fire, storm, flood, war, embargo, or any act of God or other cause or contingency beyond such party's reasonable control and not reasonably anticipated; provided that, if any act or event described in this Section prevents or will prevent Seller from performing its obligations under the T&C, Buyer shall have the right, without obligation or liability to Seller, to purchase Material from another supplier until Seller is able to resume performance of its obligations hereunder. Under such circumstances Seller shall reimburse Buyer for any premium reasonably and verifiably paid by Buyer for such Material. Seller shall immediately provide Buyer with notice of any force majeure event or anticipated force majeure event. If the force majeure event continues for more than thirty days, Buyer shall have the right to terminate this Agreement.

15.6 No Assignment. Seller may not assign its rights or obligations under the T&C to any other party without the prior written consent of Buyer.

15.7 Governing Law; Jurisdiction. The T&C shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. The provisions of the United Nations Convention on Contracts for the International Sale of Goods, and any conflict-of-laws provisions that would require application of another choice of law, are excluded. The parties agree and consent to the exclusive jurisdiction of the Circuit Court for Mercer County, Kentucky or the U.S. District Court for the Eastern District of Kentucky, as applicable, provided, however, that Buyer may elect to bring an action against Seller in any court having jurisdiction over Seller.

15.8 Survival. The provision of Sections 3, 9, 11, 12, 13.5, 13.6, 14 and 17 contained in the T&C shall survive the termination of the Agreement for any reason. The termination of the Agreement shall not affect in any manner the rights and obligations of the parties accruing prior to the date of such termination nor any rights or remedies existing at law or in equity by reason of any breach of any term of the Agreement which occurred prior to such termination.

15.9 No Waiver. NO WAIVER OF ANY BREACH OF ANY PROVISION OF THESE TERMS WILL CONSTITUTE A WAIVER OF ANY OTHER BREACH OR OF SUCH PROVISION. THESE TERMS MAY BE MODIFIED ONLY IN WRITING SIGNED BY AUTHORIZED REPRESENTATIVES OF BUYER AND SUPPLIER. HOWEVER, BUYER MAY, AT ANY TIME, BY WRITTEN CHANGE ORDER, MAKE CHANGES IN: (A) QUANTITIES ORDERED; (B) THE DRAWINGS, DESIGNS OR SPECIFICATIONS APPLICABLE TO THE GOODS OR SERVICES COVERED BY THIS ORDER; (C) THE METHOD OF SHIPMENT AND PACKING; AND/OR (D) THE PLACE OF DELIVERY. IF SUCH CHANGES MATERIALLY AFFECT THE TIME FOR PERFORMANCE, THE COST OF MANUFACTURING THE GOODS, OR THE COST OF FURNISHING SERVICES, BUYER WILL MAKE AN EQUITABLE ADJUSTMENT IN THE PURCHASE PRICE OR THE DELIVERY SCHEDULE OR BOTH. ANY DISPUTE WITH RESPECT TO AN EQUITABLE ADJUSTMENT SHALL NOT RELIEVE SELLER OF ITS OBLIGATION TO PERFORM IN ACCORDANCE WITH A WRITTEN CHANGE ORDER.

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15.10 Entire Agreement. The Agreement is intended as a final expression and a complete and exclusive statement of the agreement between the parties respecting the subject matter hereof and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. No amendment to or modification of the Agreement shall be valid or binding upon either party unless it is made in writing and signed by a duly authorized representative of both parties unless otherwise required by law.

15.11 Severability. In the event that any provision of the Agreement is held illegal, invalid or unenforceable for any reason, such illegality, unenforceability or invalidity shall at the option of the party against whom the same is asserted not affect the remaining parts of the Agreement but the Agreement shall be construed and enforced as if that provision had never been inserted herein.

15.12 Communication and Technology. When notified of availability by Buyer, the Seller shall be required to connect to Buyer's EDI systems to provide two-way electronic communication for items that include, but are not limited to ASNs, invoices, schedules, etc. All costs associated with the connection and use of the systems will be borne by the Seller.

15.13 No License. Nothing in the Agreement will be construed as granting any right or license to the Seller, either express or implied, to any Intellectual Property right of the Buyer or any right to use Confidential Information except for the purposes of the Agreement. Upon expiration or termination of the Agreement, Seller shall immediately cease all use of Buyer's Intellectual Property or Confidential Information. All copies of Buyer's Confidential Information shall be immediately returned to Seller or destroyed at Buyer's discretion.

15.14 Trade Remedy Proceedings. Seller understands that the goods it produces may be, either now or in the future, subject to one or more trade remedy proceedings (e.g., anti-dumping, countervailing duty, safeguard) in the United States or another country, which may result in the imposition of additional duties or other charges on the goods. If such proceedings are initiated, Seller agrees that, at Buyer's request, it will cooperate fully with Buyer and with requests for information from the competent government authorities in the importing country. Seller further understands and agrees that such cooperation may require it to provide confidential sales and cost information to the competent authorities so that they can calculate the amount of the duty or other charge on the goods.

At all times before, during, or after the initiation of a trade remedy proceeding in the United States or another country, Seller agrees to take all available steps necessary to minimize the risk that additional duties or other charges may be imposed on its goods sold to Buyer. Seller also provides Buyer with a warranty of non-applicability of any future additional duties or other charges (e.g., anti-dumping duties) covering the goods sold to Buyer, so long as the goods are: (1) sold before the date of publication of the official government notice that establishes the authority of the competent authorities to impose additional duties or other charges (i.e., the "order"); and (2) exported before the date of publication of the official government notice concluding the investigation phase of the trade remedy proceeding. The purpose of this provision is to comply with U.S. regulation 19 C.F.R. 351.402(f) (2006). Buyer retains the right to terminate the T&C if additional duties or other charges are imposed on the goods produced by Seller.

## **16 Import Laws**

For Seller's goods to be imported into the United States, Seller shall comply with all applicable recommendations or requirements of the United States Bureau of Customs and Border Protection's Customer-Trade Partnership Against Terrorism ("C-TPAT") initiative (for information go to <http://www.cbp.gov/> and find the link to the C-TPAT section). At the Buyer's or the Bureau of Customs and Border Protection's request, Seller shall certify in writing its compliance with the forgoing. Seller

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shall indemnify and hold the Buyer harmless from and against any liability, claims, demands or expenses (including attorney's or other professional fees) arising from or relating to Seller's noncompliance.

**17 Trademark and Marks**

17.1 Trademark Protection: Buyer may require Seller to place Buyer's trademarks (MARKS) on the Material. If Buyer makes such a request, Buyer grants to Seller a limited, revocable, nonexclusive royalty free license for the term of the T&C to use the MARKS on products and packaging materials in connection with the sale of Material to Buyer only. This license grant is limited to sales made to Buyer or at the direction of Buyer. The license granted in the T&C is limited to Material manufactured and/or produced by Seller at the direction of and for Buyer, or Buyer's authorized subsidiaries or affiliates. Seller is not authorized to use the MARKS in connection with the sales, manufacturing or distribution of any products or services unless expressly authorized by Buyer in writing. Upon expiration or termination of the T&C for any reason, Seller will immediately refrain from further use of the MARKS or any further reference to them, direct or indirect, or anything deemed by Buyer to be similar to the MARKS in connection with the manufacture, sale or distribution of any of Seller's products.

17.2 Ownership of Marks

- 17.2.1 Seller recognizes there is significant value and good will associated with the MARKS, and acknowledges that the MARKS and all rights and good will associated with the MARKS belong exclusively to Buyer.
- 17.2.2 Seller's every use of the MARKS shall inure to the benefit of Buyer and Seller shall not at any time acquire any rights in the MARKS by virtue of any use it may make with of the MARKS.
- 17.2.3 Seller shall cooperate fully and in good faith with Buyer for the purpose of securing and preserving Buyer's rights to the MARKS.
- 17.2.4 Upon the termination or expiration of the T&C, Seller will be deemed to have assigned, transferred, and conveyed to Buyer any rights or good will to the MARKS that may have been obtained by Seller. Seller shall cooperate with and do all acts necessary so that Buyer can accomplish or confirm the foregoing. Any such assignment, transfer, or conveyance shall be without other consideration than the mutual covenants and considerations of the T&C.
- 17.2.5 Seller and its parent company, subsidiaries, and divisions, if any, and its subcontractors, agents, and representatives agree not to attempt to register the MARKS on any product or service either during the terms of or after termination of the T&C.