



Document Number: CP-30-ALL-16

Document Title: Production Purchase Order Terms and Conditions

TI FLUID SYSTEMS
PRODUCTION PURCHASE ORDER TERMS AND CONDITIONS

1. **CONTRACT:** The Purchase Order, Global Supplier Requirements Manual together with these Terms and Conditions and any addenda or other documents incorporated or referred to in the Purchase Order or herein and any paper or electronic releases issued to Seller hereunder, (collectively, the “Order”) constitutes the entire contract between the TI Fluid Systems legal entity name on the Purchase Order (the “Buyer”) and Seller for the materials ordered and any related services (collectively, “Goods”), and supersedes any previous oral or written representations, including but not limited to provisions in Seller’s quotations, proposals, acknowledgments, invoices or other documents. These Terms and Conditions will apply to the Order except as expressly modified or waived on the face of the Order. Captions in these Terms and Conditions are for convenience only. Any references in the Order to Seller’s quotation or other Seller document(s) are for information only and Buyer hereby rejects all terms and conditions proposed by Seller therein.
2. **ACCEPTANCE:** A contract is formed on the date that Seller accepts the offer of Buyer. Each Order shall be deemed accepted upon the terms and conditions of such Order by Seller by shipment of goods, performance of services, commencement of work on goods, written acknowledgement, or any other conduct of Seller that recognizes the existence of a contract pertaining to the subject matter hereof. Additionally, each Order shall be deemed accepted five business days after Buyer delivers the Order to Seller, if Seller fails to object to the Order. Acceptance is expressly limited to these Terms and Conditions and such terms and conditions as are otherwise expressly referenced on the face of the Order. No purported acceptance of any Order on terms and conditions which modify, supersede, supplement or otherwise alter these Terms and Conditions shall be binding upon Buyer and such terms and conditions shall be deemed rejected and replaced by these Terms and Conditions unless Seller’s proffered terms or conditions are accepted in a physically-signed writing by an authorized representative of Buyer (a “Signed Writing”), notwithstanding Buyer’s acceptance of or payment for any shipment of goods or similar act of Buyer. In the event of a conflict between the Order and any prior or contemporaneous agreement or document exchanged between Buyer and Seller, the Order governs.
3. **SELLER’S STATUS:** Seller and Buyer are independent contracting parties and nothing in the Order shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other party.
4. **ASSIGNMENT:** This Order is issued to the Seller in reliance upon Seller’s personal performance of the duties imposed. Buyer’s consent to an assignment by Seller shall not be deemed to waive Buyer’s right to recoupment from Seller and/or its assigns for any claim arising out of this Order. Assignment shall not relieve Seller from its obligations of confidentiality under Section 15 hereof. Buyer shall have the right to assign any benefit or obligation under this Order to any third party upon notice to Seller.
5. **CHANGES TO ORDER:** Buyer may change this Order in any respect at any time by notice to Seller. If any such changes affect cost or time for performance, Buyer may, at its discretion, equitably adjust the price or time for performance where the Seller’s direct costs are materially affected by such changes after receipt of documentation in such form and detail as Buyer may direct. Any request by Seller for an adjustment in price or terms must be made, in writing, no less than sixty (60) days prior to the date when such change is intended to become effective. Any adjustments requested by Seller, if approved by Buyer, must be in writing and signed by a duly authorized representative of Buyer. If Seller does not provide timely notice to Buyer that a requested change may result in a difference in price or time for performance, the parties agree that Seller’s requested change did not affect the price or time for performance. Seller will not make any change to the Order unless done pursuant to Buyer’s written instructions or with Buyer’s written approval.
6. **PACKING AND SHIPMENT:** Seller will pack and ship the Goods in accordance with the Buyer’s instructions on the Order, furnish all shipping documents required by Buyer and plainly mark Buyer’s name and the Order number on all packages and documents. Unless otherwise stated in the Order or herein, Seller will bear all costs of delivering the Goods, including shipping and insurance charges, duties, taxes and other charges. Buyer’s count or weight will be final and conclusive for all shipments.



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Seller will ensure that any third parties who supply packaging for the Goods agree to comply with Buyer's standards. Seller will reimburse Buyer for all expenses incurred by Buyer as a result of improper packing, marking, routing, or shipping. Seller will not charge separately for packing, marking, or shipping, or for materials used therein unless Buyer specifies in writing that Buyer will reimburse Seller for such charges. Seller shall pay any costs incurred by Buyer, including costs charged by Buyer's customers as a result of Seller's failure to comply with shipping or delivery requirements.

7. **QUANTITY AND DURATION:**

A. The quantity applicable to each Order is specified on the face of the Order. The quantity specified may be for up to one hundred percent (100%) of Buyer's requirements for the Goods. Seller further acknowledges and agrees that Seller is obligated to provide Goods to Buyer in the quantity specified in any release issued by Buyer ("Release"). Releases may include Projections (defined below), but Releases are only binding upon Buyer for, and Buyer will have no obligation or liability beyond, the firm quantity specified in the Release. Seller acknowledges and agrees that it will be responsible for assuring all Goods are sufficient to meet the quantities stated in the Release.

B. Unless stated otherwise on the face of the Order, the duration of each Order shall be for the life of the OEM vehicle program(s) into which the Goods ultimately are incorporated, plus applicable service and replacement parts requirements or so long as Buyer's contract on the program with the OEM remains active, whichever is shorter in duration. Buyer and Seller acknowledge, however, that this Section 7.B does not affect or otherwise change Buyer's rights of termination set forth herein.

C. Upon the expiration of any Order, Seller shall cooperate with Buyer and provide all reasonably requested support and information required by Buyer to facilitate Buyer's sourcing of the Goods to a replacement supplier.

8. **PROJECTIONS:** From time to time and in connection with quotations, requisitions, and Orders, Buyer may provide Seller with estimates, forecasts or projections of its future volume or quantity requirements for the Goods and/or the term of a program ("Projections"). Projections, unlike a Release for a firm quantity, are not binding on Buyer. Buyer makes no representation, warranty, guaranty or commitment of any kind or nature, express or implied, regarding any Projections or other estimate, forecast or projection provided to Seller, including as to its accuracy or completeness. Seller accepts that Projections may not be accurate and that actual volume or duration could be less than or greater than the projections. Seller expressly accepts this risk.

9. **DELIVERIES:** Time and quantity are of the essence in Seller's performance of this Order. Seller will deliver all Goods in accordance with Buyer's instructions about volume, mix and 100% on time delivery. Seller shall provide appropriate planning information to demonstrate capability to provide 100% on time delivery at Buyer's request. If any Goods are delivered in excess of volumes ordered or in advance of schedule, Buyer may return them at Seller's expense or retain them and invoice Seller for any resulting handling and storage costs. Buyer will not process invoices for Goods shipped in advance of schedule until the scheduled delivery date. Buyer may change scheduled deliveries at any time by written notice to Seller and will reimburse Seller for reasonable, documented incremental costs incurred by Seller due to such changes. If Seller fails to deliver any shipment of Goods in accordance with Buyer's instructions, Buyer may cancel the Order and/or purchase substitute goods, in which event; Seller may reimburse Buyer for its costs in procuring the substitute goods. Seller is responsible for excess costs associated with late delivery. This shall include (but will not be limited to) expedited freight, loss of production, and excess costs charged to Buyer by its customer due to late delivery. Notwithstanding any agreement concerning payment of freight expenses, delivery shall not have occurred and the risk of loss shall not have shifted to Buyer until the Goods have been delivered to Buyer's facility and have been accepted at that facility.

10. **CONSIGNMENT STOCK:** Where indicated on the face of an Order or otherwise agreed between Buyer and Seller that Goods shall be delivered and managed under a consignment stock arrangement, transfer of title to Goods shall occur upon Buyer's withdrawal of Goods from the designated consigned inventory area (the "Consigned Inventory Area"). Buyer shall be under no obligation to withdraw Goods from the Consigned Inventory Area and may return unused Goods stored within the Consigned

Inventory Area at any time without penalty or liability. Buyer shall submit a report of the withdrawn Goods and Seller shall issue the relevant invoice on the basis of such report.

11. INSPECTIONS:

A. Buyer and Buyer's customer or customer's representative may inspect and/or test the Goods, materials and any property belonging to Buyer (or its customers) under the control of Seller (or its sub-suppliers) at any time at its own expense and Seller, at no charge, will make its premises available (and will use its best efforts to procure that its sub-suppliers will make available their respective premises) for this purpose and provide any necessary assistance to make the procedures safe and convenient. No inspections and/or tests by Buyer will relieve Seller of its obligations to inspect and test the Goods and Seller acknowledges that any inspection by Buyer whether during manufacture, prior to delivery or within a reasonable period after delivery, shall not constitute acceptance of any work-in-progress or finished Goods. In addition to any other remedies it may have, if Buyer finds any Goods to be defective or not in conformity with its specifications or requirements, it may, in its sole discretion, return them to Seller for a refund of the purchase price, require Seller to repair or replace them, or rework or repair them itself or through third parties, all at Seller's sole expense and Seller will reimburse Buyer for all costs incurred by Buyer as a result of any defective or non-conforming Goods.

B. Unless otherwise directed by Buyer in writing, any Goods determined to be nonconforming by Seller (or its suppliers) or rejected by Buyer (or its customer) as nonconforming, will be rendered unusable. Seller will not sell, and will procure that nonconforming Goods are not sold in the automotive aftermarket as replacement or service assemblies or parts. Seller has, or will institute immediately, appropriate internal controls, as well as audit/review arrangements with its suppliers, to ensure compliance with the requirements of this Section 11. Seller shall defend, indemnify and hold Buyer harmless from and against any liability claims, demands or expenses (including attorney's or other professional fees) arising from or relating to Seller's noncompliance with the requirements of this Section 11.

Buyer shall have the right to enter Seller's facility during normal business hours or, in the event of a Seller shutdown, at reasonable times, to inspect the facility, Goods, materials and any property of Buyer covered by each Order and, without the necessity of a court order, may enter upon Seller's property and remove property belonging to Buyer or any customer of Buyer, including, without limitation, Tooling and other goods, inventory or Seller's Property that has been or is agreed to be sold to Buyer under the Order.

12. **QUALITY:** Seller will comply with any and all industry quality standards (including without limitation IATF 16949 and ISO 14001, as amended or superseded and any applicable governmental quality standards such as but not limited to China CCC certification) and those quality standards established by Buyer and its customers. Seller further hereby agrees to comply with Buyer's Global Supplier Requirements Manual, as amended or superseded, a copy of or access to which Seller acknowledges has been provided by Buyer.

13. **PRICE WARRANTY:** Seller warrants that its prices to Buyer for the Goods are no less favorable than those extended by Seller to other customers for the same or comparable goods in comparable quantities. Seller agrees to reduce its prices under this Order if necessary at any time to maintain this warranty. Buyer shall also receive the full benefit of all discounts, premiums and other favorable terms offered by Seller to its customers. Seller hereby acknowledges that the Buyer does not make any guarantees regarding a specific quantity or minimum dollar volume of sales pursuant to this Order and that the pricing of the Goods is not dependent upon any specific volume of sales. Prices charged for Goods listed on the Order are not subject to increase, including specifically any increase based upon currency fluctuations, changes in raw material or component pricing, labor or overhead, unless specifically agreed to by Buyer in a Signed Writing.

14. **INVOICES; PAYMENT:** Seller will invoice Buyer for Goods when shipped in a form acceptable to Buyer. Buyer's standard payment terms are net second day of the second month after delivery, unless otherwise specified on the face of the Order or the

Goods are considered to be consigned in accordance with Section 10. Buyer shall be entitled, following payment to Seller, to sell any obsolete Goods to a third party. Payment will not constitute acceptance of any defective or non-conforming Goods. Seller agrees that all its accounts with Buyer will be administered on a net settlement basis and that Buyer may set off debits and credits, including Buyer's attorney fees and costs of enforcement, against any of Seller's accounts regardless of basis for such debits and credits and without advance notice. In this Section 14 "Buyer" includes Buyer's parent, subsidiaries and affiliates, and "Seller" includes Seller's parent, subsidiaries and affiliates.

15. **CONFIDENTIAL INFORMATION:** Seller acknowledges and agrees that it will be obligated to maintain the secrecy and confidentiality of all information disclosed by Buyer to Seller during the course of work under any Order ("Confidential Information"), including, but not limited to, any information regarding Buyer or its business or its customers, the existence and terms of any Request for Quotation or Order, and any drawings, specifications, or other documents prepared by either party in connection with any Request for Quotation or Order. Seller agrees that it will not disclose Confidential Information to or use Confidential Information with or for the benefit of itself or any third party without prior written authorization from Buyer. Seller also agrees to adopt measures to protect the secrecy and confidentiality of Confidential Information that are reasonable under the circumstances. Confidential Information shall not include any information that (a) was in the possession of Seller before receipt from Buyer; (b) is or becomes available to the public through no fault of Seller; or (c) is received by Seller in good faith from a third party having no duty of confidentiality to Buyer. The obligations of Seller with respect to Confidential Information shall remain in effect during the time that any Confidential Information is considered by Buyer to be secret or confidential or otherwise qualify for protection under the laws of the country in which Buyer is located.

At the request of Buyer, Seller will return to Buyer all materials (in any form) that include, incorporate, or otherwise Confidential Information of Buyer. Unless otherwise agreed in a Signed Writing, all information provided by Seller to Buyer in connection with each Order shall be disclosed on a non-confidential basis, and Buyer shall have no duty to maintain the secrecy or confidentiality of such information. Seller shall not sell or dispose of, as scrap or otherwise, any completed or partially completed or defective Goods manufactured hereunder without defacing or rendering them unsuitable for use.

16. **INTELLECTUAL PROPERTY RIGHTS; PATENT WARRANTY:**

A. If Buyer furnishes the design for the Goods or reimburses Seller in whole or part for designing the Goods, then Buyer will own all intellectual property rights relating to the design. If Seller furnishes the design for the Goods or bears the full costs of designing the Goods, then Seller will own all intellectual property rights relating to the design. In the latter event, Seller hereby grants Buyer a permanent, paid-up, irrevocable, royalty-free license to make, have made, use, have used, such intellectual property to rework, repair or replace any defective or non-conforming Goods. Each party warrants to the other that any designs which it furnishes hereunder will not infringe or contribute to the infringement of any patent or patent right.

B. Seller at its expense will indemnify and hold Buyer harmless with respect to every claim that may be brought against Buyer or others that use the Goods, for any alleged infringement of any present or future patent, copyright, industrial design right or other proprietary right based on Seller's activity under an Order, or the manufacture, sale, or use of the Goods (i) alone; (ii) in combination by reason of their content, design or structure; or (iii) in combination in accordance with Seller's recommendations. Seller will investigate and defend or otherwise handle every such claim or at Buyer's request, assist it in its investigation, defense, or handling of any such claim. Seller will pay all expenses and damages or settlement amounts that Buyer and others selling its products or using the Goods of an Order may sustain by reason of each such indemnified claim. Seller's obligations will apply even though Buyer furnishes all or any portion of the design and specifies all or any portion of the processing used by Seller.

C. Seller will furnish to Buyer, or another party designated by Buyer, without restrictions on use or disclosure, all information and data Seller acquires or develops in the course of Seller's activities under this Order. At Buyer's request, Seller also will discuss with Buyer or another party designated by Buyer, without restrictions on use or disclosure, any potential design, and quality or manufacturing problems with Goods the Seller worked on or produced pursuant to this Order.

D. At Buyer's request, Seller will furnish to Buyer all other information and data of Seller which Buyer deems necessary to understand the operation and to maintain the Goods delivered under this Order, with no restrictions on use other than Seller's patent rights.

E. With respect to inventions which Seller conceives or first reduces to practice in the course of Seller's activities under this Order, Seller grants to Buyer a permanent, paid-up, nonexclusive, worldwide license, with a right to sublicense others, to make, have made, use, have used said inventions and patents on such inventions.

F. Seller grants to Buyer a permanent, paid-up, nonexclusive, worldwide license, including a license to any operating software incorporated into the Goods sold hereunder with a right to grant a sublicense to any of its affiliated companies, to make, have made, use, have used and sell the Goods sold hereunder or derivatives thereof under any other patents now or hereafter owned or controlled by Seller which are deemed necessary by Buyer to exercise the license of Section 16.E in the manufacture, use or sale of products manufactured by or for Buyer or any of its affiliated companies.

G. Seller grants to Buyer, and agrees to grant to any affiliated company designated by Buyer, a nonexclusive license, on reasonable terms and conditions, to make, have made, use, have used and sell under any other patents now or hereafter owned or controlled by Seller which cover any application of the technology embodied in the information or data Seller acquires or develops in the course of Seller's activities under this Order.

17. **PRODUCT WARRANTY:** With respect to the Goods or services purchased under this Order and all other goods or services purchased from Seller, Seller expressly warrants for the Warranty Period as follows: (a) the Goods shall strictly conform to all specifications, drawings, instructions, advertisements, statements on containers or labels, descriptions and samples; (b) the Goods shall be free from defects in workmanship and material and shall be new and of the highest quality; (c) Buyer shall receive title to the Goods that is free and clear of any liens, encumbrances and any actual or claimed patent, copyright or trademark infringement; (d) the Goods shall be merchantable, safe and fit for the Buyer's intended purposes, which purposes have been held out by Seller or have been made known to Seller; (e) the Goods shall be adequately contained, packaged, marked and labeled; (f) all services performed by Seller shall be performed in a competent, workmanlike manner and in accordance with industry standards; and (g) the Goods shall be manufactured in compliance with all applicable laws, regulations or orders, and governmental or industry agency or association standards or other standards applicable to the manufacture, labeling, transporting, licensing, approval or certification, including by way of illustration and not by way of limitation, product safety, labor conditions and any law or order pertaining to discrimination in the Buyer's country and wherever the Buyer's customer is located as well as in the countries in which the vehicles incorporating the Goods are sold to the Buyer's end customer. These warranties shall be in addition to all other warranties, express, implied or statutory. These warranties shall survive inspection, test, delivery, acceptance, use and payment by Buyer and shall inure to the benefit of Buyer, its successors, assigns, customers and the users of Buyer's products. These warranties may not be limited or disclaimed by Seller. Buyer's approval of Seller's design, material, process, drawing, specifications or the like shall not be construed to relieve Seller of the warranties set forth herein, nor shall a waiver by Buyer of any drawing or specification request for one or more articles constitute a waiver of any such requirements for the remaining articles to be delivered hereunder unless so stated by Buyer in writing.

If Buyer experiences any breach of the above warranties during the Warranty Period, Buyer shall have the right to take the following actions, at Buyer's option: (1) retain the defective Goods in whole or in part with an appropriate adjustment in the price for the Goods; (2) require Seller to repair or replace the defective Goods in whole or in part at Seller's sole expense, including all shipping, transportation and costs of installation, including retrofitted installation in vehicles in the field (3) correct or replace the defective items with similar items and recover the total cost from Seller, including the cost of product recalls, field actions, defect investigations, service campaigns or any similar issue; and (4) exercise all other rights under the Uniform Commercial Code and any other applicable statutes.

For purposes of this Order, "Warranty Period" shall mean such warranty period that Buyer is contractually obligated to provide to its customers or as specified on the front of the Order, whichever is longer. Notwithstanding the foregoing, Seller agrees to waive the expiration of the Warranty Period in the event there are breaches of warranty discovered after the Warranty Period of a significant nature or in a significant portion of the Goods, or a defect is discovered which, in Buyer's opinion, constitutes a threat of damage to property or to the health and safety of any person.

18. SERVICE AND REPLACEMENT PARTS:

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

B. For the time period required by Buyer's customer (typically between ten and fifteen years after termination of the current model production of the vehicle involved), Seller shall sell to Buyer quantities of Goods sufficient to fulfill 100% of Buyer's and its customers' service and replacement parts requirements for past model years. Any Seller requests for price increases shall be approved only to the extent that said price increases are approved by Buyer's customer. If a dispute arises between Seller and Buyer regarding the price of service or replacement parts under this Section, Seller shall continue to supply Buyer's requirements for service and replacement parts at the production prices set forth in the Order pending resolution of such dispute.

19. ENVIRONMENTAL STATEMENT: Seller shall ensure that the environmental impact of its goods, including but not limited to the Goods, and processes are minimized by dedicating their efforts to reducing the generation and release of substances, which may affect the environment.

20. LEGAL COMPLIANCE: Seller warrants that it will comply with all applicable laws, regulations, ordinances and orders in performing this Order and that it and each of its directors, officers and employees have conducted all operations and transactions in compliance with all applicable laws and regulations relating to data protection, anti-bribery and corruption and anti-money laundering and will furnish Buyer and its designees with such certificates or reports of legal compliance as Buyer may request from time to time. All purchased materials used in part manufacture shall satisfy current governmental and safety constraints on restricted, toxic, and hazardous materials; as well as environmental, electrical, and electromagnetic considerations applicable to the country of manufacture, transit and sale.

21. HAZARDOUS MATERIALS: Seller will properly classify, describe, package, mark, label and provide Material Safety Data Sheets for the Goods and pack and ship them in compliance with any applicable laws regulations, ordinances and orders relating to the packaging and shipment of hazardous materials. All Orders for hazardous materials will be purchased FOB delivered to Buyer, unless otherwise specified on the Order.

22. TOOLING: The right, title and interest to all Goods, materials, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment, designs, drawings, gages, specifications, spare parts, trial parts, ancillary products, items owned by Buyer (or by its customer) and other items furnished by Buyer or by its customer to Seller for use in manufacturing the Goods, or for which Seller is reimbursed by Buyer or its customer (collectively, "Tooling"), shall be and remain the property of Buyer or its customer.

In the event that Buyer issues a Tooling Order, all right, title, and interest in and to any part of the Tooling, including any and all supplies, materials, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment, designs, drawings, specifications, spare parts, trial parts and ancillary products, shall pass to Buyer as soon as it is acquired or fabricated in accordance with a Tooling Order or other written documentation issued by Buyer. During the term of an Order, all Tooling in the possession of Seller shall be deemed to be bailed property and shall not be deemed to be a fixture or a part of Seller's real property. Seller shall bear the risk of loss of



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and damage to Buyer's property, including but not limited to any Tooling. Seller shall (i) properly house and maintain the Tooling on Seller's premises; (ii) not use the Tooling for any purpose other than for performance under the Order; (iii) prominently mark the Tooling (as specified by Buyer) as property of Buyer; (iv) refrain from commingling the Tooling with the property of Seller or with that of a third party; (v) adequately insure the Tooling against loss or damage, including but not limited to maintaining full fire and extended coverage insurance for replacement value and naming Buyer as an additional insured; (vi) take reasonable steps to ensure that the Tooling does not become subject to any liens or other claims; and (vii) not move the Tooling to another location whether owned by Seller or a third party, without the prior written consent of Buyer. Buyer shall have the right to enter Seller's premises at reasonable times to inspect the Tooling and Seller's records pertaining thereto.

Seller expressly waives and releases any and all statutory, equitable or other liens, including but not limited to any molder liens, special tool liens, builder liens and the like, that Seller has or might have on or in connection with the Tooling for any and all work, including but not limited to, designing, manufacturing, improving, maintaining, servicing, using, assembling, fabricating or developing the Tooling. Seller hereby agrees to indemnify, defend and hold Buyer harmless from and against any loss, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings, including without limitation all attorney's fees and any other cost of litigation that are in any way related to releasing, terminating or otherwise removing any such liens placed on the Tooling. Seller will assign to Buyer any claims Seller has against third parties with respect to Buyer's property.

Upon Buyer's written request, Seller, at its expense, shall immediately deliver the Tooling at Buyer's option F.O.B. Carrier Seller's facility (Ex Works Loaded) or F.O.B. Buyer's premises (CIF Buyer Plant/Delivered Buyer Plant) or as otherwise directed by Buyer in writing, properly packed and marked in accordance with the requirements of the carrier and Buyer. Seller will cooperate with Buyer's removal of the Tooling from Seller's premises.

Seller shall assume all risk of death or injury to persons or damage to property arising from use of the Tooling. Unless otherwise agreed to in writing by Buyer, Seller at its own expense shall (i) keep the Tooling in good condition and repair, including repair necessitated by wear and tear and other usage by Seller and (ii) pay any and all personal property taxes which may become due on the Tooling. In the event that it becomes necessary, as determined by either Buyer or Seller, to replace the Tooling due to normal use by the Seller, or otherwise, said replacement Tooling shall be at the sole expense of the Seller and said replacement Tooling shall remain the property of the Buyer. Buyer does not guarantee the accuracy of any Tooling or the availability or suitability of any supplies or material furnished by it. Seller assumes sole responsibility for inspecting, testing and approving all Tooling or other materials supplied by Buyer prior to any use by Seller.

Seller authorizes Buyer to file the appropriate security document(s) with the appropriate filing authority to give notice of Buyer's ownership interest in the Tooling. Failure to file a financing statement will not alter or amend Buyer's ownership rights to the Tooling. Seller shall provide Buyer, upon Buyer's request, with a written inventory of all Tooling.

23. **TRADE CREDITS, COUNTRY OF ORIGIN:** All trade credits, export credits, customs drawbacks, tax and fee rebates and the like will belong to Buyer. Seller will cooperate with Buyer in obtaining these benefits and credits. Seller will furnish Buyer and its designees with such documentation establishing the country of origin and value of the Goods as Buyer may request, including, as applicable, affidavits of manufacture and relevant (including, but not limited to NAFTA) certificates of origin.
24. **INDEMNIFICATION:** To the fullest extent permitted by law, Seller agrees to indemnify, save harmless and defend Buyer and its affiliated companies, their directors, officers, employees, agents and customers ("Indemnitees") from and against any loss, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings, including without limitation all judgments rendered against, and all fines and penalties or settlements imposed upon Indemnitees, and all attorneys' fees and any other cost of litigation ("Liabilities") arising out of breach of contract claims, warranty claims, product recall claims, defect investigations, service campaigns, product liability claims, injuries to persons, including death, or damage to property caused by Seller, its employees, agents, subcontractors, or in any way attributable to the performance of Seller, including without limitation, breach of contract, breach of warranty or product liability; provided, however, that Seller's obligation to indemnify Buyer shall

not apply to any liabilities solely arising from Buyer's negligence. Seller, at Buyer's option and at Seller's expense, will undertake defense of such actual or potential Liabilities through counsel approved by Buyer. Provided, however, that Seller shall first obtain authorization from Buyer before settlement is made of the actual or potential Liabilities if the terms of such settlement could materially adversely affect Buyer, including any terms which admits the existence of a defect in Goods or a failure of Buyer to fully and faithfully perform its obligations. In the alternative, Buyer may elect to undertake defense of such Liabilities to the extent it is asserted against Buyer, and Seller shall reimburse Buyer on monthly basis for all expenses, attorneys' fees, and other costs, including any judgment, fines, penalties or settlements incurred by Buyer.

25. **INSURANCE:** During the term of the Order, at its own expense, Seller will maintain insurance coverage for: workers' compensation, public liability (including contractual liability and product liability), recall events and any other insurance as may be reasonably requested by Buyer, in amounts and coverage sufficient to cover its liabilities under the Order and with insurers satisfactory to Buyer. On request, Seller will furnish Buyer with certificates of insurance that evidence this coverage, name Buyer as an additional insured, and prohibit the cancellation or reduction of coverage without 15 day's prior written notice to Buyer. At Buyer's option, Seller may furnish evidence of self-insurance. Compliance with this Section 25 will not relieve Seller of its defense and indemnification obligations under Section 24.
26. **ALLOCATION:** If Seller is unable, at any time, to supply the entire quantity of Goods ordered by Buyer, Seller will meet all of Buyer requirements before making any allocation among its other customers.
27. **TERMINATION FOR DEFAULT:** Buyer reserves the right to terminate immediately all or any part of each Order, without any liability of Buyer to Seller, in the event of any default by Seller. The following are causes, among others, allowing Buyer to terminate the Order: (i) if Seller repudiates, breaches or threatens to breach any of the terms of the Order including, without limitation, Seller's warranties; (ii) if Seller fails to perform or deliver Goods as specified by Buyer; (iii) if Seller fails to provide Buyer with adequate and reasonable assurance of Seller's ability to perform timely any of Seller's obligations under any Order, including, without limitation, delivery of Goods; (iv) if Buyer terminates for breach any other Order issued by Buyer to Seller in accordance with the terms of such Order (whether or not such other Order is related to the Order); or (v) if Seller fails to remain competitive with respect to price, quality, delivery, technology, payment terms, or customer support. In the event that an act of termination by Buyer is determined to be improper for any reason, the damages available to Seller shall be limited to the damages that Seller would have been entitled to receive if Buyer had terminated for convenience pursuant to Section 29.
28. **TERMINATION FOR CHANGE OF CONTROL OR BANKRUPTCY:**
- A. In addition to its other remedies, Buyer may, at its option, immediately terminate this Order without any liability to Seller upon a change of control of Seller. A change of control of Seller includes: (a) the sale, lease or exchange of a substantial portion of Seller's assets used for the production of Goods, or the entrance into an agreement by Seller regarding the same; (b) the sale or exchange of such an amount of Seller's stock or other ownership interest which would result in a change of control of Seller, or the entrance into an agreement regarding the same; (c) the execution of a voting or other agreement providing a person or entity with control of Seller or of such other amount as would result in a change of control of Seller. Seller shall notify Buyer promptly in writing in the event of the earlier of (i) the entrance into an agreement, or (ii) the occurrence of an event, described above in this Section. In the event of a termination pursuant to this Section, Buyer shall give Seller written notice of the termination at least thirty (30) days prior to the effective termination date. Seller shall reimburse Buyer for all costs incurred by Buyer in connection with a Seller Insolvency, including but not limited to, all attorneys' fees and other professional fees.
- B. Buyer may, at its option, immediately terminate this Order without any liability to Seller upon the occurrence of any of the following events: (i) Supplier (or any of its affiliates) suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of any insolvency laws within the jurisdiction of its incorporation; (ii) the Supplier (or any of its affiliates)

commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; (iii) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the Supplier (or any of its affiliates) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; (iv) a creditor or encumbrancer of the Supplier (or any of its affiliates) attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; (v) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator (is appointed over the Supplier (or any of its affiliates); (vi) a floating charge holder over the assets of the Supplier (or any of its affiliates) has become entitled to appoint or has appointed an administrative receiver; (vii) a person becomes entitled to appoint a receiver over the assets of the Supplier (or any of its affiliates) or a receiver is appointed over the assets of the Supplier (or any of its affiliates); (viii) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (i) to (vii) of this paragraph (inclusive); or (ix) the Supplier ceases, or threatens to cease, to carry on all or substantially the whole of its business. Seller shall reimburse Buyer for all costs incurred by Buyer in connection with a Seller Insolvency, including but not limited to, all attorneys' fees and other professional fees.

29. **TERMINATION FOR CONVENIENCE:** In addition to any other right of Buyer to terminate each Order, Buyer may at its option, immediately terminate all or any part of the Order at any time and for any reason by giving written notice to Seller.
30. **TERMINATION CLAIMS:**
- A. Upon receipt of notice of termination pursuant to Sections 27, 28 or 29, Seller, unless otherwise directed in writing by Buyer, shall (i) terminate immediately all work under the Order; (ii) transfer title and deliver to Buyer the usable and merchantable finished Goods, work in process, and raw materials/components that Seller produced or acquired in accordance with firm Release amounts under the Order and which Seller cannot use in producing Goods for itself or for others (which Buyer shall be entitled to sell to any third party) ; (iii) settle all claims by subcontractors approved by Buyer on the face of an Order or Order amendment or in a Signed Writing, if any, for reasonable actual costs that are rendered unrecoverable by such termination; (iv) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest and (v) upon Buyer's request, cooperate with Buyer in effecting the resourcing of the Goods covered by the Order to an alternative supplier designated by Buyer.
- B. Upon termination of any Order by Buyer under Sections 28 or 29, Buyer shall pay to Seller the following amounts without duplication: (i) the Order price for all finished and completed Goods that conform to the requirements of the Order and not previously paid for; (ii) Seller's reasonable actual cost of the usable and merchantable work in process and raw materials/components transferred to Buyer in accordance with subsection A hereof; (iii) Seller's reasonable actual cost of settling claims for the obligations Seller would have had to the subcontractors approved by Buyer on the face of an Order or Order amendment or in a Signed Writing in the absence of termination, and (iv) Seller's reasonable actual cost of carrying out its obligations under subsections A(v).
- C. Upon termination pursuant to Section 27, Seller shall not be entitled to any further payments by Buyer.
- D. Except as expressly set forth in Section 28, 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 subcontracts, for any other alleged losses or costs, whether denominated as loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, ancillary exit charges

(including, but not limited to, costs of riggers, warehousing, premium manufacturing costs, loading of trucks or other standard business procedures related to transitioning production to an alternative supplier), or general and administrative burden charges resulting from termination of the Order or otherwise. Notwithstanding anything to the contrary, Buyer's obligation to Seller upon termination shall not exceed the obligation Buyer would have had to Seller in the absence of termination.

E. Within thirty (30) days after the effective date of termination under Sections 28 or 29, Seller shall furnish to Buyer its termination claim, together with all supporting data which shall consist exclusively of the items of Buyer's obligation to Seller that are listed in this Order. Buyer may audit Seller's records before or after payment to verify amounts requested in Seller's termination claim.

31. **TRANSITION OF SUPPLY:** Upon the expiration or earlier termination of any Order for whatever reason, Seller agrees to take all actions necessary in order to ensure that there is no interruption in the supply of Goods to Buyer. Among other things, Seller agrees to take such actions as may be reasonably required by Buyer to accomplish the transition from Seller to an alternative seller, including without limitation the following: (a) Seller shall provide all notices necessary or desirable for Buyer to resource the Order to an alternative seller; (b) Seller shall provide a sufficient bank of goods covered by the Order to ensure the orderly transition to any alternative seller chosen by Buyer; and (c) Seller shall provide to Buyer all tooling and any other property furnished by or belonging to Buyer or any of Buyer's customers in as good a condition as when received by Seller, reasonable wear and tear excepted; (d) Buyer and the alternative seller reserve the right to access and actively participate during the disconnect or disassemble process for the Tooling, and the location, time and date of the exit shall be mutually agreeable between the Buyer and Seller; and (e) Seller shall, at Buyer's option: (i) assign to Buyer any or all supply contracts or Orders for raw material or components relating to the Order; (ii) sell to Buyer, at Seller's cost any or all perishable tooling and Goods inventory relating to the Order; and/or (iii) sell to Buyer any of Seller's property relating to the Order, at a price equal to the unamortized portion of the cost of such items less any amounts Buyer previously has paid to Seller for the cost of such items. Seller shall provide documentation supporting the original cost of any unamortized items. The term "alternative seller" expressly includes, but is not limited to, a Buyer-owned facility.
32. **NO TERMINATION RIGHT BY SELLER:** If an Order is for a fixed duration, as specified on the face of said Order, Seller shall have no right to terminate said Order. For Orders of indefinite duration, Seller may terminate such Order on no less than twelve months' notice provided to the Buyer, in writing.
33. **AUDIT RIGHTS:** Seller hereby grants to Buyer access to all pertinent information, including but not limited to, books, records, payroll data, receipts, correspondence and other documents and materials in the possession or under the control of Seller, or otherwise relating to any of Seller's obligations under an Order or any payments requested by Seller pursuant to an Order. Buyer will have the right at any reasonable time to send its authorized representatives to examine all such information. In addition, all work, materials, inventories provided under this Order must be accessible to Buyer, including but not limited to any parts, tools, fixtures, gauges, models and the like. Seller shall maintain all pertinent information relating to an Order for a period of four years after completion of services or delivery of Goods pursuant to that Order. In the event that any such audit discloses any inaccurate information, the Seller shall indemnify, defend and hold harmless Buyer from and against any loss, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings, including but not limited to all attorney's fees and any other cost related thereto. The Seller shall cause all of its subsuppliers to grant to Buyer all of the rights afforded to Buyer pursuant to this Section 33.
34. **FORCE MAJEURE:** Any delay or failure of either party to perform its obligations shall be excused if it is caused by an extraordinary event and without the non-performing party's fault or negligence, such as acts of God, fires, floods, windstorms, explosions, riots, natural disasters and wars. Written notice of such delay, including the anticipated duration of the delay, must be given by the non-performing party immediately upon becoming aware of the event. During the period of any delay or failure to perform by Seller, Buyer, at its option (i) may purchase Goods from other sources and reduce its schedules to Seller by such

quantities, without liability to Seller; (ii) cause Seller to provide the Goods from other sources in quantities and at times requested by Buyer at the price set forth in this Order; or (iii) may request Seller to deliver to Buyer at its expense all finished goods, work in process and parts and materials produced or acquired for work under an Order. If requested by Buyer, Seller shall, promptly and in any event within five (5) days of such request, provide adequate assurance that the delay will not exceed such period of time as Buyer deems appropriate. If the delay lasts more than the time period specified by Buyer, or Seller does not provide adequate assurance that the delay will cease within such time period, Buyer may, among its other remedies, immediately cancel this Order without liability. Prior to the expiration of any directly related labor contract of Seller, Seller at its expense will take such actions as Seller may reasonably determine to ensure the uninterrupted production of Goods for a period of thirty (30) days for Buyer during any anticipated labor disruption or slowdown resulting from the expiration of the labor contract.

35. **BINDING EFFECT:** This Order is binding on the parties and their respective directors, officers, employees, agents, subcontractors, and duly authorized successors and assigns.
36. **REMEDIES; DISCLAIMER:** The rights and remedies of the Buyer shall be cumulative and in addition to any other rights or remedies provided by law or equity. Any attempt by Seller to limit its warranties or Buyer's remedies or the amount and types of damages that Buyer may seek shall be null and void. Seller acknowledges and agrees that money damages would not be a sufficient remedy for any actual, anticipatory or threatened breach of any Order by Seller with respect to its delivery of Goods to Buyer and that, in addition to all other rights and remedies which Buyer may have, Buyer shall be entitled to specific performance and temporary, preliminary and permanent injunctive or other equitable relief as a remedy for any such breach, without proof of actual damages and without bond or other security being required. Seller also acknowledges and agrees that shutting down a customer's plant creates issues for which money damages are not a sufficient remedy. In the event of a breach or threatened breach by Seller of any of the representations, warranties or covenants of Seller, Buyer may, without notice to Seller, resource the production of Goods from Seller to another supplier or dual source any of the Goods covered hereby (i.e., have another supplier produce or be prepared to produce Goods being produced by Seller), to protect Buyer and its customers. This process of moving business may take a considerable amount of time and Seller understands that, given the risks posed by the possible shutdown of Buyer's customer, Buyer is justified in initiating and transferring business without prior notice to Seller. Notwithstanding anything to the contrary contained in any Order, Buyer does not release Seller from any claim against Seller that is based in whole or in part on misrepresentation, fraud or duress in connection with the Order or any breach or anticipatory breach of the Order or any other Order between Buyer and Seller (even if that Order relates to other products).
37. **WAIVER:** Buyer's waiver of any right provided herein or to which it is entitled at law or equity will not constitute a continuing or subsequent waiver of that right or a waiver of any other rights to which it is entitled.
38. **LIMITATIONS ON BUYER'S LIABILITY:** In no event shall Buyer be liable to Seller for any lost profits, lost revenue, lost production or for any incidental, consequential, special, and exemplary or punitive damages. Without limiting the foregoing, the parties further agree that:
- A. With respect to a claim arising out of or in connection the termination of this agreement or any Order, Seller's damages, if any, shall be limited to the damages set forth in Section 30 (Termination Claims); and
 - B. With respect to all other claims, Seller's damages shall be limited to the lesser of: (i) the value of Goods purchased by Buyer from Seller in the three months immediately preceding the alleged breach; or (ii) \$100,000 US Dollars (or the equivalent Euro amount, based on the currency exchange rate on the date of settlement of such claim).
39. **SERVICES/CONSULTING:** To the extent this is an Order that includes services or consulting services, Seller hereby assigns to Buyer all rights, title and interest in and to any and all ideas, inventions, improvements, materials, copyrightable material, drawings, documents or the like, conceived or made by Seller as a result of or relating to work done or services performed for

Buyer pursuant to this Order. Such assignment includes all proprietary rights appurtenant thereto, and Seller will execute any documents necessary to confirm such assignment.

40. SELLER FINANCIAL AND OPERATIONAL CONDITION:

A. Seller represents and warrants to Buyer as of the date of each Order (which representations and warranties shall be deemed repeated as of the date of Seller's acceptance of each Release under the Order and at the time of each delivery under the Order) that: (i) it is not insolvent and is paying all debts as they become due; that it is in compliance with all loan covenants and other obligations; (ii) all financial information provided by Seller to Buyer concerning Seller is true and accurate; (iii) such financial information fairly represents Seller's financial condition; and (iv) all financial statements of Seller have been prepared in accordance with generally accepted accounting principles, uniformly and consistently applied.

B. Upon Buyer's request, Seller shall provide copies of its quarterly and/or annual financial statements, Seller shall permit Buyer and its representatives to review Seller's books and records concerning compliance with each Order and Seller's overall financial condition, and Seller also shall provide Buyer with full and complete access to all such books and records for such purpose. Seller agrees that, if Seller experiences any delivery or operational problems, Buyer may, but is not required to designate a representative to be present in Seller's applicable facility to observe Seller's operations. Seller agrees that, if Buyer provides to Seller any accommodations (financial or other, including providing designated representatives as set forth above) that are necessary for Seller to fulfil its obligations under any Order, Seller shall reimburse Buyer for all costs, including attorneys' and other professionals' fees, incurred by Buyer in connection with such accommodation and shall grant a right of access to Buyer to use Seller's premises, machinery, equipment and other property necessary for the production of Goods covered by such Order (and a lien to secure the access right) under an access and security agreement. Additionally, Seller agrees to provide prompt written notice to Buyer of any impending or threatened insolvency of the Seller.

41. SEVERABILITY: If any term(s) of the Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term(s) shall be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of the Order shall remain in full force and effect.

42. CONTROLLING LANGUAGE: The English Version of the Global Terms and Conditions will apply in the event of any disagreement over any translation.

43. GOVERNING LAW; FORUM: This Order will be interpreted and enforced under the laws of the country (and state/province, if applicable) where Buyer is situated, without recourse to the conflicts of laws provisions thereof. In no event will the provisions of the U.N. Convention on the International Sale of Goods apply to this Order. All disputes involving this Order shall be adjudicated exclusively in the courts in the country (and state/province, if applicable) where the Buyer is situated or, at the discretion of the Buyer only, in the courts where the Seller is situated.