



# YAPP USA Automotive Systems, Inc.

## Purchase Order Terms & Conditions

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As used herein, "Buyer" means YAPP USA Automotive Systems, Inc. and "Seller" means the entity identified as the seller, supplier or provider of goods and/or services (the "Supplies") on the face of the Purchase Order.

### 1. Offer Acceptance

Each purchase order issued by Buyer to Seller (the "Purchase Order" or "Order") is Buyer's offer or counter offer for the purchase of the Supplies specified in the Purchase Order on the terms and conditions specified in Section 2 below. Seller's written acceptance of the Purchase Order or performance of any work or services under the Purchase Order, or any other conduct that recognizes the existence of a contract with respect to the subject matter of the Purchase Order, constitutes Seller's acceptance of Buyer's offer.

The Purchase Order expressly limits Seller's acceptance to its terms, including terms incorporated by reference. Notification of objection is hereby given to any term in any response to the Purchase Order that does not exactly match the terms of the Purchase Order.

### 2. Terms and Conditions

The Purchase Order includes, and hereby incorporates by reference, the express terms contained on the face of the Purchase Order, these purchase order terms and conditions, and any riders and signed documents referred to in the Purchase Order (collectively, the "Contract Documents"). Any acceptance of a Purchase Order is limited to and conditional upon Seller's acceptance of the Contract Documents. The terms contained in the Purchase Order and in the other Contract Documents constitute the entire agreement between Buyer and Seller relating to the subject matter of the Purchase Order and supersede any prior agreements. Any references in the Purchase Order to any offer or proposal made by Seller is solely to incorporate the description or specifications of the Supplies in such prior offer or proposal, but only to the extent that the description or specifications do not conflict with the description and specifications of the Purchase Order. Any additional or different terms proposed by Seller, whether in Seller's quotation, acknowledgement, invoice or other documentation prepared by Seller, are hereby rejected by Buyer and do not become a part of the Purchase Order, but shall not operate as a rejection of the Purchase Order if Seller accepts Buyer's offer by commencement of any work, shipment of the Supplies or any other means acceptable to Buyer, in which case the Purchase Order shall be deemed accepted by Seller without any additional or different terms or variations whatsoever. A Purchase Order does not constitute an acceptance of any prior offer or proposal by Seller, and any reference in the Purchase Order to any such prior offer or proposal is solely to incorporate the description or specifications of the Supplies in such offer or proposal, but only to the extent that such description or specifications are not directly in conflict with the description and specifications in the Purchase Order. The terms on the face of the Purchase Order and these terms and conditions shall, to the extent possible, be interpreted consistently. In the event of conflict, the terms on the face of the Purchase Order prevail.

The Purchase Order may only be modified under Section 35. Buyer may cancel all or any part of a Purchase Order at any time prior to Buyer's actual knowledge of acceptance by Seller.

### 3. Delivery

Time is of the essence. Deliveries shall be made both in quantities and at times set out in firm delivery or shipping releases, authorizations, broadcasts or similar written instructions (each, a "Release") issued by Buyer to Seller from time to time. Buyer may change the rate of scheduled shipments or temporarily suspend scheduled shipments, neither of which shall entitle Seller to a modification of the price for the Supplies. Buyer shall not be required to make payment for the Supplies delivered to Buyer which are in excess of quantities



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specified in Buyer's releases, nor shall Buyer be obligated to accept any late delivery. All delivery dates in Releases reflect the date the goods are to be delivered at Buyer's designated delivery point.

Seller acknowledges and agrees that any estimates or forecasts of production volumes or length of program, whether from Buyer or Buyer's customer, are subject to change from time to time, with or without notice to Seller, and shall not be binding upon Buyer. Buyer makes no guarantee in respect of the quantities to be set out in Releases, nor any guarantee in respect of the term of supply of the Supplies.

#### **4. Title and Risk of Loss**

Title passes to Buyer upon Buyer's acceptance of the Supplies to the delivery location set forth in the Release. Seller bears all risk of loss or damage to the Supplies until delivery of the Supplies to Buyer at the delivery location set forth in the Release.

#### **5. Delays**

If at any time Seller has reason to believe that deliveries will be late, Seller will immediately provide Buyer with written notice specifying the reason and length of the anticipated delay in deliveries. Upon the occurrence or threatened occurrence of any late deliveries, Buyer may direct expedited shipment and/or incur premium freight or transportation costs, and Seller shall pay upon demand all excess costs resulting therefrom.

Seller shall be responsible for all other damages arising in connection with Seller's failure to meet Buyer's quantity or delivery requirements, including without limitation, all direct, consequential, and incidental damages incurred by Buyer including the cost of any shutdown of Buyer's facility or Buyer's customer's facility. During such delay, Buyer may at its option buy the goods from other sources and reduce its schedules to Seller by such quantities, without liability to Seller, or have Seller provide the goods from other sources in quantities and at times requested by Buyer and at the price(s) set forth in the PO.

#### **6. Changes**

Buyer reserves its right to change quantities, delivery dates and/or specifications or to otherwise change the scope of the work covered by the Purchase Order upon notice to the Seller. If such changes affect cost or timing, Buyer may at its discretion equitably adjust the price or time for performance where Seller's direct costs are materially affected after receipt of such supporting documentation as Buyer may require. No claim under this paragraph shall be asserted by Seller after ten (10) days following the notification of the change by Buyer.

Seller will not make any change relating to the Supplies except at Buyer's written instruction or with Buyer's written approval. Such prohibited changes include, without limitation, changing (i) any third party supplier to Seller of the services, raw materials, subcomponents or other goods related to the Supplies, (ii) the location of the facility from which Seller and/or any such third party supplier relates to the Supplies operates, (iii) the price of the Supplies, (iv) the nature, type or quality of any services, raw materials, subcomponents or other goods related to the Supplies, (v) the fit, form, function, appearance or performance of any Supplies, or (vi) the production method, or any process or software, or any production equipment used in the production or provision of, or as part of, any Supplies.



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### **7. Price Warranties**

Seller represents and warrants that the prices for the Supplies are no less favorable to Buyer than the prices Seller currently extends to any of its other customers for the same or substantially the same goods and/or services with the same or substantially the same delivery or quantity requirements. If Seller reduces the prices of such goods and/or services during the term of the Purchase Order, then Seller shall reduce the prices of the Supplies under the Purchase Order. If Seller fails to meet the lower price, Buyer, at its option, may terminate this Order without liability pursuant to Section 29.

### **8. Labor Disputes**

Seller shall immediately notify Buyer of any actual or potential labor dispute delaying or threatening to delay Seller's ability to meet its delivery or other obligations under the Purchase Order, such notice to provide all pertinent details. Seller will notify Buyer in writing at least (6) six months in advance of the expiration of any current labor contract(s). Upon request, Seller will deliver a supply of finished goods at least thirty (30) days prior to the expiration of any such labor contract, in quantities and for storage at any place or places designated by Buyer at Seller's expense.

### **9. Quality; Inspection**

Buyer may inspect and reject defective goods both prior to and after making payment therefore. Seller acknowledges that Buyer may choose not to perform incoming inspections of goods, and waives any rights to require Buyer to conduct such inspections. Seller, at no charge, will make its premises available to Buyer and Buyer's customers so they may inspect and/or test the goods at any time and shall provide any necessary assistance to make the access (including any inspection and testing) safe and convenient. Seller shall provide and maintain, at no additional charge, a testing and inspection system (which shall include documented quality control and reliability procedures) acceptable to Buyer covering the Supplies.

Buyer may reject all or any portion of the Supplies if it determines the Supplies are nonconforming or defective. Buyer may, at its option, at Seller's expense, return defective goods or scrap such goods internally for credit or reimbursement, or rework defective goods at the greater of the actual cost of such rework and Buyer standard charges for such rework. At Buyer's option, Seller shall replace any defective goods at its sole cost and expense, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate this Order for cause pursuant to *Section 29*.

Seller shall be responsible for any and all costs incurred by Buyer in connection with nonconforming goods, including without limitation (i) the cost of downtime in a facility of Buyer or a customer of Buyer and (ii) the cost of any inspections, sorting, or testing evaluations, calculated at the greater of the actual cost incurred by Buyer and Buyer's standard charges for such costs.

If Buyer holds defective goods, it will do so on Seller's instruction at Seller's risk. If Seller fails to give written instructions within 10 days of receiving notice from Buyer that Buyer is holding defective goods, Buyer may charge Seller for storage and handling or dispose of the goods without liability to Seller.



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### **10. Quality Systems**

Seller shall comply with any and all industry quality and inspection systems as well as the quality control standards that are established or required by Buyer, including without limitation, (i) TS16949 and ISO 9001 (as amended or superseded), (ii) the requirements identified in Buyer's most recently adopted Supplier Quality Manual as may be furnished by Buyer to Seller directly, or as may be posted on Buyer's website from time to time. Buyer and/or its customer may from time to time review and inspect Seller's testing, inspection, quality control standards, as well as the records and data supporting the same.

### **11. Right to Audit**

Buyer shall have the right, during regular business hours (except in the case of emergency, in which case Buyer shall have the right at any time), to inspect the facility, goods, materials and any property of Buyer covered by the Purchase Order, including all processes of the Seller related to the provision to Buyer of the Supplies. If Buyer wishes to inspect a facility or processes of the Seller, it shall provide not less than one (1) business day's prior notice, and the notice shall identify the facility, the areas or the processes to be inspected. Seller shall provide Buyer with access to its facilities to conduct such inspection and Seller shall cooperate fully with Buyer in the course of any such inspection.

### **12. Labeling, Packing and Shipment**

Seller agrees that all goods to be supplied hereunder shall be properly prepared for shipment and shall be packed, labeled, and shipped in accordance with Buyer's specifications, and/or any written directions and/or instructions as may be provided to Seller by Buyer from time to time. All packages shall be clearly identified with Buyer's PO number, Buyer's part number and contents quantity (or weight where appropriate). All material is to be shipped in a manner that protects the material from damage and/or from the outside elements. Individual packages shall not exceed the weight restriction applicable to the relevant jurisdiction. Seller shall not charge Buyer for labeling, handling, packing, storing, or shipping. All packing slips, bills of lading and customs documentation must clearly show the Purchase Order number and release number if assigned, and otherwise be sufficient to enable Buyer to easily identify the goods.

### **13. Invoicing and Payment**

Each invoice shall clearly show the detail on the Purchase Order including as a minimum, Buyer's Purchase Order number (and release if applicable), the Purchase Order item number, Buyer's part number, quantity of units in shipment, unit price, extended price, shipment date and bill of lading number. All payments shall be made in the currency specified on the face of the Purchase Order and no interest shall be paid on any overdue amounts.

Buyer reserves the right to return all invoices or related documents submitted incorrectly, and payment terms will be determined as of the date of the latest correct invoices.

Except as otherwise expressly stated in the Purchase Order, or hereunder, Buyer shall pay net invoices (subject to applicable withholding taxes, if any) by the later of (i) sixty (60) days after the end of the month during which the Supplies covered by the Purchase Order were delivered and/or the services covered by the Purchase Order were performed (as the case may be) and (ii) sixty (60) days after the invoice date. Notwithstanding the foregoing, where the Supplies to be purchased by Buyer from Seller under the Purchase Order constitute Tooling (including molds) and Buyer is entitled to receive reimbursement from its customer for such Tooling, Seller shall be entitled to payment



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under the Purchase Order for such Tooling only after and to the extent of, and in proportion to, actual receipt by Buyer of such payment from its customer.

In addition to any right of set-off or recoupment provided by law, Buyer may, without notice, set-off against or recoup from any amounts owed to Seller or Seller related or affiliated companies amounts that Buyer claims are owed to Buyer or to Buyer's related or affiliated companies by Seller or Seller's related or affiliated companies. If any obligations of Seller or its related or affiliated companies are disputed, contingent or unliquidated, Buyer may defer payment of amounts due until such obligations are resolved. If Seller does not provide such access and documentation, Buyer may determine in its reasonable discretion an appropriate adjustment based on information available to Buyer, including estimated costs, and Seller shall be responsible for Buyer's costs in determining such estimated costs. Seller shall continue performing its obligations under the Purchase Order notwithstanding any such dispute.

If invoices are subject to a cash discount, the discount period begins when Buyer receives the invoice. If Seller fails to attach necessary documents to the invoice the discount period will not begin until Buyer receives such documents.

If invoices are subject to Buyer's Direct Customer approval and if invoices are for equipment or tooling purchases, modifications, or cancellation charges, then Buyer's payment to Seller may be subject to Buyer's Direct Customer's approval. In such case, Seller acknowledges that Buyer's payment will be delayed until Buyer's Direct Customer's approval is complete, and Seller will provide full support to Buyer for any relevant information or documentation necessary pertaining to subject invoices.

### **14. Equipment and Other Property**

Unless otherwise expressly agreed to by Buyer in the Purchase Order, Seller, at its expense, shall furnish, keep in good condition, and replace when necessary, all machinery, equipment, tools, jigs, dies, gauges, fixtures, molds, patterns, and other items (the "Seller Owned Property") required by Seller to perform its obligations under the Purchase Order. Seller hereby grants Buyer an irrevocable option to take possession of and title to the Seller Owned Property that is special for the production of the Supplies, upon payment to Seller of its net book value less any amounts that Buyer has previously paid to Seller for the cost of such items; provided, however, that this option shall not apply if the Seller Owned Property is used to produce goods that are the standard stock of Seller or if a substantial quantity of similar goods are being sold by Seller to others.

Notwithstanding any other provision of the Purchase Order, Seller acknowledges and agrees that all materials, parts, assemblies, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment, all related appurtenances, accessions, and accessories and other items, and any reproductions and replacements thereof, any materials affixed or attached thereto, that are furnished by Buyer (either directly or indirectly) to Seller or paid for, in whole or in part, by Buyer, including by Buyer's customer, (all items above, collectively the "Tooling"), shall remain the property of Buyer and shall be held by Seller on a bailment basis. The Tooling, while in Seller's custody or control and while in the custody or control of Seller's suppliers, contractors or agents, shall be labeled appropriately as the property of Buyer, shall be held at Seller's risk, shall be kept insured by Seller at Seller's expense against loss or damage in an amount equal to the replacement cost thereof, and shall be subject to removal at Buyer's written request. Only Buyer has any right, title or interest in and to Tooling, except for Seller's limited right, subject to Buyer's sole discretion, to use the Tooling in the performance of Seller's obligations under this Agreement. Seller shall not use the Tooling for any other purpose. Seller shall not commingle Tooling with the property of Seller or with that of a Person other than Buyer or Seller and shall not move any Tooling from Seller's premises without the prior written approval by Buyer.



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Unless otherwise expressly stated in the Purchase Order, Seller shall maintain accounting and property control records for Tooling in accordance with sound industrial practices. Seller shall, at Seller expense, maintain the Tooling in good condition and repair, and shall replace any of the Tooling if, as and when necessary or reasonably required. Buyer does not provide any warranties with respect to the Tooling. Upon completion or termination of the Purchase Order, Seller shall retain on a bailment basis for Buyer, the Tooling still then in the physical possession of Seller, at Seller's expense, until directions are received from Buyer. Seller shall allow Buyer to take possession of the Tooling at any time, which includes the right to enter onto Seller's premises or to require Seller to pack and ship the Tooling (which packing and shipping shall be at Seller's expense in the case of a termination of the Purchase Order by Buyer for a breach by Seller) to a destination selected by Buyer without the necessity of payment or notice to Seller, or a hearing or a court order, which rights, if any, are waived by Seller. Seller's continued holding of Tooling after demand has been made by Buyer for delivery will substantially impair the value thereof, and, accordingly, Buyer will be entitled to a court order of possession without any need or proving damages or a bond. To the fullest extent permitted by law, Seller shall not allow any Encumbrance to be imposed on or attach to the Tooling through Seller or as a result of Seller's action or inaction. Seller waives its own rights to any mechanics lien statute or mouldmaker lien statute (or similar lien statute) and shall defend, indemnify and hold harmless Buyer from any third-party claim, including any claim arising out of any mechanics lien statute or mouldmaker lien statute (or similar lien statute). The Tooling shall be in no less than the same condition as originally received by Supplier, reasonable wear and tear excepted.

Seller acknowledges and agrees that (a) Buyer is neither the manufacturer of the Tooling nor the manufacturer's agent, (b) Buyer is bailing Tooling to Seller for Seller's benefit, (c) Seller has inspected the Tooling and is satisfied that the Tooling is suitable and fit for its intended purposes, of which Seller is aware, and (d) BUYER HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF THE TOOLING OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. Notwithstanding the foregoing, if the bailment relationship described in this Section 14 is deemed to be a secured financing transaction, Seller grants to Buyer a continuing security interest in any rights or interests it may have in the Tooling.

### **15. Intellectual Property**

Seller represents and warrants that use or sale by Buyer of any Supplies hereunder will not infringe on any patent, industrial design, trade-mark, license, copyright, process of manufacture or other intellectual property right. Seller agrees to defend, indemnify and save Buyer, its subsidiaries and affiliates, their respective successor and assigns, Buyer's customer and users of products containing the Supplies, harmless from any liabilities, demands, losses, costs, damages, claims or expenses (direct or indirect) of any kind or nature (including court costs and legal and other professional fees) arising from or as a result of any such infringement or alleged infringement. Seller expressly waives any claim that any infringement arose from compliance with Buyer's specifications. Buyer or its subcontractors may repair or rebuild goods supplied under the Purchase Order without payment of any kind to Seller. Buyer and other indemnified parties shall have the right to be represented by their own counsel and actively participate in any such claim, and the reasonable costs of such representation shall be paid by Seller on demand.

Seller shall indemnify Buyer from and against any and all Damages arising from any third party infringement claims or alleged infringement claims in connection with the Supplies. This duty shall not be limited to the amount Buyer paid to purchase the Supplies. Damages mean liabilities, judgments, awards, fines, penalties, settlement amounts, demands, losses, costs, court costs, costs of compliance with judicial orders, fees (including reasonable attorney's





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fees), and expenses, including those costs and fees incurred in enforcing this provision, and including any applicable interests. Seller's duties shall start upon a threat of a complaint being filed.

Seller hereby grants to Buyer, its affiliates, and their respective successor and assigns, a non-exclusive, paid-up, worldwide, irrevocable and perpetual, license, with a right to sublicense others, to use any patents, trade secrets, trademarks, services marks, copyrights, license, or other intellectual property right owned or controlled by Seller or its affiliates as necessary and sufficient to enable Buyer to make, have made, repair, rebuild, use and/or sell the Supplies.

Parts manufactured based on Buyer's drawings and/or specifications may not be used for Seller's own use or sold to third parties without Buyer's prior written consent. Seller will not assert any claim with respect to technical information that Seller may disclose in connection with the Supplies.

All Supplies, Tooling and all other deliverables, data, documentation, inventions (whether or not patentable), drawings, industrial designs, technical information, know-how, processes of manufacture or other intellectual property or information which are generated by Seller further to its obligations under the Purchase Order, whether in electronic form or otherwise, may not be used by Seller other than in connection with the Purchase Order and shall become the sole and exclusive property of Buyer immediately upon payment by Buyer of any amount under the Purchase Order. Seller shall furnish to Buyer, without restrictions on disclosure, all property or information.

To the extent that Seller creates or develops any patents, industrial designs, technical information, knowhow, processes of manufacture or other intellectual property in the performance of Seller's obligations under this Order, Seller shall: (i) assign to Buyer each invention, discovery or improvement (whether or not patentable) that is conceived or first reduced to practice by Seller, or by any person employed by or working under the direction of Seller, in the performance of Seller's obligations under this Order; and (ii) promptly disclose in an acceptable form to Buyer all such inventions, discoveries or improvements and cause Seller's employees to sign any papers necessary to enable Buyer to obtain title to and to file applications for patents throughout the world.

Any work of authorship created by Seller or its employees which is ordered or commissioned by Buyer for the creation of copyrightable works, the works shall be considered "works made for hire;" and 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.

### **16. Confidentiality and Non-Disclosure**

Buyer owns and retains all Buyer Information (as defined below). Seller shall not acquire, nor attempt to obtain, any patent, trademark, copyright, license or other rights in respect of the Buyer Information. Seller shall not disclose, publish, publicize or advertise any Buyer Information to any other person, use any Buyer Information except for the purpose of supplying the Supplies. Seller shall handle all Buyer Information in such a manner to ensure that it is kept strictly confidential and that it is not used other than for the purpose of supplying the Supplies. Seller shall deliver all Buyer Information to the Buyer at the completion or termination of the Purchase Order or, upon request of the Buyer, at any other time. "Buyer Information" means all information furnished by Buyer, including without limitation, pricing, specifications, drawings, designs, engineering instructions, photographs, reproducible copy, parts lists, plans, reports, working papers, computations, samples and



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prototypes, and also includes any information relating to the Purchase Order (whether prepared by Buyer, Seller or any other person), and any copies or excerpts thereof.

Unless otherwise expressly stated in the Purchase Order and except as may be agreed in a prior written agreement between Buyer and Seller, no commercial, financial or technical information disclosed in any matter by Seller in connection herewith shall be deemed to be secret or confidential, and Seller shall have no rights against Buyer or its customer with respect to any use or disclosure of any such information.

### **17. Use of Buyer's Name**

Seller will not, without the prior written consent of Buyer, in any manner publish the fact that Seller has furnished or contracted to furnish Buyer goods and/or services, or use the name or trademarks of Buyer or its affiliates, their products, or any of their associated companies in Seller's advertising or other publications. Seller will not place its, or any third party's trademark or other designation on the part if the part bears a Buyer trademark or an identifying mark specified by Buyer, or if the part is specific or proprietary to Buyer's design ("Marked Parts"). Seller will sell Marked Parts, and similar goods, only to Buyer and will not sell Marked Parts or similar goods to third parties without Buyer's prior written consent.

### **18. Shipment / Customs Duties / Taxes and Export Controls**

Unless otherwise expressly stated in the Purchase Order, (i) all goods shall be delivered, in accordance with Buyer's specifications and/or any written directions and/or instructions as may be provided to Seller by Buyer from time to time, by Seller at Seller's expenses and Buyer shall not be liable for any insurance, storage, parking or detention charges, (ii) prices include customs duties, tariffs and all federal, provincial, state and local taxes (including all import taxes, excise taxes and sales taxes) applicable to the Supplies, and (iii) any reduction in Seller's cost resulting from a reduction in transportation charges, customs duties, import taxes, excise taxes and/or sales taxes from those in effect on the date of the Purchase Order shall be paid to Buyer by Seller as a reduction in the price.

Seller is obligated to annually provide Buyer with all appropriate Certificates of Origin to satisfy NAFTA requirements, where applicable. In addition, Seller shall provide Buyer with all appropriate Country of Origin documentation to satisfy applicable customs requirements. Seller will be responsible for any costs or penalties relating to Seller's failing to provide such certification or documentation or providing fraudulent certification or documentation.

Export licenses or authorizations necessary for the export of the goods shall be the responsibility of Seller unless otherwise stated on the Purchase Order, in which event Seller shall provide such information as may be necessary to enable Buyer to obtain such licenses or authorizations. Seller will reimburse Buyer for any costs associated with inadequacies in any such documentation. Without limitation, it is Supplier's responsibility to provide the correct tariff classification of Supplies. If Buyer incurs any costs or losses as a result of an inaccurate tariff classification, such costs or losses shall be paid by Seller to Buyer and Buyer shall be entitled to debit Supplier's account for such costs or losses.

Seller shall make all necessary arrangements for goods to be covered by any duty deferral or free trade zone program of the country of import. Unless otherwise stated herein, all customs drawback will be credited to the Buyer.





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### **19. Warranty**

Seller represents and warrants that the Supplies delivered or supplied hereunder, including any special tools, dies, jigs, fixtures, patterns, machinery and equipment, that are obtained at Buyer's expense for the performance of this Order and/or are or become the property of Buyer, will comply with all the specifications, drawings, samples, or other descriptions furnished to or by Buyer from time to time, and will (i) be merchantable, (ii) be of good material and workmanship and free from defect, (iii) be free and clear of all liens, security interests or other encumbrances; (iv) not infringe or misappropriate any third party's patent or other intellectual property rights, (v) comply with all applicable laws, regulations, rules, codes and standards of the jurisdictions in which the Supplier, and the products containing the Supplier, are to be sold. In addition, Seller acknowledges that Seller knows Buyer's intended use and warrants that all the Supplies delivered or supplied hereunder are designed, manufactured or assembled by Seller based on Buyer's intended uses and will be fit, suitable and sufficient for that use. Seller will reimburse Buyer for all damages (direct or indirect) which Buyer may incur if Seller breaches these warranties. Seller further expressly warrants that, unless otherwise expressly stated in this Order, the Supplies are manufactured entirely with new materials and none of the Supplies are, in whole or any part, governmental or commercial surplus or used, remanufactured, reconditioned or of such age or condition so as to impair its fitness, usefulness or safety. The warranty period shall be the longer of that provided by applicable law and that offered by Buyer to its customers.

Buyer's approval of any design, drawing, material, process or specifications will not relieve Seller of these warranties.

To mitigate its damages, Buyer may fully defend any claim from its customer that the Supplies supplied by Seller are defective, in breach of warranty, or otherwise did not meet applicable legal or contractual requirements because such customer may attempt to hold Buyer responsible for problems caused in whole or in part by Seller. Seller and Buyer agree that this defense is in the interest of both Seller and Buyer. Seller waives the right to argue that the fact that Buyer took any such position in any way limits Buyer's right to assert a claim against Seller by Buyer for breach of warranty, contribution, indemnification or other claim.

Seller will immediately notify Buyer in writing when it becomes aware of any ingredient, component, design or defect in the Supplies that is or may become harmful to persons or property.

### **20. Compliance with Laws**

In fulfilling its obligations hereunder, Seller, its employees, agents, representatives and contractors (and all Supplies delivered by Seller hereunder) shall at all times comply with any and all applicable laws, rules, regulations, codes, orders, ordinances and standards. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Order.

Seller shall package, label and transport the Supplies and their containers, in particular those which constitute a health, poison, fire, explosion, environmental, transportation or other hazard, in compliance with all applicable laws in effect in the place to which the Goods are shipped or as otherwise specified by Buyer.

Further, Seller represents that neither it nor any of its subcontractors will utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in abusive employment or corrupt business practices,



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in the provision of the Supplies. Seller agrees to comply with all applicable anti-corruption laws, and that neither it nor any of its subcontractors will directly or indirectly provide or offer to provide, anything of value to or for the benefit of, any official or employee of a governmental authority to obtain or retain any contract, business opportunity, or other benefit, or to influence any act or decision of that person in his/her official capacity. At Buyer's request, Seller shall certify in writing its compliance with the foregoing.

Seller shall defend, indemnify and hold Buyer, its subsidiaries and affiliates, their respective successors, assigns, representatives, employees and agents harmless from and against all liabilities, claims, demands, losses, costs, damages and expenses of any kind and nature (including personal injury, property damage, consequential and special damages) arising from or as a result of Seller's failure to comply with this Section.

### **21. Indemnification and Insurance Requirements**

Seller hereby agrees to defend, indemnify and hold harmless Buyer, its affiliates, their directors, officers, employees, agents and customers ("Indemnified Parties") from any liability, claim, loss, cost, demand, expense of any nature or kind (including consequential and special damages, personal injury, property damages, lost profits, recall or other customer field service action costs, costs allocated under a customer warranty allocation program, production interruption costs, inspection, handling and reworking charges, professional and other legal fees, and other costs associated with Buyer's administrative time, labor and materials), any action and all other obligations and proceedings including without limitation all judgments rendered against, and all fines and penalties imposed upon Indemnified Parties, and all legal fees and any other costs of litigation ("Liabilities") arising from or as a result of (i) warranty claims, product recall claims, or product liability claims, injury or death of any person and damage or loss of any property, allegedly or actually resulting from or arising out of any act, omission or negligent conduct of Seller or its employees, agents, or subcontractors or in any way attributable to the performance of Seller; (ii) result of any noncompliance of Seller with section 19; (iii) any noncompliance of Seller with the Contract Documents (including without limitation, shipping or delivery requirements); or (iv) any other acts, omissions or negligence of Seller or of any of its subcontractors or suppliers in connection with Seller's performance of its obligations under this Order; provided however, that Seller's obligation to indemnify Buyer will not apply to any liabilities solely arising from Buyer's negligence.

Before commencing work, Seller shall, upon request of Buyer, furnish to Buyer a certificate of insurance showing that Seller carries public liability, products liability, property damage and workers' compensation insurance in amounts and by insurers acceptable to Buyer. All such policies of insurance shall contain appropriate endorsements naming Buyer as an additional insured, extending coverage thereof to liability expressly assumed by Seller and requiring the insurer to give Buyer 30 days' prior written notice of any cancellation or substantial change of coverage. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer's insurers and Buyer or the indemnitees

### **22. Buyer's Liability.**

The total liability of Buyer arising from a claim by Seller in connection with the Contract Documents shall not exceed the total amount of the corresponding price paid by Buyer under the Contract Documents. Buyer shall have no liability to Seller whatsoever if Buyer's breach is caused by a breach or delay of Seller. Buyer will not be liable for any indirect, special, incidental, punitive, exemplary, or consequential damages, whether or not foreseeable.



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### **23. Service and Replacement Parts**

Except as otherwise expressly agreed in writing, for a period of fifteen (15) years after a vehicle design or specific part concludes production, Seller will supply Buyer's written "service parts" orders for the same Supplies, component parts and materials at the price(s) set forth in the Purchase Order plus any actual cost differential for special packaging. If the Supplies are systems or modules, Seller will sell each component or part at a price that does not, in the aggregate, exceed the system or module price specified in the Purchase Order, less assembly costs, plus any actual cost differential for packaging.

### **24. Customer Requirements**

Seller shall comply with the applicable terms and conditions of any agreements ("Customer POs") received by Buyer from Buyer's customer ("Customer"), or directly or indirectly applicable to Buyer, under which Buyer agrees to supply to its Customer, or to incorporate into goods supplied to Customer, Supplies purchased by Buyer from Seller. The terms "Customer" and "Customer PO" also include, where relevant, the OEM and any intermediate entities in the supply chain between Buyer's direct Customer and such OEM, and related terms and conditions of such Customers. Buyer may in its discretion supply Seller with information regarding Customer POs. Seller will be responsible for determining how such Customer POs impact Seller's obligations under the Purchase Order, and Seller will meet all such disclosed Customer Purchase Order terms and conditions to the extent within Seller's control. In the event of a conflict between the Purchase Order or these Terms and the terms of the Customer PO, Buyer will determine, in its sole and absolute discretion, which terms will supersede and apply to Seller. Seller will do everything within its control to enable Buyer to meet the terms and conditions of Customer PO, including without limitation, cost and productivity terms and price reductions. By written notice to Seller, Buyer may elect to have the provisions of this section prevail over any conflicting term between Buyer and Seller. (b) In the event that a Customer files or has filed against it a petition in bankruptcy or insolvency and, in the course of such proceeding and in connection with actual or threatened termination by the Customer of its contract(s) with Buyer (by rejection or otherwise), Buyer permits a reduction in the price(s) paid to Buyer for products incorporating the Supplies, the price paid to Seller for the Supplies from and after the date of such reduction will be automatically adjusted proportionally by the same percentage as the price paid to Buyer, and the Purchase Order will otherwise remain in effect without modification. (c) If a Customer directed, recommended, requested, suggested or otherwise identified Seller as the source from which Buyer is to obtain the Supplies ("Direct Supply Relationship"), then notwithstanding the particular payment terms otherwise applicable to the Purchase Order or anything to the contrary in the Purchase Order: (1) in no event will Seller have a right to receive payment from Buyer for the Supplies except following, and in proportion to, Buyer's actual receipt of payment for those goods in which the specific Supplies are incorporated, and (2) any lengthening of applicable payment terms to Buyer will automatically lengthen the payment terms as between Buyer and Seller by an identical amount of time, and Buyer may, at its option and on notice to Seller, otherwise revise its payment terms for Supplies to take into account any other change in the payment terms of Customer(s) for the Supplies under the Purchase Order; (3) within three business days of any change in price, specifications or other terms negotiated or proposed between Seller and Customer, Seller will notify Buyer in writing and will immediately adjust its invoices to reflect any price reduction, provided that no change will be binding on Buyer without Buyer's specific written consent; and (4) (without limiting any other rights and remedies of Buyer) Seller will defend, indemnify and hold harmless Buyer from any liabilities, claims, demands, losses, damages, costs and expenses (including without limitation attorneys' fees and other professional fees) incurred by Buyer arising from or relating to the Supplies supplied by Seller and including without limitation any charges or set-offs (including without limitation interim field service action cost recovery debits) taken by Customer against Buyer by reason of alleged defects in Supplies, even if such set-offs by Customer are before final determination of (and subject to adjustment based upon) whether and to what extent defects in Supplies were a cause of the related remedial action undertaken and



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related costs/damages incurred by Customer. (d) If any requirement imposed by any Purchase Order on Seller is found to be unenforceable or a gap otherwise exists or is created in the terms applicable to any Purchase Order through operation of law, conflict in terms or otherwise, the corresponding requirement(s) of Customer shall be applicable to and binding on Seller for the benefit of Buyer. Seller acknowledges that it is familiar with the automotive industry and the applicable terms of Customer(s) that would apply in such event.

### **25. Assignment or Sub Contracting**

Supplier shall not assign or subcontract any portion of the Purchase Order without the prior written consent of Buyer. Buyer shall have the right to assign this Purchase Order or its interest herein, without Seller's consent, to any of its affiliates or to any purchaser or successor to Buyer's business.

### **26. Hazardous Substances**

Seller shall comply with all Buyer requirements then in effect regarding the handling, transport, processing, use or disposal of the goods, containers and packing. Upon Buyer's request, Seller will promptly furnish Buyer, in such form and detail as Buyer may direct: (i) a formula or list and description of all ingredients in the goods (including ingredients which could reasonably be considered pollutants, contaminants, chemicals, deleterious substances or industrial toxic or hazardous wastes or substances); and (ii) an updated formula or list of ingredients promptly upon any change.

### **27. Term**

Each Purchase Order will remain in effect for the term specified in the Purchase Order (or until terminated if no term is specified) unless earlier terminated in accordance with this Agreement.

### **28. Termination for Convenience**

Buyer may, at its option, terminate the Purchase Order in whole or in part at any time for any reason without penalty by giving Seller written notice. Upon Seller's receipt of such notice of termination, Seller shall, unless directed otherwise by Buyer in writing, (i) terminate immediately all work under the Purchase Order, (ii) transfer to Buyer all finished goods which conform to the requirements of the Purchase Order and does not exceed the quantity specified in Releases issued by Buyer, and (iii) transfer all actual and reasonable quantities of work-in-process and raw materials produced or acquired by Seller prior to the effective date of termination in order to produce the quantities of goods specified in Releases issued by Buyer which cannot reasonably be used by Seller in producing supplies for itself or other customer. Upon such termination by Buyer, Buyer shall pay to Seller the following amounts without duplication (in accordance with the payment terms set out in the Purchase Order): (i) the Purchase Order price for the Supplies that have been completed in accordance with firm Releases and not previously paid for; and (ii) the actual costs of the work-in-process and raw materials transferred to Buyer as contemplated above. Buyer shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, or general and administrative burden charges from termination of the Purchase Order. Within 30 days of the effective date of termination, Seller shall submit a comprehensive termination claim to Buyer, with sufficient supporting data to permit Buyer's audit and shall promptly furnish supplemental and supporting information as Buyer shall request. Buyer shall have the right to audit and examine all books, records, facilities, work, material, inventories and other items relating to any termination claim. If Seller fails to submit its termination claim with the 30 day period referred to above, Buyer may determine, on the basis of information



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available to it, the amount if any due Seller with respect to the termination and such determination shall be final. If Seller delivers any other material after termination, Buyer may return the material and debit Supplier for any cost related thereto.

### **29. Termination for Breach**

Buyer reserves the right to terminate all or any part of the Purchase Order without liability or further obligation, if Seller (i) repudiates, breaches, or threatens to breach any provision of the Purchase Order, including Seller's warranties, (ii) fails or threatens not to deliver Supplies or perform services under the Purchase Order; or (iii) undergoes a material adverse change in its financial condition, including without limitation if Seller (A) admits its inability to pay its debts as they become due or otherwise acknowledges its insolvency; (B) institutes or has commenced against it any proceeding seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, dissolution, winding up, reorganization, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to it under any law relating to bankruptcy, insolvency, reorganization, or compromise of debts or other similar laws; (C) has a receiver, trustee, agent, custodian or other similar official appointed for it or a substantial part of its assets; or (D) ceases or threatens to cease carrying on business in the ordinary course.

### **30. Transition of Supply**

Upon the termination of the Purchase Order by either party, in whole or in part, or in connection with a decision of Buyer to change to an alternate source of Supplies, including in-sourcing at Buyer's facility, (an "alternative supplier"), Seller will co-operate with Buyer in ensuring an orderly transition of supply, including as follows: (i) Seller shall continue to produce and deliver all Supplies ordered by Buyer pursuant to any Releases issued by Buyer, at the prices and other terms stated in the Purchase Order, without premium or other condition, during the period Buyer deems necessary in order for Buyer to transition to the alternate supplier; and (ii) at no cost to Buyer, Seller will promptly (A) provide all requested information and documentation regarding Seller's manufacturing process (including bills-of-material, Tooling and process information and samples of Supplies), (B) permit access to Seller's site by Buyer or Buyer's representatives to inspect Seller's manufacturing process with respect to the Supplies, (C) provide all notices necessary or desirable for Buyer to resource the Purchase Order to an alternative supplier, and (D) comply with Seller's obligations under Section 14.

### **31. Remedies**

All remedies set out in the Contract Documents are cumulative. Buyer's failure to resort to any remedy is not a waiver of any default or remedy. In addition, Buyer may avail of any other remedy in the Purchase Order (including any Contract Document) and those available at law or equity.

Seller will reimburse Buyer for any incidental, consequential or other damages (including lost profits) caused or required by Seller's breach, including without limitation costs, expenses and losses incurred directly or indirectly by Buyer or Buyer's customer(s): (i) in inspecting, sorting, storing, reworking, repairing or replacing the nonconforming Supplies; (ii) resulting from production interruptions; (iii) conducting recall campaigns, customer field service actions or other corrective service actions; or (iv) resulting from personal injury (including death) or property damage caused by the nonconforming Supplies. Buyer's damages include reasonable attorneys' fees and other professional fees, settlements and judgments incurred by Buyer and other costs associated with Buyer's administrative time, labor and materials.





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In any action brought by Buyer to enforce Seller's obligations in connection with the production or delivery of Supplies or transition support, Seller acknowledges and agrees that monetary damages are not a sufficient remedy for any actual, anticipatory or threatened breach of the Purchase Order and that, in addition to all other rights and remedies that Buyer may have, Buyer shall be entitled to specific performance and injunctive equitable relief as a remedy for any such breach, plus Buyer's reasonable attorneys' fees.

Seller expressly acknowledges and agrees that for any failure of Seller to deliver the Supplies on the delivery dates and times as specified, or in any action brought by Buyer for possession of property, monetary damages are not a sufficient remedy for any actual, anticipatory or threatened breach of the Purchase Order and that, in addition to all other rights and remedies that Buyer may have, Buyer shall be entitled to equitable relief, including injunction, in such event.

### **32. Customer Contact**

Seller (including its affiliates) shall not contact Buyer's customer regarding the Supplies unless specifically authorized by Buyer in writing. Unless Seller has been authorized to deal directly with Buyer's customer, Seller (including its affiliates) shall respond to any inquiry from Buyer's customer by requesting that the inquiry be directed to Buyer, and Seller shall simultaneously advise Buyer of the inquiry.

### **33. Orders for Tooling**

This Section 33 applies only to Tooling orders. The price set forth in the Purchase Order for Tooling equipment shall be adjusted so as to credit Buyer in the amount, if any, by which such price exceeds Seller's actual costs. Seller agrees to permit Buyer access to Seller's premises and records at any time and from time to time during regular business hours to verify charges submitted by Seller in relation thereto, including without limitation, at Buyer's option, copies of Seller's cancelled checks and bank statements and any other information necessary for Buyer to confirm the existence or absence of rebates, credits or discounts provided to Seller by any third party relating to such Tooling. Seller will retain (and cause its Tooling sub-suppliers to retain) all cost records for a period of three years after receiving final payment of the charges.

### **34. Relationship of Parties**

Buyer and Seller are independent contracting parties and nothing in the Purchase Order shall make either party the agent or legal representative of the other for any purpose. The Purchase Order (including any other Contract Document) does not grant to either party any authority to assume or to create any obligation on behalf of or in the name of the other. All employees and agents of Seller or its respective contractors are employees or agents solely of Seller or such contractors, and not of Buyer.

### **35. Modifications**

The Purchase Order may only be modified by a written amendment signed by Buyer's authorized representative. For changes within the scope of Section 6, the Purchase Order may be modified by a purchase order amendment issued by Buyer. Buyer may modify these purchase order terms and conditions from time to time by posting revised purchase order terms and conditions to Buyer's internet website (or such other website as may be directed through links available on such website) as specified on the fact of the Purchase Order ("Buyer's Website"). You may visit Buyer's Website at [www.abcgrouppinc.com](http://www.abcgrouppinc.com). Such revised purchase order terms and conditions shall apply to all purchase orders and purchase order amendments issued on or after the effective date thereof. Seller shall be responsible for reviewing Buyer's Website periodically.





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### **36. Additional Requirements**

Buyer's Website may contain additional requirements for certain items covered by the Purchase Order, including quality, packaging, and delivery requirements. Any such requirements shall be deemed to form part of the Purchase Order and are binding on Seller. Buyer may periodically update such requirements by posting revisions thereto on Buyer's Website. In the event of conflict between the requirements on the face page of the Purchase Order and such additional requirements contained on Buyer's Website, the terms on the face page of the Purchase Order shall prevail (unless the requirements specified on Buyer's Website expressly provide otherwise).

### **37. Waiver of Compliance**

No waiver by Buyer of a breach or threatened breach of any provision of the Contract Documents shall constitute a waiver of any other breach or threatened breach or of such provision. Any failure by Buyer to insist upon strict compliance by Seller of any term or condition hereunder shall not act as a waiver of or estoppel with respect to Buyer's rights thereunder.

### **38. Severability**

If any provision, clause or phrase of these terms and conditions shall, for any reason and to any extent, be deemed by any court of competent jurisdiction to be invalid or unenforceable, the remainder of these terms and conditions and the application of every other provision, clause or phrase to Buyer and Seller shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

### **39. Survival**

The obligations of Seller to Buyer survive termination of the Purchase Order, except as expressly stated in the Purchase Order.

### **40. Governing Law**

The Purchase Order, and the rights and obligations of the parties under the Purchase Order, shall be governed by and construed in accordance with the laws of the state of Tennessee and the laws of the United States applicable therein. For greater certainty, the United Nations Convention on Contracts for the International Sale of Goods or the United Nations Convention on the Limitation period in the International Sale of Goods, as amended, shall not apply to the Purchase Order. Any legal proceeding related in any way to the Purchase Order shall be commenced in a court in Tennessee. The parties consent to the exclusive jurisdiction of such court as their freely negotiated choice of forum for all such legal proceedings.