



TERMS AND CONDITIONS OF PURCHASING OF **DETROIT MANUFACTURING SYSTEMS, LLC** AND ITS SUBSIDIARIES AND AFFILIATES

“Buyer” shall refer to [Detroit Manufacturing Systems, LLC](#) and/or its affiliate or subsidiary as the case may be, and “Seller” shall refer to the entity listed on the face of a Purchase Order or the other Party executing these Terms and Conditions, (the “Terms”). (Buyer and Seller are each a “party” and collectively, the “Parties”.) The term “Purchase Order” as used herein shall mean any and all purchase orders issued to Seller by Buyer. The terms “Goods” or “Services” hereunder shall mean such goods or services, as the case may be, provided to Buyer by Seller pursuant to a Purchase Order.

1. ACCEPTANCE: Any acceptance of a Purchase Order is limited to acceptance of the express terms of Buyer’s offer as set forth in these Terms and Conditions and the Purchase Order. Any proposal for additional or different terms or any attempt whatsoever by Seller to vary any of the terms of a Purchase Order (whether in Seller’s quotation form, acknowledgement form, invoice or otherwise) shall be deemed material and is hereby objected to and rejected. Seller’s written acceptance of the Purchase Order, or its earlier commencement of (i) work on the Goods subject to a Purchase Order or shipment of the Goods, whichever occurs first, or (ii) performance of all or any portion of the Services for which a Purchase Order has been issued, shall constitute acceptance of Buyer’s offer contained in a Purchase Order. Submission of an invoice or shipping statement referencing or relating to a Purchase Order, whether in writing or electronically, shall constitute a written acceptance of such Purchase Order and these Terms and Conditions. In addition to any other rights of Buyer, Buyer may cancel a Purchase Order at any time prior to Buyer’s actual knowledge of Seller’s acceptance.

2. CUSTOMER TERMS: Except to the extent of any conflict with explicit terms of a Purchase Order, Seller shall comply with the general terms and conditions of purchasing of Buyers’ customer (“Customer”) or other agreement received by Buyer from the Customer, if the terms of such other agreement are provided to Seller, whereby Buyer agrees to supply to the Customer or to incorporate the Goods or Services into the products supplied by Buyer to the Customer. Buyer may but shall not be obligated to, from time to time, provide Seller with information regarding the Customer Purchase Order(s) but, in any event, Seller shall be responsible for ascertaining the general terms and conditions relevant to a Customer purchase order that may affect Seller’s obligations hereunder. Without restricting the foregoing, Seller shall take such steps, provide such disclosure and do all things as may be necessary or desirable and within Seller’s control to enable Buyer to meet Buyer’s obligations to the Customer under the Customer’s purchase order(s). If there is any conflict or inconsistency between this paragraph and any other paragraph in any Purchase Order, Buyer shall have the right to have the provisions of this paragraph and these Terms prevail.

3. LABELING, PACKING AND SHIPPING: All Goods are to be suitably prepared for shipment and must be labeled, packed and shipped in accordance with Buyer’s specifications as set forth on any Purchase Order and in the [Detroit Manufacturing Systems](#) Supplier Requirements Manual and Label Quality Procedure (which can be found at www.dmsna.com) as the same may be amended from time to time (including the marking of all cases, packages, boxes or other containers with the number of the related Purchase Order, and enclosing therewith or attaching thereto a shipping notice showing the contents thereof, together with the name of the Seller and, if different, the name of the shipper). The pricing set forth in a Purchase Order shall be inclusive of labeling, packing, boxing and crating and Seller shall not charge Buyer for labeling, packing, boxing or crating except as stated specifically in a Purchase Order. Goods shipped in advance of Release’s (as defined hereinafter) or the shipping dates specified in a Purchase Order or Release, or in excess of the quantity ordered, shall be at Seller’s risk, and may be returned to Seller, with all transportation charges both to and from the



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original destination payable by the Seller. If the Goods are not shipped in strict accordance with these Terms and Conditions, Buyer's directions and/or the instructions set out in a Purchase Order or Release, if any, then Seller shall pay or reimburse Buyer, as the case may be, for any excess costs occasioned thereby.

4. DELIVERY:

- (a) Time is of the essence with regard to performance under any Purchase Order.
- (b) Deliveries are to be made both in the quantities and at the times specified in a Purchase Order or if not specified therein, in such quantities and at such times as may be indicated in Buyer's Releases or other instructions. If Seller is unable to make shipments as specified in a Purchase Order or in a Release or other instructions from Buyer, then Seller will immediately notify Buyer and Buyer shall have the right to cancel such Purchase Order without liability and without prejudice to Buyer's right to claim from Seller any losses or damages occasioned thereby. Prior to Seller's first production shipment on a new or revised part number (drawing or revision level or revised supplier process) Seller shall provide an AIAG warrant with PPAP in accordance with AIAG and the [Detroit Manufacturing Systems PPAP checklist](#).
- (c) For purposes of a Purchase Order, notwithstanding any agreement concerning payment of freight expenses, delivery shall not have occurred and the risk of loss shall not have transferred to Buyer until delivery of the Goods to Buyer's facility and acceptance by Buyer thereof. Buyer shall not be required to make payment for Goods delivered to Buyer which is in excess of quantities specified in Buyer's delivery schedules.
- (d) Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which shall entitle Seller to a modification of the prices for the Goods.
- (e) Title to any Goods shall pass to Buyer from the earlier of the date upon which Buyer has made payment for such Goods or delivery of such Goods to Buyer and no reservation of title clause proposed by the Seller shall be effective against the Buyer, except if expressly accepted in writing by the Buyer. The Seller shall assure that no reservation of title clause shall be asserted by its subcontractors for any element delivered by them and which is part of the Goods and/or Services.
- (f) Transfer of risk of loss related to the Services shall be upon their final acceptance by Buyer as set forth in these Terms.
- (g) Seller shall pay, for any delay in the delivery or the performance of supply, a late delivery charge equal to \$250 per delivery and a \$350 administrative fee per delivery. The late delivery charge is in addition to all other rights or remedies of the Buyer and is not an election of remedies. Buyer retains all other rights and remedies available to it in law or equity.

5. PRODUCTION CAPACITY; FLEXIBILITY: Quantities indicated in a Purchase Order are given for information purposes only and do not represent a commitment for purchase. The actual quantities shall be specified by Releases issued by Buyer. The term "Release" means Buyer's authorization for shipment of the Goods, which authorization may be electronic or in writing and which (i) shall specify the quantity of the Goods and the delivery dates and (ii) may authorize Seller to procure raw materials and/or components.

- (a) In the event that Buyer's Customer imposes an increase in vehicle production for which the Goods or Services are required, the Seller agrees to fulfill upon Buyer's request any additional requirements for Goods or Services at the agreed pricing in the Purchase Order and without additional compensation.
- (b) In the event that Buyer's Customer imposes a reduction or stoppage of vehicle production for which the Goods or Services are required, Buyer shall have the right, without any liability whatsoever:
 - i. With respect to a reduction in production to adjust the quantities ordered from the Seller accordingly, without additional cost; and
 - ii. With respect to stoppage of production, to terminate any related Purchase Order(s) and related



agreements without cause and as an event of Force Majeure without cost to Buyer.

- iii. In the event of such termination or reduction, except to the extent compensated by Buyer's Customer, each of the Parties shall bear its own costs resulting from such circumstances.
- (c) In the event Seller believes that requested volumes of Goods exceed the agreed manufacturing capacity, Seller shall give timely notice of its claim. Such notice shall not relieve Seller of its obligation to timely deliver unless such requested volumes exceed the agreed manufacturing capacity and Seller cannot reasonably meet such volumes.

6. ACCEPTANCE OF GOODS OR SERVICES; DEFECTIVE AND/OR NONCONFORMING GOODS AND SERVICES:

(a) Acceptance of Goods.

- i. Buyer shall do its best to inform the Seller of any apparent defects in the Goods as soon as possible from the time at which such defects should be detectable in the ordinary course of operations.
- ii. Buyer's failure to assert a claim or reserve such claim at the time of delivery and/or payment for Goods shall not be considered as a final acceptance of the Goods delivered, nor as an acceptance of the amount invoiced, and shall not, under any condition, be deemed as a waiver by Buyer of its right to assert any claim in the future in accordance with all applicable laws.

(b) Rejection of Goods. Buyer reserves the right to reject the Goods in any form whatsoever, in the event of other than an immaterial non-compliance of the Goods. Buyer also reserves the right to reject delivery of excess quantities of the Goods in the same manner.

(c) Acceptance of Services.

Services shall be accepted by Buyer only upon completion of performance which shall occur either:

- 1 upon the date provided in the Purchase Order or other written agreement, and only if Services are satisfactory without reservation; or
- 2 upon the date on which all reservations have been withdrawn by Buyer as evidenced by Buyer's execution and delivery of a corresponding completion certificate.

(d) Rejection of Services.

Buyer reserves the right to reject the Services if:

- 1 at the completion date of the Services, the Services are not satisfactory without reservation, by reason of other than immaterial nonconformity or defect; or
- 2 Buyer's reservations have not been withdrawn within the time limits established by the Parties by reason of other than immaterial nonconformity or defect ; or
- 3 the Seller has failed to comply with the Service delivery schedule or completion deadlines.

(e) Defective and/or nonconforming Goods and Services.

- i. If any of the Goods or Services fail to meet the warranties contained in these Terms, any applicable law or any other written agreement between the Parties, the Buyer shall have at anytime, without prejudice to the right of Buyer to terminate or to claim compensatory damages, the option, to:
 - 1 have such Goods repaired or replaced immediately by and at the sole expense of the Seller, who shall have no right to raise any objections or claims regarding the production or delivery schedule or as to Services have such Services performed again immediately by and at the sole expense of the Seller, who shall have no right to raise any objection; or
 - 2 have such nonconforming Services performed by a third party designated by Buyer, at the sole expense of the Seller who shall have no right to raise any objection; or



- 3 have the purchase price for the Goods or payment for Services promptly refunded promptly upon demand of Buyer; or
- 4 otherwise satisfactorily deal with the defective or nonconforming Goods or Services (including, to the extent applicable, participation in recall, claims adjustment and other similar programs) in a manner acceptable to Buyer in its sole discretion, at Seller's sole expense.

ii. Any rejected Goods must be recovered by the Seller at its sole expense and risk within eight (8) calendar days following notice of rejection by Buyer. It is expressly agreed that after such time, Buyer may, without any liability whatsoever, at the Seller's sole cost, expense and risk, either destroy the rejected Goods, or return them to the Seller.

(f) Failure to timely cure. Should Seller fail or otherwise be unable to cure any such breach or nonconformity within the time-frame or other parameters required by Buyer (and whether or not such time-frame or other parameters are communicated to Seller) (i) Buyer may cancel in whole or part any Purchase Order as to the particular defective or nonconforming Goods and Services, or (ii) Buyer may, in Buyer's sole discretion, (and without any obligation to do so), assume control over the correction, repair, replacement or other rectification efforts, processes and programs, in which case Seller shall pay or reimburse Buyer for all associated costs and expenses (including Buyer's internal handling, reworking and administrative time, labor and materials). After notice to Seller, all defective or nonconforming Goods shall be held at Seller's risk. Buyer may, and at Seller's direction, shall return such Goods to Seller at Seller's risk, and all sorting and handling charges, as well as transportation, freight and delivery charges (both to and from the original destination) and any other related expenses, shall be paid by Seller. Any payment made by Buyer to Seller for such defective or nonconforming Goods or Services shall be immediately refunded by Seller, unless and to the extent that Seller promptly corrects, repairs, replaces or otherwise satisfactorily corrects such nonconformity. Seller's warranties shall also apply to such corrected, repaired, or replaced Goods and Services.

7. INVOICES: Seller shall send the original invoice(s) which shall comply with all applicable legal requirements (plus two additional copies) and bill(s) of lading to Accounts.payable@dms-na.com. Seller's invoice(s) shall show the Number of the Purchase Order and all items invoiced, with quantities, unit prices and taxes (if any) listed separately. The words final invoice (or similar terminology) shall appear on Seller's last invoice covering the completion of the Purchase Order. If Buyer expressly agrees to be responsible for transportation, freight or delivery charges (if not included as part of the price on the face of the Purchase Order) such costs shall be invoiced separately, with receipted copies of freight bills attached. Any cash discount period available to Buyer shall commence on the day of Buyer's receipt of an invoice or final invoice that meets the requirements set forth above, provided that the Goods have been received by Buyer and/or the Services rendered by Seller. Where the Goods or Services are provided on an international basis, Seller shall supply, without additional charge, such number of additional certified copies of invoices and customs or other documents as may be requested or specified by Buyer from time to time. Note that goods received that are settled via the Evaluated Receipt Settlement (ERS) process does not require the Seller to submit invoices.

8. DELAYS:

(a) If Seller fails to perform as required under a Purchase Order or fails to make deliveries as contemplated by a Purchase Order, Buyer may cancel the then remaining balance of the Purchase Order, unless the delay is an excusable delay as defined in these Terms. In addition, if any of Seller's performance or deliveries fails to meet schedule other than by reason of an excusable delay, Buyer may direct expedited routing and charge Seller for all excess costs incurred thereby and all additional handling charges and other expenses resulting therefrom. If Seller is subject to one or more excusable delays which persist for



more than 20 days in succession or 45 days in the aggregate, then Buyer may, at any time thereafter, cancel the then remaining balance of the Purchase Order without liability (except for such cancellation charges, if any, as may be specifically agreed upon by Buyer in Buyer's sole discretion).

- (b) The term "excusable delay" means any delay in performance or in the making of deliveries under a Purchase Order which results without fault or negligence on the part of the party involved and which is due to causes beyond such party's reasonable control. Excusable delay shall not, however, mean or include internal strikes or labor disputes or financial difficulties at Seller or strikes or labor disputes or financial difficulties at a sub-supplier of Seller.
- (c) Buyer may delay delivery or acceptance of the Goods or performance of the Services, by reason of an excusable delay, in which case Seller shall hold the Goods and/or delay performance of the Services, at Buyer's direction, until such time as the cause of the excusable delay has been removed.
- (d) Whenever an actual or potential excusable or inexcusable delay is delaying or threatens to delay performance or the making of deliveries under a Purchase Order, the delayed party shall immediately give notice and details thereof to the other party.
- (e) If, under the terms of a Purchase Order, Buyer expressly grants Seller exclusive or single source rights to supply the Goods or Services to Buyer, such grant of rights shall not restrict Buyer's ability to absolute entitlement to procure goods and services which are the same as or similar to the Goods and Services from third parties in the event of (and throughout the period of) a delay and, at Buyer's option, to reduce a Purchase Order by such quantities without liability to Seller.
- (f) Without limiting Seller's obligations hereunder, in the event of any supply allocation by Seller, Seller shall give preference to Buyer for all of the Goods and Services ordered from Seller.

9. TRANSPORTATION CHARGES, CUSTOMS DUTIES AND TAXES:

- (a) Except where the terms of delivery or conditions of transport are stated differently on any Purchase Order the delivery point for all shipments of Goods shall be DDP Buyer's facility and all transportation, freight and delivery charges shall be at Seller's expense. No charge shall be made for insurance, storage, parking or detention except as provided on any Purchase Order.
- (b) Unless otherwise stated in a Purchase Order the prices are inclusive of all customs duties and expenses and all Federal, State, local and foreign taxes (including import, excise, sales and/or goods and services taxes) applicable to the sale of the Goods or the provision of Services.
- (c) Any reduction in Seller's costs resulting from a reduction in transportation, freight and delivery charges, customs duties, import taxes, excise taxes and/or sales taxes from those in effect on the date of the Purchase Order shall be credited or paid to Buyer by Seller in reduction of the price of the Goods and/or Services.
- (d) For shipments to or from Mexico, in accordance with the Value Added Tax Law ("VATL"), this tax must be stated expressly and separately from any other item, including the price. Seller's invoices and any other documentation concerning Buyer's purchases or sales must state the Value Added Tax in an express and separate form.

10. IMPORT COMPLIANCE; CUSTOMS DRAWBACK DOCUMENTS:

- (a) Regardless of the stated delivery term, any importation or exportation of Goods to reach Buyer's facilities must comply with all Buyer import/export procedures and Government regulations for the countries of import and export. All Goods must be valued, classified and be processed under the correct import/export classification, type of shipment or trade agreement.
- (b) Seller shall be responsible for any failure by Seller to comply with such procedures and regulations and shall defend and hold Buyer harmless from any costs, fines, expedited freight, or production line stoppages arising from such failure.



(c) For Seller shipments into the USA:

- i. If Seller is listed on the Bureau of Industry and Security (BIS) website as a Denied Person/Party at any point in time during the business relationship, Buyer shall have the right to immediately terminate all Purchase Orders in whole or part for cause and without further liability or obligation to Seller.
- ii. If Seller ships Goods by sea-freight at anytime, this mode of transportation requires an Importer Security Filing (ISF) to be provided to the US CBP at least 48 hours in advance of shipment.

(d) Seller is responsible to ensure the required documentation is accurate and available including but not limited to: Required documentation Customs Form 7501, Commercial Invoice, Manufacturers Affidavit (MA), Certificate of Origin (COO), Importer Security Filing Invoice, Importer Security Filing (ISF), NAFTA Certificate, Declaration of Foreign Shipper, and Importer Declaration.

(e) Whether Buyer or Seller is listed as the Importer of Record (IOR), for international shipments, Seller shall in all events be responsible to ensure compliance with all importation and applicable laws, rules and guidelines are met. If Seller utilizes a third party freight broker Seller shall remain responsible for ensuring compliance with all legal requirements.

(f) Upon request, Seller shall furnish promptly all documents and other information required for customs drawback purposes, properly completed in accordance with applicable governmental regulations. Unless otherwise stated in a Purchase Order, all customs drawback shall be reserved and retained for, or credited or paid to, Buyer.

11. VALUE ADDED: Upon request, Seller shall furnish promptly all certificates and other information of domestic value added, properly completed in accordance with applicable governmental regulations.

12. PAYMENT: Unless otherwise provided in these Terms or otherwise stated on the face of a Purchase Order, net invoices (subject to applicable withholding taxes, charge-backs and other matters, if any) shall be paid within 5 days of the later of (i) 60 days after the end of the month during which the Goods were delivered and/or Services were accepted, or (ii) 60 days after the end of the month during which the Seller's Goods are paid for by Buyer's Customer. Notwithstanding the foregoing, in the event Seller is a supplier that Buyer's Customer has directed Buyer to utilize, a "mandated supplier", and in the event that Buyer's Customer fails to pay Buyer for any Goods and/or Services delivered and/or performed by Seller as a mandated supplier, then Buyer shall have no obligation to pay Seller for such Goods until such time as Buyer receives payment for such Goods from its Customer.

13. SET-OFF/SUBCONTRACTS:

- (a) In addition to any right of set-off provided by law, all amounts due or to become due to Seller from Buyer shall be considered net of indebtedness of Seller (and/or Seller's affiliates) to Buyer (and/or Buyer's affiliates), and Buyer may deduct or set-off at any time any such indebtedness from any amounts due or to become due to Seller (and/or Seller's affiliates) from Buyer (and/or Buyer's affiliates).
- (b) For purposes of any Purchase Order, Seller shall not enter into any subcontract or sub-purchase orders for other than standard commercial supplies or raw materials, except with the express prior written approval of Buyer.

14. CHANGES:

- (a) Buyer reserves the right to make changes in the Specifications (as defined below) and other provisions of a Purchase Order. In the event that any such change causes an increase or decrease in the price of, or the time required for, the delivery of the Goods or the performance of the Services, upon timely request



by Seller, an equitable adjustment shall be made in the price or delivery/performance schedule, or both, and the relevant Purchase Order shall be modified in writing accordingly. Seller shall have the burden of evidencing a change in its costs and acknowledges that not every engineering change shall result in an adjustment to the pricing for such Goods. Such adjustment, if any, shall relate solely to the costs related to the changes implemented by Buyer. Seller shall submit its written request for an adjustment within 30 days following the notification of the change by Buyer. If Seller does not submit its written request within said 30 days, Seller shall be deemed to have waived any adjustment to the pricing for such Goods. Buyer shall be entitled to audit Seller's records to confirm the Seller's claims with regard to any such request.

- (b) In the event Seller wishes to change any Specifications, design or part numbers (or other types of identification), or make changes in processes or procedures or any changes in Seller's subcontractors, or any changes to raw materials or goods used by Seller in the manufacture or supply of the Goods or performing the Services or in the location of the facilities used by Seller for providing the Goods or performing the Services, then Seller shall request in writing permission from Buyer to make such changes. Seller shall not make such changes until or unless approved in writing by Buyer.

15. PRICE WARRANTY: Seller warrants that its pricing under any Purchase Order complies with all applicable laws and regulations. Seller warrants that the prices for the Goods and Services are, and shall remain, at least as favorable to Buyer than the prices currently extended to any other customer of Seller for the same or substantially similar goods or services in the same or substantially similar quantities and delivery/performance requirements. If Seller reduces the prices of such same or substantially similar goods or services during the duration of any Purchase Order, Seller shall reduce the prices of Goods and Services correspondingly. Seller warrants that the prices shown on the Purchase Order(s) are complete, and no additional charges of any type shall be added without Buyer's express written consent. Seller expressly assumes the risk of any event or cause (whether or not foreseeable) affecting such prices including but not limited to any changes in Seller's costs for labor, raw material and/or energy. Except as specifically provided in a Purchase Order or in these Terms, the pricing set forth in a Purchase Order is firm and shall only be modified as provided herein and only with advance written agreement by Buyer. Except as specifically set forth on the face of a Purchase Order, the pricing shall not be subject to adjustment for currency fluctuation. Any estimated volumes that may have been provided represent estimates from Buyer's Customer and are not a commitment to purchase any minimum quantity of Goods. Seller acknowledges having received all information and all other elements required for or relevant to the determination of the price. Therefore, Seller shall not assert mistake or any lack of understanding or failure to arrive at a meeting of the minds as a basis for a total or partial breach by Seller or to claim a price increase or any other form of compensation.

Seller acknowledges and agrees that the pricing set forth in a Purchase Order represents agreed pricing between the Parties based upon information supplied by Seller in its Quotation Analysis Form. Buyer shall have the right at any time, to audit Seller's books, documents and records to confirm the material content and cost, cycle times, labor costs and other information set forth in the Quotation Analysis Form for accuracy. In the event that as a result of the audit by Buyer, Buyer reasonably determines that Seller's actual labor costs, material content or costs, cycle times or other costs are less than those set forth in the Quotation Analysis Form, Buyer shall be entitled to a price reduction to reflect Seller's actual cost of production. The price reduction due Buyer may be retroactive and in such events Seller shall promptly refund to Buyer such amounts as determined by Buyer to have been overpaid. Notwithstanding the foregoing, in no event shall Seller be entitled to a price increase as a result of this provision or any audit and Seller acknowledges that the pricing contained in a Purchase Order is a



not to exceed amount. Seller shall provide Buyer reasonable access to its books, documents and records so as to permit Buyer the ability to conduct its audit.

16. **COMPETITIVENESS:** Buyer requires improvements in productivity and efficiency by Seller. Seller must remain competitive in all respects, including but not limited to price, quality, delivery and reliability. It is agreed that if new technology becomes available which would provide a different and more economical method of manufacture for the Goods provided by Seller, that Seller shall have an obligation to undertake the implementation of such technology and processes at its own expense. The savings achieved in connection with such required improvements shall be divided equitably between the Parties with consideration given to the source of such savings and the capital or other expenditures required to achieve such savings. If the Parties cannot agree on an equitable allocation Buyer may terminate a Purchase Order in accordance with the provisions of this Section. If Seller fails to maintain its competitive status, Buyer may give Seller written notice that Seller has become less than competitive. The written notice from Buyer will indicate in reasonable detail those areas of performance, including, but not limited to, delivery, quality, technology or pricing, which form the basis for Buyer's assertion that Seller has failed to remain competitive. After receipt of such notice Seller shall have ten (10) days to dispute Buyer's assertion and sixty (60) calendar days in which to become competitive and cure the default. Any objection by Seller to Buyer's notice shall not extend the cure period. If Seller fails to become competitive during the 60-day cure period, then Buyer thereafter may terminate part or all of a Purchase Order by giving not less than sixty (60) additional calendar days prior written notice of termination to Seller, (the "Termination Period"). The Termination Period shall not be construed as a cure period. If Seller is non-competitive as to price only, Seller shall not be considered in default within the cure period so long as prior to the end of the cure period Seller matches the competitive price. In the event of a termination by reason of Seller's failure to remain competitive, such termination shall be for cause and Buyer shall have no liability, obligations or commitments to Seller of any type or nature whatsoever after the end of the Termination Period.

17. **WARRANTIES REGARDING THE GOODS AND SERVICES:**

- (a) Seller expressly warrants that all of the Goods and Services, including any special tools, dies, jigs, fixtures, patterns, raw materials, machinery and equipment obtained by Seller at Buyer's expense and/or which are to become the property of Buyer under a Purchase Order, shall conform to and fulfill all drawings, specifications, samples and other descriptions furnished, specified or adopted by Buyer, hereinafter the foregoing being the "Specifications", shall be merchantable, free from any defects in design, (to the extent designed by Seller) material and workmanship and free of all liens, claims and encumbrances whatsoever.
- (b) If the Goods constitute special tools, dies, jigs, fixtures, patterns, raw materials, machinery or equipment, Seller further warrants that such Goods will operate and perform successfully on a commercial scale in accordance with Buyer's usual requirements and methods of operation. Additionally, Seller acknowledges that Seller knows the particular purpose for which Buyer intends to use the Goods or Services and Seller warrants such Goods and Services shall be fit and sufficient for such particular purpose. Seller's warranties herein are available to, and are granted for the benefit of, Buyer, Buyer's affiliates and their respective successors, assigns, customers and users of products incorporating the Goods or Services.
- (c) These warranties shall be in addition to all other warranties and conditions, express, implied, statutory or otherwise, available under applicable law. Seller shall indemnify and save Buyer, Buyer's affiliates and their respective successors, assigns, customers and users of products incorporating the Goods and Services, harmless from any breach of these warranties and, for greater certainty, no limitation on Buyer's rights or remedies in Seller's documents, if any, shall operate to reduce this indemnification.



- (d) Seller shall also indemnify and hold Buyer harmless from all liability, damages and associated costs and expenses (including any lost profits, recall costs and other direct or indirect, consequential or special damages) imposed upon Buyer resulting from the acts, omissions or negligence of Seller in respect of the Goods and Services and/or Seller's breach of these warranties.
- (e) The warranty period shall equal the greater of: (i) five (5) year(s) from the later of the date of delivery of the Goods or final run-off for machines, equipment, spare parts and/or Services; or (ii) any warranty period that has been agreed to by Buyer and Seller, documented in writing and signed by Buyer; or (iii) 100,000 miles on the vehicle in which the Goods are incorporated; or (iv) Buyer's warranty granted to Buyer's Customer; or (v) as provided by applicable law.

18. INFORMATION, ADVICE AND WARNINGS: As a specialist in its business the Seller shall, regardless of Buyer's ability and/or know-how, provide Buyer with all information, advice and warnings necessary or useful for the Goods or Services provided by Seller. Most particularly, the Seller must:

- (a) Provide Buyer with any information and advice essential to the proper storage and use of the Goods; and
- (b) Verify that the technical specifications are sufficient and pertinent; and
- (c) Inform Buyer of any nonconformity of technical specifications to the regulations in force in the countries where the products incorporating Seller's goods will be sold; and
- (d) Inform Buyer of any risk of quality shortfall or other deficiency in the Goods of which Buyer should be aware; and
- (e) Immediately warn Buyer in case of discovery of a defect in the Goods or Services, particularly if such defect could endanger the safety of property or persons; and
- (f) Suggest to Buyer any action likely to improve quality and cost of the Goods or Services.

19. RECALL; RECALL LIABILITY: Upon the occurrence of a Recall, where one of the potential causes for the Recall is determined in Buyer's reasonable judgment to be attributable to Seller, Seller will indemnify and hold Buyer harmless for the costs of any services or other actions undertaken to correct or to remedy any Recall. Buyer's remedies under this Section shall include, but not be limited to, a claim for actual, consequential and incidental damages (including, without limitation, attorneys' fees and administrative costs and expenses) arising out of, resulting from or related to any such Recall. The term "Recall" shall mean (i) in the absence of an order issued by the United States Secretary of Transportation (the "Secretary") or any other applicable governmental agency or authority of the United States or any other country, notification by Buyer's Customer to the Secretary, governmental authority of such other foreign country and to owners, purchasers, and dealers as required under section 151 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (the "Act") [15 USCS § 1411] or comparable federal or provincial law of a foreign country, that any motor vehicle or item of replacement equipment contains a defect related to motor vehicle safety or that such vehicle or item of replacement equipment fails to comply with an applicable federal, state or provincial motor vehicle safety standard, or such other notification as may be required under any other federal, state or provincial applicable law and/or (ii) an order by the Secretary pursuant to section 152(b) of the Act [15 USCS §1412(b)] with respect to any motor vehicle or item of replacement equipment which fails to comply with an applicable federal motor vehicle safety standard or contains a defect which relates to motor vehicle safety, or an order by any other applicable United States or foreign governmental agency or authority requiring notification and remedial action on the part of Buyer or Buyer's Customer with respect to any motor vehicle or item of replacement equipment. Any decision on the part of Buyer, which shall be in its sole discretion, to contest in a legal proceeding any determination by the Secretary, or any other United States or foreign governmental agency or authority, with respect to a Recall order shall not waive or diminish in any manner any rights of Buyer under the provisions of this Section. Buyer's rights under the provisions of this Section shall be cumulative and additional to any other or further remedies provided by law or in equity.



20. NEW MATERIALS: Unless expressly so permitted on the face of a Purchase Order, Seller represents and warrants that none of the Goods are, in any way, governmental or commercial surplus, used, remanufactured, reconditioned or of such age or condition so as to impair their fitness, usefulness or safety.

21. QUALITY CONTROL INSPECTION, AUDITS:

- (a) Buyer's Supplier Requirements Manual, as the same may be amended or updated from time to time, is incorporated herein by this reference. Seller shall be and remain, as directed by Buyer, QS 9000, IATF or TS 16949, ISO 9000, ISO-14001, registered and compliant for any period of time Seller supplies Goods or Services to Buyer and shall comply in all respects with Buyer's Supplier Requirements Manual.
- (b) At Buyer's option, Buyer may, from time to time, review and inspect Seller's testing, inspection, quality control and reliability procedures, as well as the data supporting the same. Seller agrees to comply at all times with Buyer's most recently adopted quality control/assurance specifications and manuals and inspection standards and procedures as made available by Buyer (including, without limitation, as posted on Buyer's website, www.dmsna.com), additional copies of which are available upon request. Seller shall, whenever requested by Buyer, furnish certificates indicating such compliance.
- (c) All materials and workmanship utilized in the performance of any Purchase Order shall be subject to inspection and testing by Buyer (and Buyer's customers) to the extent practicable at all times and places, including the period and place of manufacture. If any such inspection or testing is made on Seller's premises or on the premises of any authorized subcontractor or agent of Seller, Seller or such authorized subcontractor or agent, as the case may be, shall provide, without additional charge, all reasonable facilities and assistance. Unless granted by Buyer's authorized representatives in writing, no inspection shall be deemed to be an approval or admission by Buyer that the inspected Goods or Services (or any related work-in-process or other physical inventory) fulfill the terms of any Purchase Order. Inspection and approval by Buyer or Buyer's authorized representatives does not preclude rejection or other relief for any existing defects (whether latent or manifest) subsequently discovered. Seller shall provide and maintain, without additional charge, a testing and inspection system (which shall include quality control and reliability procedures) acceptable to Buyer covering the materials and workmanship utilized in the performance of any Purchase Order.
- (d) In no case whatsoever shall (i) any inspection or testing by Buyer (or Buyer's customers) of the materials and workmanship utilized in the performance of any Purchase Order, (ii) any review or inspection by Buyer of Seller's testing, inspection, quality control or reliability procedures (or related data), or (iii) any acceptance by the Buyer of the Goods or Services, relieve Seller from the strict and complete performance of all of Seller's obligations and warranties under any Purchase Order. In no event shall payment be deemed to constitute acceptance by or on behalf of Buyer of any nonconforming Goods or Services.
- (e) Controls prior to delivery.
 - i. Buyer reserves the right to inspect the Goods or the progress of Services before their delivery or receipt, on the site of the Seller during normal working hours upon prior notice to the Seller of such inspection.
- (f) Audits.
 - i. At any time during the term of supply upon twenty-four (24) hours' prior notice, Buyer may perform an audit on-site during the Seller's normal working hours. The audit shall not unnecessarily interfere with the Seller's performance of the Agreement.
 - ii. The Seller agrees to cooperate fully with the auditor in order to facilitate the audit, most particularly by granting the auditor access to any location, installation, documentation or



information requested and by answering all questions of the auditor.

- iii. As part of the audit, the auditor may take random samples of the Goods manufactured or being manufactured by the Seller in order to confirm compliance with quality standards and to confirm that the Goods will conform to all Specifications.
- iv. The Seller shall undertake all measures identified by the Buyer in the audit within the time limits and under the conditions set forth by the auditor. The Seller shall make all necessary quality improvements to the Goods in order to achieve Buyer's quality standards. Should the audit establish that such quality standards are not being met, Buyer's audit and agreement to permit Seller to cure such deficiencies is not a waiver of any breach or claim arising from such nonconformity.
- v. Expenses related to the audit shall be reimbursed by the Seller when the audit is in response to a problem, including but not limited to a quality or logistics problem, requiring urgent resolution in order to prevent or to settle a claim from a Customer of Buyer. Such expenses shall be reimbursed by the Seller upon presentation by Buyer of supporting documentation.

(g) Effect of controls prior to delivery and of audits.

- i. Controls and audits as described herein shall not affect the Seller's liability nor the warranties given to Buyer and shall not be detrimental to the rights and claims of Buyer including but not limited to the right to claim damages in accordance and/or to terminate all or part of any Purchase Order.

22. BUYER'S ITEMS: Any materials, machinery, equipment, tools, dies, jigs, fixtures, patterns, drawings, specifications, samples and other facilities, including any replacements thereof, furnished by Buyer to Seller, obtained by Seller at Buyer's expense and/or which are to become the property of Buyer under a Purchase Order (collectively, the "Items") shall become, from the date of Seller's acceptance of Purchase Order and remain the sole and exclusive property of Buyer, with the absolute right of possession in, Buyer, free from any liens or claims of any type or nature whatsoever by Seller or any other party claiming by or through Seller, and Seller shall indemnify and defend Buyer against any and all such claims, including bonding, if necessary or expedient, to ensure Buyer's possession when demanded. Seller shall hold the Items as a bailment only. Seller shall use the Items only in the performance of work for Buyer and not otherwise. All Items in the custody and control of Seller or Seller's authorized subcontractors or agents shall be held at Seller's risk, shall be kept insured by Seller, at Seller's expense, against loss or damage in amounts equal to the full replacement value thereof and shall be subject to immediate removal at Buyer's written request, in which event Seller shall prepare the Items for shipment and shall deliver them to Buyer in accordance with Buyer's instructions. Seller shall promptly notify Buyer of the location of the Items, if the Items are located at any place other than the Seller's premises and shall not change the location of such Items without the advance written consent of Buyer. Seller shall, at Seller's expense, maintain all Items in at least as good condition and repair as when originally received by Seller, reasonable wear and tear excepted, and shall, if and as necessary, replace any items that are used, worn, damaged or destroyed. Buyer does not provide any representations, assurances, warranties or conditions whatsoever (and whether express, implied, statutory or otherwise) with respect to the Items. Upon the completion or termination of a Purchase Order, all Items shall be retained by Seller, at Seller's expense, until disposition directions are received from Buyer.

Performance by Seller hereunder shall not transfer any right of ownership in, nor license to, nor permission to use, any Item except to the extent necessary to produce Goods or Services or as otherwise agreed in writing by Buyer. Buyer shall have the option at any time to purchase any and all molds, tools, tooling, dies, jigs, fixtures, and other equipment used in the manufacture of Goods or delivery of Services for Buyer not already owned by



Buyer, at the then current book value, less any costs for repair or refurbishment.

Each tool, tooling, mold, die, jig, fixture or piece of equipment is to be clearly stamped or stenciled with:

- a) Buyer's Tool (or Capital Equipment) Identification Number;
- b) Buyer's Product Number; and
- c) Labeled "PROPERTY OF _____" (with Seller to insert "Detroit Manufacturing Systems" or the name of Buyer's customer, as directed by Buyer in writing).

Items will be approved for payment only after the successful completion and approval of the Production Part Approval Process (PPAP) sample submission by Buyer and its Customer, successful audit and payment for such Items to Buyer by Buyer's customer. Subject to compliance with the foregoing, payment terms for approved amounts shall be 90 days after PPAP approval and successful audit. Buyer shall have the right to deduct 5% from a tooling payment in the event Seller's PPAP sample submission is more than fifteen (15) calendar days late from its scheduled due date. For PPAP sample submissions submitted forty-five (45) or more calendar days after their scheduled due date, Buyer shall have the exclusive option to cancel any Purchase Order in whole or part, without any liability or obligation to Seller from Buyer. Approved tooling invoices will be paid by Buyer after payment for such approved tooling from Buyer's Customer. Approved tooling invoices shall mean those invoices approved by Buyer after an audit of Seller's records by Buyer. Seller acknowledges and agrees that a tooling Purchase Order and the compensation to be paid thereunder is subject to a successful audit by Buyer. Buyer shall have the right to audit Seller's books and records for a period of two years after PPAP submission by Buyer to its customer and in the event that Seller determines that any amount was not properly payable may debit Buyer's accounts for such amounts.

Prior to Seller's first production shipment, Seller must submit to Buyer in writing a listing of the Identification Numbers for all molds, tools, tooling, dies, jigs, fixtures, and other capital equipment, detailed descriptions and locations for each item with an Identification Number, tooling biographies and confirmation that each is properly marked as detailed above.

All molds, tools, tooling, dies, jigs, fixtures, and other equipment shall not be scrapped or made available to third parties (for any purpose including but not limited to production purposes) without the prior written consent of Buyer.

All molds, tools, tooling, dies, jigs, fixtures, and other equipment shall be secured, fully insured and maintained production ready at all times by Seller on behalf of Buyer, at Seller's sole expense.

Upon Buyer's request, all or any portion of Buyer's property in the possession of Seller, Seller's agents or Seller's subcontractors, shall be immediately released to Buyer or delivered to Buyer by Seller, either (a) for international shipments Delivered Duty Paid (DDP) at Buyer's plant (Free Carrier (FCA) Buyer's plant for all other shipments) properly packed and marked in accordance with the requirements of the carrier selected by Buyer to transport such property, except where stated differently on the Purchase Order or (b) to any location designated by Buyer, in which event Buyer shall pay to Seller the reasonable and documented costs of delivering such property to such location.



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Where permitted by law, Seller waives any possession rights, lien rights, requirements for the posting of bond or other surety, or other rights that Seller might otherwise have in any of such molds, tools, tooling, dies, jigs, fixtures, and other equipment or other of Buyer's property for work performed on such property, goods manufactured with such property or otherwise.

Except where stated differently on the Purchase Order, the Seller shall bear all risk of loss and of damage to the Buyer's Items until risk of loss is transferred to Buyer in accordance with the delivery provisions set forth in these Terms.

23. PROPRIETARY RIGHTS:

- (a) Seller represents and warrants to Buyer that no Goods or Services and no article, machine, product, component, material or services provided or used by Seller in connection with a Purchase Order shall be a misuse or misappropriation of any trade secret or infringe any patent, copyright, trademark, industrial design right or other proprietary right not owned or controlled by Seller, and that neither the normally anticipated uses thereof by Buyer, nor any specified methods of using same known by Seller to be contemplated by Buyer, will infringe any patent, copyright, trademark, industrial design right or other proprietary right in accordance with applicable law. Seller shall indemnify, defend and hold and save Buyer, Buyer's affiliates and their respective successors, assigns, customers and users of products incorporating the Goods and Services, harmless from all losses and/or liabilities of any nature or kind, including damages, court costs, representation expenses (both internal and external, including lost management and employee time and out-of-pocket expenditures) and legal fees, arising or existing because of the infringement or alleged infringement of any patent, trademark, copyright, industrial design or process of manufacture for or on account of the manufacture, sale or use of any of the Goods or Services, or products incorporating the Goods and Services, except where strict and complete compliance by Seller with the specifications prescribed by and originating with Buyer constitutes the sole basis of the infringement or alleged infringement.
- (b) Seller hereby grants to Buyer, Buyer's affiliates and their respective successors and assigns, and, with Buyer's express written consent, to customers and users of products incorporating the Goods and Services, a non-exclusive, royalty free, paid-up, irrevocable, worldwide license (i) to use any patents, industrial designs and processes of manufacture relating to the Goods and Services, including such a license to make, repair, rebuild, relocate, and sell, and to have made, repaired, relocated, and sold, the Goods or Services, and (ii) to use any copyrighted or copyrightable works of authorship fixed in any tangible medium of expression (including drawings, prints, manuals and specifications) furnished by Seller to any such party in the course of Seller's activities under a Purchase Order, including the right to reproduce, distribute and display such works and to prepare derivative works based thereon, subject to the other provisions herein.
- (c) All patents, trade-marks, copyrights, industrial designs and processes of manufacture created or developed by Seller in connection with supplying the Goods or Services to Buyer shall become and remain the sole and exclusive property of Buyer.
- (d) To the extent that a Purchase Order is issued for the creation of copyrightable works, the works shall be considered "works made for hire" to the extent that the works do not qualify as "works made for hire." Seller hereby assigns to Buyer all right, title and interest in all copyrights and moral rights therein.

24. CONFIDENTIALITY: Seller shall consider and treat all Information (as defined in this paragraph) as confidential and shall not disclose any Information to any other person, or use any Information for any purpose



other than pursuant to and as required by a Purchase Order, unless Seller obtains the prior written permission from Buyer's authorized representatives to do so. Buyer retains all rights to and interests in and to the Information, and Seller shall not allow any Information to be reproduced, communicated or used in any way in connection with services or goods furnished to others without the specific prior written permission of Buyer's authorized representatives. The term Information shall mean all drawings, reproductions, Specifications, designs, engineering instructions, photographs, reproducible copy, parts lists, plans, reports, working papers, computations and other information whatsoever and in any form or medium furnished, directly or indirectly, by Buyer, or anything derived therefrom. Seller shall not advertise or otherwise disclose the fact that Buyer has contracted to purchase Goods or Services from Seller, nor shall any information relating to a Purchase Order or to the Goods or Services be disclosed, without, in each case, the prior written permission of Buyer's authorized representatives. This confidentiality obligation shall continue during the performance of a Purchase Order and for a period of five (5) years after its termination. This Section is intended to supplement any existing confidential information agreement. In the event of any inconsistency between this Section and such existing agreement the existing agreement shall prevail.

25. DISCLOSURE TO BUYER: Unless otherwise specifically agreed to in advance and in writing by Buyer's authorized representatives, no commercial, financial or technical information disclosed in any form or manner or at any time by Seller to Buyer shall be deemed secret or confidential, and Seller shall have no rights or remedies against Buyer with respect thereto.

26. COMPLIANCE WITH LAWS:

- (a) Seller warrants its compliance with all Federal, State, local and foreign laws, ordinances, rules and regulations, Executive Orders, and all amendments thereto (collectively "Laws"), including environmental, health, safety and transportation Laws, that are applicable to any Purchase Order, and shall furnish Buyer with certificates of such compliance where required thereunder or when requested by Buyer.
- (b) Seller also warrants that the Goods and Services shall comply with all applicable codes, official standards and regulations, and all amendments thereto, of the governing inspection authorities in the place of use of the Goods or Services or as otherwise specified by Buyer.
- (c) Seller shall transport, package and label the Goods and their containers, including, in particular, those which constitute a health, poison, fire, explosion or other safety hazard, in accordance with all applicable Laws in effect in the place to which the Goods are shipped or as otherwise specified by Buyer. Without limitation, such obligations shall include the proper preparation and provision of applicable material safety data sheets (MSDS) and other prescribed documentation and/or information.
- (d) EEO CLAUSE FROM EXECUTIVE ORDER 11246 EQUAL EMPLOYMENT OPPORTUNITY - The Equal Employment Opportunity Clause in Section 202, Paragraphs 1 through 7 of Executive Order 11246, as amended, relative to equal employment opportunity and the implementing Rules and Regulations of the Office of Federal Contract Compliance are incorporated herein by specific reference. (Not applicable for Mexico)
- (e) EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION: For shipments to or from the United States the Purchase Order(s) incorporate by reference all applicable provisions of The Code of Federal Regulations as amended, pertaining to: (a) the equal opportunity clause in government contracts; (b) Affirmative action for disabled veterans of the Vietnam Era; and (c) Affirmative action for handicapped workers. Seller certifies that it is in compliance with all applicable provisions of The Code of Federal Regulations, as amended.
- (f) Seller for itself and its suppliers, undertakes to comply with the provisions of the United Nations Treaty of November 20, 1989 regarding children's rights prohibiting child labor; and not to use, in any form



whatsoever, forced or compulsory labor as defined in Article 1 of the International Labor Organization treaty of June 25, 1957 on the elimination of forced labor.

- (g) In particular, the Seller undertakes to comply with the provisions of all ethical, social and environmental commitments that may be requested by Customers.
- (h) The Seller shall be fully liable for any and all consequences arising from a breach of the above provisions by Seller or its suppliers, and shall indemnify and hold Buyer harmless against and from any claims, costs and damages (including attorneys' fees) resulting from any breach of such provisions.

27. INDEMNIFICATION AND INSURANCES:

- (a) At all times, Seller's representatives, employees or agents shall be under the exclusive direction of the Seller. If Seller's representatives, employees, subcontractors, or agents enter upon any premises owned or occupied by Buyer in the performance of Seller's obligation hereunder, Seller shall: (i) indemnify, defend, and hold and save harmless Buyer, Buyer's representatives, employees, agents, and invitees, from and against all liabilities, demands, claims, losses, costs, damages and expenses by reason or on account of property damages, death and/or personal injury of whatever nature or kind arising out of, as a result of, or in connection with, the performance of a Purchase Order, which is caused or contributed to in any manner by Seller's actions or omissions, (ii) ensure that Seller is in compliance with all requirements under all applicable laws including but not limited to workers' compensation legislation of the jurisdiction in which Buyer's premises are located, and (iii) ensure and remain responsible for the compliance by Seller's representatives, employees and agents with Buyer's rules and regulations (pertaining to safety and other occupancy requirements) while on Buyer's premises. Seller agrees that all of Seller's efforts in the performance of any Purchase Order shall be made as an independent contractor and that the persons engaged in such performance shall not be considered employees of Buyer. Seller further agrees to remove and/or substitute any of Seller's employees when so requested by Buyer (in Buyer's sole discretion) and to ensure that any labor or union affiliations of the employees of Seller are compatible with the requirements of Buyer.
- (b) Seller shall maintain and carry adequate insurance, on a commercially reasonable basis, on Seller's own plant and equipment for the full insurable value thereof, as well as comprehensive commercial general liability insurance, including public liability, property damage liability, product liability and contractual liability coverage of at least Twenty Eight Million Dollars (USD \$28,000,000) each occurrence, automobile liability for all owned, non-owned and hired automobiles for bodily and property damages of at least Seven Million Dollars (USD \$7,000,000) and workers' compensation and employees' liability insurance covering all employees engaged in the performance of any Purchase Order in amounts required by law and employer's liability insurance of at least One Million Five Hundred Thousand Dollars (USD \$1,500,000). Seller shall have Buyer named as an additional insured on its insurance policies. Seller shall, on Buyer's request, furnish certificates or other acceptable forms of proof of insurance confirming the foregoing coverages. The receipt or review of such certificates or other forms of proof of coverage by Buyer shall not relieve Seller from Seller's insurance obligations hereunder or reduce or modify such insurance obligations.
- (c) Seller agrees to indemnify, defend, protect and hold harmless Buyer, Buyer's affiliates and their respective successors, assigns, agents, employees, customers and users of products incorporating the Goods or Services from and against any and all claims and alleged claims for personal injury, property damage, economic loss, cost or expense, including reasonable attorney fees and expense, and/or consequential or special damages arising out of, resulting from or related to (i) improper, unsafe or defective materials, workmanship or design of the Goods or Services, except where strict and complete compliance by Seller with the Specifications prescribed by and originating with Buyer constitutes the sole basis of the claim or alleged claim, or (ii) breach of any provisions of any Purchase Order,



including but not limited to any of the representations or warranties provided herein, or (iii) Seller's failure to comply with all applicable Laws.

28. TERMINATION:

- (a) Buyer may terminate a Purchase Order in whole or in part at any time by written notice (including notice by facsimile) stating the extent and effective date of such termination. Upon receipt thereof, Seller shall (i) stop work on the termination date and to the extent specified in the notice and terminate all orders and subcontracts to the extent they relate to the terminated work, (ii) promptly advise Buyer of the quantities of applicable work and material on hand or purchased prior to termination and the most favorable disposition that Seller can make thereof; (iii) in accordance with Buyer's instruction manufacture and deliver not less than a five (5) week bank of Goods at the pricing set forth in the applicable Purchase Order; and (iv) comply with Buyer's instructions regarding the protection, transfer and disposition of title to and possession of such work and materials. Seller shall submit to Buyer any claims relating to such termination as soon as possible, but in any event within 30 days (unless Buyer agrees otherwise) from the effective date of such termination. The failure of Seller to submit its claim within this time period shall be an absolute waiver of any right of compensation. Seller hereby grants Buyer the right to audit and inspect Seller's books, records, and all other documents relating to Seller's termination claims.
- (b) Unless otherwise authorized in writing by Buyer, Seller shall not make commitments for materials or fabricate in advance of the time necessary to permit shipment(s) on the delivery date(s) specified in Buyer's Releases. Buyer shall in no event be liable or responsible for any such costs or amounts incurred by Seller in breach of this provision.
- (c) If the parties cannot agree within a reasonable time upon the amount of fair compensation for termination by Buyer under subparagraph 28(a), Buyer shall, in addition to making payment of the contract price for the Goods and Services delivered or performed and accepted by Buyer prior to the effective date of termination, pay to Seller, without duplication, only the following costs and expenses: (i) the contract price for Services performed or Goods completed in accordance with the terms of the Purchase Order but not previously paid for, and (ii) the actual direct costs incurred and paid by Seller for any engineering and development work authorized in a writing signed by Buyer and properly allocated or apportioned to the terminated portion of a Purchase Order, all of the foregoing subject to audit and verification by Buyer in accordance with generally accepted accounting principles. In all events, compensable costs hereunder shall not include, by example but not limitation, program management costs, costs incurred for capital equipment, tooling or fixture enhancements, or other costs whether or not set forth in Seller's quotation or any Quotation Analysis Form, unless such costs were specifically identified as compensable in the relevant Purchase Order.

29. TERMINATION UPON DEFAULT:

- (a) Buyer reserves the right to terminate a Purchase Order in whole or in part for default occasioned by Seller's failure to perform in accordance with the requirements of a Purchase Order (including the obligations arising under these Terms) or Release. Such termination shall be without liability to Buyer, except for completed Goods delivered and accepted or Services performed and accepted by Buyer. Seller shall be liable for all direct, indirect, special and consequential damages, including but not limited to lost profits, caused by or resulting from Seller's default.
- (b) Buyer may terminate a Purchase order in whole or in part, in the event of a change in control/ownership



of the Seller or the sale by Seller of a material part of its assets used to perform under a Purchase Order. Any such termination shall be a termination for cause and shall be without cost to Buyer.

- (c) Seller may terminate a Purchase Order only for non-payment of the purchase price for Goods which are thirty (30) or more days past due and in a material amount. Seller may not request such termination unless prior to such termination (i) Seller first provides Buyer written notice specifying in detail the amounts past due (including the relevant Purchase Order and invoice numbers); and (ii) Buyer, within sixty (60) days of actual receipt of such notice, does not either: (a) pay the past due amounts, or (b) notify Seller that the amounts claimed to be unpaid are disputed by Buyer. If Buyer fails to either pay such amounts or notify Seller of the disputed amounts, Seller may thereafter deliver a termination notice to Buyer setting forth the termination of such Purchase Order. Seller may not terminate or cancel any Purchase Order for any reason except as permitted under this Section. Seller may not suspend performance under a Purchase Order for any reason.

30. **TERMINATION UPON INSOLVENCY OR BANKRUPTCY:** Buyer may terminate a Purchase Order, without liability, in the event of the insolvency, bankruptcy, reorganization, arrangement, receivership or liquidation by or against the Seller; or if Seller fails to provide adequate written assurance of adequate performance after demand by Buyer; or if the Seller makes an assignment for the benefit of creditors or ceases to carry on business in the ordinary course.

31. **ASSIGNMENT:**

- (a) Seller shall not assign a Purchase Order or any portion thereof or any work thereunder or any interest therein, except that Seller may, with the prior written consent of Buyer, make an assignment of monies due or which may become due Seller to a bank, or other financial institution: provided, however, that any such assignment shall be subject to set-off, recoupment or any other lawful means of enforcing any present or future claim or claims which Buyer may have against Seller.
- (b) Where used in a Purchase Order, the terms Seller mean Seller and Seller's heirs, executors, legal representatives, successors and permitted assigns, as the case may be.
- (c) Buyer shall have the right to freely assign a Purchase Order or Buyer's interest herein to any third party.

32. **REMEDIES:** The remedies reserved in these Terms and at law are cumulative, and not alternative, and may be exercised separately or together, in any order or combination, and, in the case of Buyer only, are in addition to any other rights and remedies provided for or available to Buyer at Law, in equity or otherwise. Seller hereby waives any claims that it may have against Buyer in tort, under statute or in equity, and confirms that Seller's complete rights and remedies as against Buyer, including the right of indemnity and measure of damages in the event of Buyer's breach or default, are limited to those expressly conferred by or provided for in these Terms.

In the event that Seller takes action (or fails to act) in a manner that disrupts or threatens to disrupt Buyer's ability to produce and deliver to Buyer's customers on schedule, Buyer shall have the right to seek specific performance of a Purchase Order in a court of Buyer's choosing without application of principles of conflicts of law.

Notwithstanding the termination of a Purchase Order, in whole or part, whether for cause or convenience, and whether such termination is claimed by Buyer or Seller, so long as during the Transition Period, as defined hereinafter, and provided that Buyer timely pays the pricing set forth on the Purchase Order for such Goods or Services the Seller shall have the absolute obligation to continue to provide the Services or produce and deliver the Goods in accordance with the terms of the Purchase Order for a reasonable period of time so as to permit



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Buyer the opportunity to procure a replacement supplier, so as to permit an orderly transition of the production of the Goods or Services and so as to avoid any interruption of production at Buyer's facilities or the facilities of Buyer's customer. Such period shall only be of such a length so as to reasonably provide Buyer the opportunity to transition, under commercially reasonable terms and conditions, the supply of Goods or Services without an interruption of production at Buyer's facility or at the facilities of Buyer's customer, such period being referred to herein as the "Transition Period". This Transition Period shall not be a cure period and shall terminate by Buyer giving not less than five days notice of its intention to terminate the Transition Period. Seller shall not have the right to terminate the Transition Period except in the event that Buyer fails to pay for conforming Goods or Services timely delivered or provided by Seller during the Transition Period in accordance with the Purchase Order and Releases issued for such Goods or Services and without regard to whether or not such Purchase Order has been terminated in whole or in part. Seller further acknowledges that the Goods or Services provided hereunder are unique and that rights set forth herein are in addition to any rights granted under any state law including but not limited to §2-716 of the UCC as adopted by the jurisdiction governing the transactions contemplated hereunder.

The Parties further agree that any breach of these Terms or a Purchase Order that would have the effect of interrupting production at Buyer or Buyer's customer, would result in irreparable harm to the Buyer, its customers and the business and reputation of each of them, and that money damages would not be a sufficient remedy for any such breach. The Parties agree that in such event the Buyer shall be entitled to equitable relief, including injunction and specific performance, requiring further production of Goods or the provision of Services, as a remedy for any such breach or claimed breach. During the term of any Purchase Order, Seller consents to the entry of an order for specific performance for the production of goods in accordance with UCC §2-716 or similar statute. Seller further waives any requirement or finding that a Purchase Order constitutes a requirements contract or the securing or posting of any bond in connection with any such remedy. Seller further acknowledges and consents to the entry of injunctive or similar relief in order to enforce the obligations of the Parties under these Terms and Conditions and any Purchase Order or other document governing the purchase of goods from Seller by Buyer whether at law or in equity. The remedies of Buyer shall not be deemed to be the exclusive remedies for a breach by Seller but shall be in addition to all other remedies available at law or equity.

33. WAIVER AND MODIFICATION; INCONSISTENCY:

- (a) A supply agreement signed by both parties, (if any), the Buyer's Purchase Order(s) and Release(s) and these Terms and Conditions, together with the Buyer's documents specifically referenced herein constitute the entire agreement between the Parties and supersede all prior or contemporaneous agreements, representations and understandings of the Parties with regard to the subject matter of a Purchase Order. In the event of an inconsistency between these documents the order of priority shall be the supply agreement (if any), a Release, the Purchase Order, the Terms and Conditions and thereafter such other manuals or documents as are referenced herein. There are no terms that are not specifically set forth in these Terms and Conditions or the Purchase Order.
- (b) Either party's failure to insist on the strict and complete performance by the other party of any term or condition hereof or failure to exercise any right or remedy reserved herein shall not constitute a waiver of any such provision, or affecting the validity of these Terms or of the right to subsequently claim the application of such provision or of the Terms themselves. In addition, either party's waiver of any breach or default hereunder by the other party, shall not, thereafter, waive any other terms, conditions, rights, remedies, breaches or defaults, whether of the same or a similar nature or type.
- (c) No modification of a Purchase Order, or waiver of, or addition to, any Purchase Order's terms and



conditions, shall be binding upon Buyer, unless made in writing and signed by Buyer's representatives. In the event of a conflict between the printed conditions appearing in a Purchase Order and any notations, modifications, waivers or additions made or expressly accepted by Buyer's authorized representatives, the latter shall supersede and prevail.

- (d) The Seller acknowledges receipt of all documents referenced in the present Terms and Conditions or that the Seller has reviewed all such documents at www.dmsna.com.

34. GOVERNING LAW:

- (a) These Terms and any Purchase Order shall be interpreted and enforced in accordance with the laws of the State of Michigan, exclusive of the choice of law rules thereof. For greater certainty, the U.N. Convention on Contracts for the International Sale of Goods shall not apply to the Terms of any Purchase Order.
- (b) Any action or proceedings by Buyer against Seller may be brought by Buyer in any court(s) having jurisdiction over Seller or, at Buyer's option, in the court(s) having jurisdiction over Buyer's location, in which event Seller consents to exclusive jurisdiction in such jurisdiction as selected by Buyer and service of process in accordance with the procedures of such jurisdiction. Any actions or proceedings by Seller against Buyer may be brought by Seller only in the State and Federal courts sitting in Oakland County, Michigan and each Party hereby waives any claim or defense respecting improper venue or lack of jurisdiction in any case brought in such court(s).
- (c) The Parties agree that the "battle of the forms" provisions of Section 2207 of the Uniform Commercial Code as enacted in Michigan or similar provisions of any other potentially applicable law shall not apply to these Terms and Conditions and any Purchase Order, and in the event of any purported inconsistency between the Purchase Order and these Terms and Conditions on the one hand and any acceptance by Seller on the other hand, the Purchase Order and these Terms and Conditions shall govern.
- (d) THESE TERMS AND THE DOCUMENTS REFERENCED HEREIN EMBODY THE ENTIRE AGREEMENT BETWEEN BUYER AND SELLER, AND NO NEGOTIATIONS, UNDERSTANDINGS OR AGREEMENTS, VERBAL, COLLATERAL OR OTHERWISE IN RELATION HERETO EXIST BETWEEN BUYER AND SELLER, EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS OR A PURCHASE ORDER.

35. **EXCLUSIVE MANUFACTURE & SALE:** All Goods not a part of Seller's normal and general inventory (exclusive of its business with Buyer) and manufactured pursuant to a Purchase Order, are to be manufactured exclusively for Buyer. Seller shall not quote or bid to supply any Goods or Services to any third party during any period of time that it is quoting or supplying Buyer with such Goods or Services. Accordingly, unless Seller obtains prior written authorization from Buyer, Seller is forbidden from selling any Goods that are not a part of Seller's normal and general inventory to anyone other than Buyer. Further, Seller shall not during the term of any Purchase Order or for a period of ten (10) years after the termination of a Purchase Order, or after a quotation to Buyer, supply such Goods or Services to any third party.

36. **LIMITATION ON REMEDIES, LIABILITIES AND DAMAGES:** Buyer's entire liability to Seller for any loss, liability or damage, including attorneys' fees, for any claim arising out of or related to the Goods or Services provided to Buyer, regardless of the form of action, will be limited to Seller's actual direct out-of-pocket expenses which are reasonably incurred by Seller, and only to the extent that sufficient and acceptable documentary evidence of such damages is presented to Buyer. Seller's recovery will not in any event exceed



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the total amount of purchases by Buyer during the three (3) month period immediately preceding such claim. IN NO EVENT WILL BUYER BE LIABLE TO SELLER OR ANY THIRD PARTY FOR LOST PROFITS, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES, HOWSOEVER ARISING OUT OF OR RELATED TO THE GOODS OR SERVICES PROVIDED TO BUYER, REGARDLESS OF THE BASIS OF SUCH CLAIM.

37. SERVICE AND REPLACEMENT PARTS: During serial production, Seller will sell to Buyer all Goods necessary for it to fulfill its current model service and replacement parts requirements at the price(s) set forth in the Purchase Order issued for the production Goods. If the Goods are systems or modules, Seller will sell the components or parts that comprise the system or module at price(s) that shall not, in the aggregate, exceed the price of the system or module less assembly costs. During the 15 year period after Buyer completes current model purchases, Seller will sell goods to Buyer to fulfill Buyer's past model service and replacement parts requirements. Unless otherwise agreed to by Buyer in writing, the price(s) shall be those in effect at the conclusion of the then current model purchases.

ADDENDUM FOR SELLERS FROM MEXICO AND CANADA.

For shipments from Sellers organized and existing under the laws of Mexico the following modified Terms shall apply and shall modify or replace as applicable below, the related provisions set forth in the main body text above:

The term Buyer shall mean "[Detroit Manufacturing Systems, LLC](#)" or such other company of [Detroit Manufacturing Systems](#), as set forth on the face of a Purchase Order.

1. Section 19 above is replaced in its entirety with the following:

19. RECALL; RECALL LIABILITY: Upon the occurrence of a Recall, where one of the potential causes for the Recall is determined in Buyer's reasonable judgment to be attributable to Seller, Seller will indemnify and hold Buyer harmless for the costs of any services or other actions undertaken to correct or to remedy any Recall. Buyer's remedies under this Section shall include, but not be limited to, a claim for damages and lost profits, actual, consequential and incidental damages (including, without limitation, attorneys' fees and administrative costs and expenses) arising out of, resulting from or related to any such Recall. The term "Recall" shall mean (i) in the absence of an order issued by the Secretary of Communications and Transports (the "Secretary"), the Secretary of Economy or any other applicable governmental agency or authority of Mexico or any other country, notification by Buyer's Customer to the Secretary, governmental authority of such other foreign country and to owners, purchasers, and dealers as required under Mexican law, that any motor vehicle or item of replacement equipment contains a defect related to motor vehicle safety or that such vehicle or item of replacement equipment fails to comply with an applicable federal, state or provincial motor vehicle safety standard, or such other notification as may be required under any other federal, state or provincial applicable law and/or (ii) an order by any competent authority with respect to any motor vehicle or item of replacement equipment which fails to comply with an applicable federal motor vehicle safety standard or contains a defect which relates to motor vehicle safety, or an order by any other applicable authority requiring notification and remedial action on the part of Buyer or Buyer's Customer with respect to any motor vehicle or item of replacement equipment. Any decision on the part of Buyer, which shall be in its sole discretion, to contest in a legal proceeding any determination by the Secretary, or any other Mexican or foreign governmental agency or authority, with respect to a Recall



order shall not waive or diminish in any manner any rights of Buyer under the provisions of this Section. Buyer's rights under the provisions of this Section shall be cumulative and additional to any other or further remedies provided by law.

2. Section 32 above is replaced in its entirety with the following:

32. REMEDIES: The remedies reserved in these Terms and at law are cumulative, and not alternative, and may be exercised separately or together, in any order or combination, and, in the case of Buyer only, are in addition to any other rights and remedies provided for or available to Buyer at Law or otherwise. Seller hereby waives any claims that it may have against Buyer in accordance with Mexican law or any international agreement executed by Mexico, and confirms that Seller's complete rights and remedies as against Buyer, including the right of indemnity and measure of damages in the event of Buyer's breach or default, are limited to those expressly conferred by or provided for in these Terms.

In the event that Seller takes action (or fails to act) in a manner that disrupts or threatens to disrupt Buyer's ability to produce and deliver to Buyer's customers on schedule, Buyer shall have the right to seek specific performance of a Purchase Order in a competent court.

Notwithstanding the termination of a Purchase Order, in whole or part, whether for cause or convenience, and whether such termination is claimed by Buyer or Seller, so long as during the Transition Period, as defined hereinafter, and provided that Buyer timely pays the pricing set forth on the Purchase Order for such Goods or Services the Seller shall have the absolute obligation to continue to provide the Services or produce and deliver the Goods in accordance with the terms of the Purchase Order for a reasonable period of time so as to permit Buyer the opportunity to procure a replacement supplier, so as to permit an orderly transition of the production of the Goods or Services and so as to avoid any interruption of production at Buyer's facilities or the facilities of Buyer's customer. Such period shall only be of such a length so as to reasonably provide Buyer the opportunity to transition, under commercially reasonable terms and conditions, the supply of Goods or Services without an interruption of production at Buyer's facility or at the facilities of Buyer's customer, such period being referred to herein as the "Transition Period". This Transition Period shall not be a cure period and shall terminate by Buyer giving not less than five days notice of its intention to terminate the Transition Period. Seller shall not have the right to terminate the Transition Period except in the event that Buyer fails to pay for conforming Goods or Services timely delivered or effectively provided by Seller during the Transition Period in accordance with the Purchase Order and Releases issued for such Goods or Services and without regard to whether or not such Purchase Order has been terminated in whole or in part. Seller further acknowledges that the Goods or Services provided hereunder are unique and that rights set forth herein are in addition to any rights granted under any applicable law including but not limited to Commercial Code and the Federal Civil Code as adopted by the jurisdiction governing the transactions contemplated hereunder.

The Parties further agree that any breach of these Terms or a Purchase Order that would have the effect of interrupting production at Buyer or Buyer's customer, would result in irreparable harm to the Buyer, its customers and the business and reputation of each of them, and that money damages would not be a sufficient remedy for any such breach. The Parties agree that in such event the Buyer shall be entitled to demand from Seller the corresponding indemnification, requiring further production of Goods or the provision of Services, as a remedy for any such breach or claimed breach. During the term of any Purchase Order, Seller consents to the entry of an order for specific performance for the production of goods in



accordance with

Commercial Code and the Federal Civil Code. Seller further waives any requirement or finding that a Purchase Order constitutes a requirements contract or the securing or posting of any bond in connection with any such remedy. Seller further acknowledges and consents to the entry of any action permitted by law in order to enforce the obligations of the Parties under these Terms and Conditions and any Purchase Order or other document governing the purchase of goods from Seller by Buyer in accordance with Mexican law. The remedies of Buyer shall not be deemed to be the exclusive remedies for a breach by Seller but shall be in addition to all other remedies available at law. Seller further agrees that any right of termination of Buyer, whether in whole or part, under these Terms may be enforced by Buyer without the need for entry of a resolution or order from a court of competent jurisdiction and shall be in the sole and absolute discretion of Buyer.

3. Section 34 above is replaced in its entirety with the following:

34. GOVERNING LAW; COMPLIANCE WARRANTY

- (a) These Terms and any Purchase Order shall be interpreted and enforced in accordance with the applicable laws of Mexico and the competent Courts of Querétaro City waiving to any jurisdiction which may correspond to them by reason of their domiciles. For greater certainty, the U.N. Convention on Contracts for the International Sale of Goods shall not apply to the Terms of any Purchase Order.
- (b) Any action or proceedings by Buyer against Seller may be brought by Buyer in any competent court.
- (c) Any reference in these terms to “applicable law(s)” shall include but not be limited to all consumer protection laws existing under the laws of Mexico.
- (d) THESE TERMS AND THE DOCUMENTS REFERENCED HEREIN EMBODY THE ENTIRE AGREEMENT BETWEEN BUYER AND SELLER, AND NO NEGOTIATIONS, UNDERSTANDINGS OR AGREEMENTS, VERBAL, COLLATERAL OR OTHERWISE IN RELATION HERETO EXIST BETWEEN BUYER AND SELLER, EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS OR A PURCHASE ORDER.
- (e) Seller warrants its compliance with Mexican Labor law, social security legislation with respect to its employees, as well as intellectual property law, copyright law and all related applicable Mexican law.

4. The following provision is added as Section 38 of these Terms:

“38. LANGUAGE; The parties have agreed that these Terms along with any documents to be created and/or delivered in conjunction with these Terms, including without limitation, any Purchase Order, may be drafted in either or both, English and Spanish. The official version for these Terms shall be Spanish and in the event of any inconsistency the Spanish version of the Terms shall prevail.

For shipments from Sellers organized and existing under the laws of any province or territory of Canada, the following modified Terms shall apply and shall modify or replace as applicable below, the related provisions set forth in the main body text above:

“Buyer” shall refer to [Detroit Manufacturing Systems, LLC](#) and/or its affiliate or subsidiary as the case may be, and “Seller” shall refer to the entity listed on the face of a Purchase Order.



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5. Section 9(b) above is replaced in its entirety with the following: “9 (b) Unless otherwise stated in a Purchase Order the prices are inclusive of all customs duties and expenses and all Federal, Provincial, State, local and foreign taxes (including import, excise, sales and/or goods and services taxes) applicable to the sale of the Goods or the provision of Services.”

6. Section 19 above is replaced in its entirety with the following:

“19. RECALL; RECALL LIABILITY: Upon the occurrence of a Recall, where one of the potential causes for the Recall is determined in Buyer’s reasonable judgment to be attributable to Seller, Seller will indemnify and hold Buyer harmless for the costs of any services or other actions undertaken to correct or to remedy any Recall. Buyer’s remedies under this Section shall include, but not be limited to, a claim for damages and lost profits, actual, consequential and incidental damages (including, without limitation, legal fees and disbursements and administrative costs and expenses) arising out of, resulting from or related to any such Recall. The term "Recall" shall mean (i) in the absence of an order issued by Transport Canada ("Transport Canada") or any other applicable governmental agency or authority of Canada or any other country, notification by Buyer’s Customer to Transport Canada, governmental authority of such other foreign country and to owners, purchasers, and dealers as required under the laws of Canada, that any motor vehicle or item of replacement equipment contains a defect related to motor vehicle safety or that such vehicle or item of replacement equipment fails to comply with an applicable federal, state or provincial motor vehicle safety standard, or such other notification as may be required under any other federal, state or provincial applicable law and/or (ii) an order by any competent authority with respect to any motor vehicle or item of replacement equipment which fails to comply with an applicable motor vehicle safety standard or contains a defect which relates to motor vehicle safety, or an order by any other applicable authority requiring notification and remedial action on the part of Buyer or Buyer’s Customer with respect to any motor vehicle or item of replacement equipment. Any decision on the part of Buyer, which shall be in its sole discretion, to contest in a legal proceeding any determination by Transport Canada, or any other Canadian or foreign governmental agency or authority, with respect to a Recall order shall not waive or diminish in any manner any rights of Buyer under the provisions of this Section. Buyer’s rights under the provisions of this Section shall be cumulative and additional to any other or further remedies provided by law.”

7. Section 26(a) above is replaced in its entirety with the following: “26 (a) Seller warrants its compliance with all Federal, Provincial, local and foreign laws, ordinances, rules and regulations, decrees, executive orders (including, without limitation, Orders-in-Council), and all amendments thereto (collectively “Laws”), including environmental, health, safety and transportation Laws, that are applicable to any Purchase Order, and shall furnish Buyer with certificates of such compliance where required thereunder or when requested by Buyer.”

8. Section 32 above is amended as follows:

(i) The last sentence of the third paragraph of Section 32 above is replaced in its entirety with the following: “Seller further acknowledges that the Goods or Services provided hereunder are unique and that rights set forth herein are in addition to any rights granted under any applicable law including but not limited to, sales of goods legislation as adopted by the jurisdiction governing the transactions contemplated hereunder.

(ii) The third sentence of the fourth paragraph of Section 32 above is replaced in its entirety with the



following:

“In the event of any breach or claimed breach of these Terms or any Purchaser Order, Seller shall not oppose or otherwise challenge or impede Buyer’s attempts or efforts to obtain specific performance for the production of goods in accordance and, without limitation to the generality of the foregoing, shall consent to the entry of an order for specific performance which may be sought by Buyer as aforesaid.”

(iii) The following is added as the fifth paragraph of Section 32 above:

“Seller shall comply with all applicable laws with respect to the performance of its obligations under these Terms or a Purchase Order. Without limitation to the foregoing, Seller shall ensure it holds all necessary permits, licenses, consents and authorizations necessary for the performance of its obligations under these Terms or a Purchase Order. Seller shall be solely responsible for the control and management of its operations, employment practices and labor relations. For greater certainty, Seller shall have the sole and exclusive control over its employees, employee relations policies and policies relating to wages, hours of work and working conditions, and the sole and exclusive right to hire, transfer, suspend, lay-off, recall, promote, assign, discipline and discharge its employees. Seller will be responsible for the payment of all compensation, including wages, salary, benefits and expenses, to all of its employees and other persons rendering services to Seller (including subcontractors retained by Seller). Seller will be responsible for the payment of all employer payroll, employer health, income, withholding and other taxes, including Canada Pension Plan, employment insurance, and workers’ compensation or workplace safety & insurance in respect of each of its employees and other persons rendering services to on behalf of Seller in connection with the performance of these Terms or a Purchase Order. Seller covenants and agrees to register itself and all persons engaged for service by it under applicable workers’ compensation legislation and to pay all applicable workers’ compensation premiums and maintain such workers’ compensation coverage throughout the duration of these Terms and any and all Purchase Orders. Seller further agrees to provide Buyer with evidence thereof in form satisfactory to Buyer upon request by Buyer from time to time. Seller covenants and agrees that all persons engaged by it to perform these Terms or any Purchase Order in Canada will at all times be legally able to work in Canada in the specific occupation that such person performs. Buyer may at any time demand from Seller, and Seller agrees to provide to Buyer forthwith, a certification of compliance with applicable immigration laws in such form as Buyer in its sole, absolute, and unfettered discretion may require.”

9. Section 34 above is replaced in its entirety with the following:

“34. GOVERNING LAW; COMPLIANCE WARRANTY

- (a) These Terms and any Purchase Order shall be interpreted and enforced in accordance with the laws of the Province of Ontario and the Federal laws of Canada applicable in the Province of Ontario, exclusive of the choice of law rules thereof. For greater certainty, the U.N. Convention on Contracts for the International Sale of Goods shall not apply to the Terms of any Purchase Order.
- (b) Any actions or proceedings by Seller against Buyer may be brought by Seller only in the City of Toronto, Ontario and each Party hereby waives any claim or defense respecting improper venue or lack of jurisdiction in any case brought in such court(s). Each Party agrees not to oppose the enforcement of any order or judgment obtained in the Province of Ontario with respect to these Terms (including,



without limitation, any Purchase Order) in any other jurisdiction.”

- (c) THESE TERMS AND THE DOCUMENTS REFERENCED HEREIN EMBODY THE ENTIRE AGREEMENT BETWEEN BUYER AND SELLER, AND NO NEGOTIATIONS, UNDERSTANDINGS OR AGREEMENTS, VERBAL, COLLATERAL OR OTHERWISE IN RELATION HERETO EXIST BETWEEN BUYER AND SELLER, EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS OR A PURCHASE ORDER.

10. Section 36 above is amended by replacing the last sentence in its entirety with the following:

“IN NO EVENT WILL BUYER BE LIABLE TO SELLER OR ANY THIRD PARTY FOR LOST PROFITS, CONSEQUENTIAL, SPECIAL, INCIDENTAL, AGGRAVATED OR PUNITIVE DAMAGES, HOWSOEVER ARISING OUT OF OR RELATED TO THE GOODS OR SERVICES PROVIDED TO BUYER, REGARDLESS OF THE BASIS OF SUCH CLAIM.”

9. The following provision is added as Section 38 of these Terms:

“38. LANGUAGE; REFERENCE TO ATTORNEY FEES: The parties have agreed that these Terms along with any documents to be created and/or delivered in conjunction with these Terms, including without limitation, any Purchase Order, be drafted in English only. Les parties aux présentes conviennent que ces dispositions contractuelles ainsi que tout document y afférent, soit rédigé en anglais uniquement. References to “attorneys’ fees” in these Terms and in any Purchase Order shall mean and be read as “legal fees and disbursements.”

DMS Term and Conditions Revision date March 1, 2018