

# ***The Updated GM General Terms and Conditions***

*You Spoke. GM Listened!*

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# GM Backs Off on Controversial and Troubling Terms and Conditions

Seven months of pushback from suppliers later, and it appears that GM has finally gotten the message . . . or, at least part of it. On February 11, GM issued updated purchasing terms and conditions, which back off of some of the most controversial and troubling provisions of the revamped purchasing terms and conditions that GM rolled out in July of last year. GM's Vice President of Global Purchasing and Supply Chain, Grace Lieblein, was quoted by *Automotive News* as explaining that the reason for the revision of the terms and conditions was that initial changes to the terms and conditions "left a lot of room for interpretation" and were being "interpreted differently than [GM's] business intent." Lieblein acknowledged that it was a "misstep" for GM to revise the terms and conditions without input from its supply base. She suggested that the updated terms and conditions were being issued as an expression of GM's commitment to, and trust in, its suppliers.

The updated purchasing terms and conditions issued today implement the following key changes to the July 2013 purchasing terms and conditions:

- In **Section 8, Protection Against Labor Disruptions (previously entitled "Protection Against Supply Interruptions")**, GM has removed much of the broad language requiring suppliers to take all actions necessary to ensure uninterrupted supply of goods for at least 30 days during *any* "foreseeable or anticipated" event or circumstance that *could* lead to delay of either GM's production or a supplier's performance, which technically would have required suppliers to predict potential issues both upstream and downstream.

GM has narrowed this provision to require that suppliers ensure an uninterrupted supply of goods

for at least 30 days only during "foreseeable or anticipated" labor disruptions or the expiration of the supplier's labor contracts, which is essentially what was required of suppliers under the 2011 terms and conditions. The deletion of broader language reduces the supplier's risk of breaching this provision by failing to predict circumstances that may arguably have been "foreseeable or anticipated" by others in the supply chain, but for which the supplier may have had insufficient information to be able to protect its supply.

- In **Section 13, Product Warranty; Warranty of Performance**, GM has deleted the last sentence, which required the supplier to warrant and guarantee that the goods "will not, at any time (including after expiration or termination of this Contract), pose an unreasonable risk to consumer or vehicle safety." This sentence, which appeared to obligate suppliers to a perpetual "safety warranty," was one of the most, if not the most, distressing provisions of the July 2013 terms and conditions, both from a legal and supplier perspective. While Section 13 still contains language that is of concern, the removal of this language reduces suppliers' risk of future liability by putting a finite number of years on a supplier's warranty obligations, regardless of however difficult that period of time may be to determine given the other vague language that remains in this provision.
- **Section 15, Duty to Inform and Notify** has been deleted in its entirety. That section required suppliers to notify GM of facts and circumstances "reasonably likely to give rise to": (i) any failure by the supplier to perform its obligations, (ii) and delay in the delivery of goods and services, (iii) any defects or quality problems relating to the goods or

services, (iv) any changes to in the supplier's corporate structure or organization, (v) any deficiency in GM's "specifications, samples, prototypes or test results", (vi) any failure by the supplier, its subcontractors or common carriers to comply with applicable laws and regulations, or (vii) any change in the supplier's "authorized representatives, insurance coverage or professional certifications."

As a result of this key change, suppliers are no longer under an obligation to police the entire supply chain (including GM in some circumstances) in order to anticipate situations where the listed circumstances are "reasonably likely" to arise. This is particularly helpful in reducing suppliers' risk of liability for breach where suppliers were under this obligation even though they had no, or only partial knowledge of, and may not have access to, all of the information necessary to comply.

- In **Section 15 (previously Section 16), Audit Rights; Inspection of Seller's Premises**, GM has deleted the reference to "all pertinent information" from the first sentence as well as the following sentence "If requested by Buyer, Seller will promptly provide to Buyer its most current income statements, balance sheets, cash flow statements and supporting data and schedules." This sentence gave GM broad access to supplier financial information, regardless of whether such information was relevant to the supplier's business with GM, causing a number of concerns for suppliers, from potential securities law violation worries to concerns that such information would be used to demand price decreases from the supplier or to give GM the ability to terminate without liability.

In the updated terms and conditions, GM has expressly limited its ability to access a supplier's books and records for the purpose of auditing the supplier's compliance with the contract by inserting the words "books and records solely" into the first sentence. While this change does lessen the breadth of GM's audit rights to some degree and precludes GM from arbitrarily demanding access to supplier financial information, GM's audit rights remain broad and risky for suppliers, especially when viewed in light of other provisions of the updated terms and conditions.

- In **Section 23 (previously Section 24), Intellectual Property Rights**, GM has substantially revised the language of subparagraph (d), which relates to "background intellectual property rights." Previously, though subparagraph (d) purported to provide GM with a limited license to a supplier's background intellectual property, the license was in fact very broad. It allowed GM to use a supplier's background intellectual property to do a wide variety of things, including, to make or have the parts made by a third party (i.e. a supplier's competitor), and the circumstances in which the license could be used were vague enough to allow GM access to a supplier's background intellectual property if GM wanted or needed it. The circumstances in which GM could exercise the license to a supplier's background intellectual property previously included the following: (i) where GM deemed it to be "reasonably necessary for the direct purposes of this Contract", without cost to GM, (ii) in the case of termination for cause or in case of a force majeure event alleged by Seller for the lifetime of the applicable product or program, without cost to GM, or (iii) if after "good-faith consultation" with the supplier, GM deemed it "reasonably necessary" to prevent interruption or delay to its production operations and for as long as deemed "reasonably necessary" by GM at a reasonable royalty rate to be negotiated.

In the updated terms and conditions, though GM did not modify the scope of the license in terms of what the license allows GM to do with a supplier's background intellectual property, including its ability to make or have the supplier's parts made by a competitor, GM did significantly limit the circumstances in which it can use the license by removing much of the vague language and inserting clearer and narrower language. Under the updated terms and conditions, GM is entitled to use the license to a supplier's background intellectual property, at no cost to GM, only if: (i) the supplier "breaches or repudiates its obligations by being unable or unwilling to deliver goods or services" or (ii) the supplier is unable to supply goods or services because of a force majeure event, but only for as long as the supplier is unable to supply. In addition, GM also added a sentence expressly limiting the duration of the license to the expiration date of the contract. While the remaining subparagraphs of

this Section still contain problematic language, again, particularly when viewed in conjunction with the other provisions, the changes to subparagraph (d) are considerable and provide suppliers with more protection than they previously had under the July 2013 terms and conditions.

Other changes reflected in the updated purchasing terms and conditions include the following:

- In **Section 9, Seller’s Assurance of Performance**, GM has deleted the phrase “as determined by Buyer in its reasonable discretion,” eliminating GM’s ability to unilaterally determine whether assurances of continued performance provided by a supplier are adequate.
- In **Section 17 (previously Section 18), Payment; Setoff and Recoupment**, GM has added language to limit its ability to withhold payment to a supplier pending receipt of evidence that the goods supplied by the supplier are free of liens, claims and encumbrances to only those situations where GM “has reasonable grounds to believe” that goods supplied by the supplier “may be subject to any liens, claims or encumbrances.”

- In **Section 28 (previously 29), Insurance**, GM has removed the burden for suppliers to name GM as an additional insured or beneficiary of all liability policies.

GM’s decision to issue these important revisions to the purchasing terms and conditions after overhauling its purchasing terms and conditions just seven months ago is a key victory for suppliers to GM. However, suppliers doing business under these updated terms and conditions without the proper legal protections are still exposed to significant risks and should consider consulting their legal advisors for assistance in navigating these updated terms and conditions as necessary to best protect their businesses.

If you have any questions, please feel free to contact Tom Manganello (tmanganello@wnj.com or 248.784.5007) or Jeena Patel (jpatel@wnj.com or 248.784.5025). For information on other automotive-related topics and legal developments, please check out Warner Norcross & Judd’s Ahead of the Curve blog at <http://aheadofthecurve.wnj.com>.



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## GENERAL TERMS AND CONDITIONS

### 1. Effectiveness

As used herein, "Contract" means this document, including, without limitation, all terms, provisions, sub-parts, sections and attachments, along with any documents incorporated by reference herein. This Contract will be accepted by Seller and become effective immediately upon the first to occur of: (a) the date on which Seller provides written acceptance to Buyer (whether by electronic means or otherwise), or (b) Seller's commencement of any work under this Contract.

### 2. Entire Agreement; Applicability

This Contract sets forth the exclusive terms and conditions under which Seller will sell and Buyer will purchase the goods or services described herein for the period(s) specified in this Contract. Terms and conditions proposed by Seller that are different from or in addition to the provisions of this Contract are expressly rejected by Buyer and are not a part of this Contract, and Seller's acceptance is expressly limited to the terms of this Contract. This Contract constitutes the entire agreement between Seller and Buyer with respect to the matters contained herein and supersedes all prior or contemporaneous oral or written agreements, representations and/or communications. This Contract may be modified only by an amendment issued by Buyer.

### 3. Delivery; Scheduling; Electronic Data Interchange

Seller will comply, in all respects, with Buyer's delivery and logistics requirements, as amended or updated from time to time and as incorporated in this Contract by reference. Time is of the essence, and deliveries must be made both in quantities and at times specified in Buyer's delivery schedules. Seller will electronically communicate with Buyer in a secure (encrypted) manner and specifically utilizing electronic data interchange (EDI) with respect to all supply chain communications relating to this Contract, including, without limitation, receiving Buyer's production schedules and sending advance shipment notices to Buyer. Buyer will not be required to make payment for goods delivered to Buyer that are in excess of quantities specified in Buyer's delivery schedules. Buyer may change the rate of scheduled shipments, the quantity of shipments or direct temporary suspension of scheduled shipments. Where quantities and/or delivery schedules are not specified, Seller will deliver goods in such quantities and times as Buyer may direct in subsequent delivery schedules. Further, if Seller's acts or omissions result in or are likely to result in Seller's failure to meet Buyer's delivery requirements and Buyer requires a more expeditious method of transportation for the goods than the transportation method originally specified by Buyer, Seller will be solely responsible for all costs and expenses associated with such expedited shipments.

### 4. Shipping; Packaging

Seller will comply, in all respects, with Buyer's shipping and packaging requirements as amended or updated from time to time and as incorporated in this Contract by reference. Unless otherwise provided in this Contract, any charges or costs relating to handling, packaging, storage or transportation of goods are borne by Seller and have been included in the piece price of the goods as set forth herein. Further, Seller will (a) properly pack, mark and ship goods in accordance with the requirements of Buyer, the involved carriers, and laws and regulations of the country of manufacture, the country of destination and any country in which the goods will be transported, including, without limitation, laws and regulations governing the handling and transportation of dangerous goods or hazardous materials; (b) route shipments in accordance

with Buyer's instructions and the terms and conditions stated in this Contract; (c) provide with each shipment packing slips with Buyer's Contract and/or release number and date of shipment marked thereon; (d) promptly forward the original bill of lading or other shipping documents for each shipment in accordance with Buyer's instructions; and (e) include on bills of lading or other shipping documents the correct classification of the goods. The marks on each package and identification of the goods on packing slips, bills of lading and invoices (when required) must be sufficient to enable Buyer to easily identify the goods purchased.

#### 5. Service And Replacement Parts

Seller will sell to Buyer goods necessary for Buyer to fulfill its current model service and replacement parts requirements at the price(s) set forth in this Contract, adjusted only for differences in packaging and logistics costs, all as approved by Buyer. If the goods are systems or modules, Seller will sell the components or parts that comprise the system or module at price(s) that will not, in the aggregate, exceed the price of the system or module less assembly costs. During the 15-year period after Buyer completes current model purchases, Seller will sell goods to Buyer to fulfill Buyer's past model service and replacement parts requirements. Unless otherwise agreed to by Buyer, the price(s) during the first 5 years of this period will be those in effect at the conclusion of current model purchases. For the remainder of this period, the price(s) for goods will be as agreed to by the parties.

#### 6. Non-conforming, Rejected or Surplus Goods

Buyer will not perform incoming inspections of the goods and Seller waives any requirement that Buyer conduct such inspections. Payment for nonconforming goods will not constitute an acceptance of them, limit or impair Buyer's right to assert any legal or equitable remedy, or relieve Seller's responsibility for latent defects. Any goods (a) determined to be nonconforming by Seller (or its suppliers); (b) rejected by Buyer as nonconforming; or (c) that become obsolete or surplus, will be rendered unusable prior to salvage or disposal by Seller (or its suppliers). Seller will ensure that nonconforming, rejected, obsolete or surplus goods are not sold as service or replacement parts to third parties. Seller will institute appropriate controls with its suppliers to ensure compliance with this Section.

#### 7. Transfer of Title

Title to the goods will transfer to Buyer free and clear of any liens, claims, encumbrances, interests or other rights at the moment the risk of loss transfers from Seller to Buyer with respect to such goods in accordance with the Incoterm or alternative delivery term set forth in this Contract.

#### 8. Protection Against ~~Supply Interruptions~~Labor Disruptions

Seller will, at Seller's expense, take such actions as are necessary or appropriate to ensure the uninterrupted supply of goods and services to Buyer for not less than 30 days during any foreseeable or anticipated ~~event or circumstance, the occurrence of which could interrupt or delay Buyer's production or Seller's performance under this Contract, including, without limitation, any labor disruption, whether or not resulting from~~labor disruption and/or the expiration of any of Seller's labor contracts. This Section shall not constitute a waiver of and is without prejudice to, any and all of Buyer's other rights and remedies under this Contract or applicable law, each of which are hereby reserved.

## 9. Seller's Assurance of Performance

In the event that Buyer has reasonable grounds for insecurity with respect to Seller's continued performance under this Contract, Buyer may, in writing, demand adequate assurance of such performance from Seller. After receipt of such demand, Seller's failure, within a reasonable period of time under the circumstances (not to exceed 20 days), to provide assurances adequate under the circumstances ~~(as determined by Buyer in its reasonable discretion)~~ will be deemed a breach of this Contract by Seller.

## 10. Changes

By written notice to Seller, Buyer may, from time to time, direct changes, or direct Seller to make changes, to drawings and specifications of the goods or to otherwise change the scope of the work covered by this Contract, including, without limitation, work with respect to such matters as inspection, testing or quality control, and Buyer and Seller will promptly discuss, reasonably and in good faith, any pricing adjustments (up or down) to be made in connection with such changes. Notwithstanding any such discussions, Seller will promptly implement such changes as directed by Buyer without delay. In the event that Buyer and Seller are unable to reach agreement on any pricing adjustments to be made in connection with such changes, any difference in price or time for performance resulting from such changes will be equitably adjusted by Buyer based on a fair cost assessment after receipt of documentation in such form and detail as Buyer may direct. Seller will accept any amendments issued by Buyer implementing such changes. Seller may, from time to time, propose changes to drawings and specifications of the goods or to the scope of the work covered by this Contract. If Buyer agrees, in its discretion, to implement such changes, the agreement between the parties with respect to such changes will be made in accordance with Section 2 (Entire Agreement, Applicability) above.

Seller will not relocate the production, manufacture or assembly of the goods from the facilities approved by Buyer, or change the location from which the goods are shipped, without first following Buyer's relocation requirements and obtaining Buyer's advanced written consent.

## 11. Subcontracting

Seller will not subcontract any of its obligations under this Contract without the prior written consent of Buyer. Any such consent of Buyer will not release Seller from, or limit, any of Seller's obligations under this Contract. Seller warrants and guarantees that any such subcontractor's performance will satisfy all requirements applicable to Seller under this Contract.

## 12. Quality

Seller will comply, in all respects, and will cause its subcontractors and suppliers to comply, in all respects, with Buyer's quality requirements and procedures as amended or updated from time to time and as incorporated by reference in this Contract. Seller will promote continuous improvement in the quality of the goods and Seller's manufacturing and logistics processes.

## 13. Product Warranty; Warranty of Performance

Seller warrants and guarantees that the goods covered by this Contract will conform to all specifications, drawings, samples, descriptions and quality standards (i) furnished by Buyer, or (ii) furnished by Seller and approved by Buyer in writing, and will be merchantable, of good material and workmanship and free from defect. In addition, Seller acknowledges that Seller knows of Buyer's intended use of the goods covered by this Contract and warrants and guarantees that such goods have been selected, designed, manufactured or assembled by Seller based upon

Buyer's stated use and will be fit and sufficient for the particular purposes intended by Buyer. Unless otherwise set forth in this Contract, the duration of the warranty provided by Seller to Buyer for the goods will begin on the date of receipt of the goods by Buyer and end on the later of (a) the date of expiration of any warranty period provided under applicable law for the goods, (b) expiration of any warranty applicable to the goods provided by Buyer to Buyer's end customer for the vehicle into which the goods are incorporated, or (c) the expiration of any specific warranty period or performance standard provided in any document incorporated by reference into the Contract, including in Buyer's specifications or quality standards. ~~Notwithstanding the foregoing, Seller warrants and guarantees that the goods covered by this Contract will not, at any time (including after expiration or termination of this Contract), pose an unreasonable risk to consumer or vehicle safety.~~

#### 14. Ingredients Disclosure; Special Warnings And Instructions

Seller will promptly furnish to Buyer in such form and detail as Buyer may direct: (a) a list of all ingredients and materials incorporated in the goods; (b) the amount of such ingredients and materials; and (c) information concerning any changes in or additions to such ingredients and materials. Prior to and with the shipment of the goods, Seller agrees to furnish to Buyer sufficient advance warning and notice, in writing (including, without limitation, appropriate labels on the goods, containers and packing), of any dangerous goods or hazardous material that is an ingredient or a part of any shipment of goods, together with such special handling instructions as may be necessary to advise carriers, Buyer and their respective employees of how to exercise that measure of care and precaution that will comply with any applicable laws or regulations and best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the goods, containers and packing shipped to Buyer. Upon Buyer's request, Seller will certify to Buyer in writing the origin of any ingredients or materials in the goods. Seller will promptly provide, in writing, any information regarding the goods requested by Buyer so that Buyer may comply in a timely manner with reporting requirements under applicable law with respect to consumer protection, "conflict minerals" or similar materials or ingredients, if any.

#### ~~15. — Duty to Inform and Notify~~

~~Seller will promptly notify Buyer in writing of any of the following events or occurrences, or any facts or circumstances reasonably likely to give rise to any of the following events or occurrences: (a) any failure by Seller to perform any of its obligations under this Contract; (b) any delay in delivery of goods or services under this Contract; (c) any defects or quality problems relating to the goods or services covered by this Contract; (d) any changes in Seller's corporate structure or organization (including any direct or indirect change in control or ownership of Seller); (e) any deficiency in Buyer specifications, samples, prototypes or test results relating to this Contract; (f) any failure by Seller, or its subcontractors or common carriers, to comply with applicable laws and regulations, including, without limitation, with respect to transportation of goods under this Contract; or (g) any change in Seller's authorized representatives, insurance coverage or professional certifications (e.g., ISO 9001).~~

#### ~~15. 16.~~ Audit Rights; Inspection of Seller's Premises

Seller grants Buyer access to Seller's premises and ~~all pertinent information (including, without limitation, books, records, payroll and other data, receipts, correspondence and other documents)~~ books and records solely for the purpose of auditing Seller's compliance with the terms of this Contract (including, without limitation, charges under this Contract) or inspecting

or conducting an inventory of finished goods, work-in-process, raw materials, any of Buyer's Property and all work or other items to be provided pursuant to this Contract located at Seller's premises. Seller will cooperate with Buyer so as to facilitate Buyer's audit, including, without limitation, by segregating and promptly producing such records as Buyer may reasonably request, and otherwise making records and other materials accessible to Buyer. ~~If requested by Buyer, Seller will promptly provide to Buyer its most current income statements, balance sheets, cash flow statements and supporting data and schedules.~~ Seller will preserve all records pertinent to this Contract, and Seller's performance under this Contract, for a period of not less than one year after Buyer's final payment to Seller under this Contract. Any such audit or inspection conducted by Buyer or its representatives will not constitute acceptance of any goods (whether in progress or finished), relieve Seller of any liability under this Contract or prejudice any rights or remedies available to Buyer.

#### 16. ~~17.~~ Work Performed on Buyer's Premises

If Seller or its subcontractors perform any work on Buyer's premises or utilizes the property of Buyer, whether on or off Buyer's premises, Seller will indemnify and hold Buyer harmless from and against any liability, claims, demands or expenses (including, without limitation, legal and other professional fees) for damages to the property of or injuries, including death, to Buyer or Seller, Buyer's or Seller's employees, subcontractors or any other person arising from or in connection with Seller's performance of work or use of Buyer's property, except for such liability, claim or demand arising out of the sole negligence of Buyer.

#### 17. ~~18.~~ Payment; Setoff and Recoupment

If Buyer requests an invoice from Seller or if this Contract requires Seller to invoice Buyer for the goods or services covered by this Contract, promptly after each shipment of goods or performance of services, Seller will issue a single invoice for such shipment or agreed performance milestone to Buyer at the address specified in this Contract. Each invoice must comply with applicable law, if any, and include the following information regarding the corresponding shipment of goods or performance of services: (a) amount due (in the currency specified in this Contract); (b) location of delivery or performance; (c) shipment or delivery information; (d) Contract number; (e) if applicable, purchase order number; (f) if applicable, the intra-EU VAT number; and (g) for goods, net weight of the goods. Buyer may reject any invoice that is inaccurate or does not conform to these requirements, and Seller will promptly reissue any such rejected invoice. Buyer's failure to reject an invoice does not constitute Buyer's acceptance of the invoice or the goods or services to which such invoice pertains.

Buyer will pay for the goods or services provided by Seller in accordance with the payment terms and in the currency specified elsewhere in this Contract. Payments may be made electronically (including, without limitation, by bank transfer or recorded bill of exchange, where applicable). Where Buyer has reasonable grounds to believe goods provided by Seller under this Contract may be subject to any liens, claims or encumbrances, Buyer may withhold payment pending receipt of evidence, in such form and detail as Buyer may direct, that such goods ~~provided by Seller under this Contract~~ are free of any liens, claims and encumbrances.

In addition to any right of setoff or recoupment provided by law, all amounts due to Seller will be considered net of indebtedness of Seller and its affiliates/subsidiaries to Buyer and its affiliates/subsidiaries; and Buyer will have the right to setoff against or to recoup from any amounts due to Seller and its affiliates/subsidiaries from Buyer and its affiliates/subsidiaries.

#### 18. ~~19.~~ Customs; Origin

Credits or benefits resulting or arising from this Contract, including trade credits, export credits or the refund of duties, taxes or fees, will belong to Buyer. Seller will timely and accurately provide all information necessary (including written documentation and electronic transaction records) to permit Buyer to receive such benefits or credits, as well as to fulfill its import and, where required by this Contract, export customs related obligations, origin marking or labeling requirements and local content origin requirements, if any. Seller will undertake such arrangements as necessary for the goods to be covered by any duty deferral or free trade zone program(s) of the country of import. Seller will ensure compliance with the recommendations or requirements of all applicable Authorized Economic Operator (AEO), governmental security/anti-terrorism and enhanced border release programs (including, without limitation, the United States Bureau of Customs and Border Protection's Customs-Trade Partnership Against Terrorism (C-TPAT), Canada Border Services Agency's Partners in Protection initiative and Administración General de Aduanas de Mexico's Neuvo Esquema Empresa Certificada (NEEC) program). At the request of Buyer or the appropriate Customs Authority, Seller will certify in writing its compliance with the foregoing.

#### 19. ~~20.~~ Transactional Tax

Unless otherwise provided in this Contract, the prices set forth in this Contract will be exclusive of all transactional taxes, including any sales, use, excise, services, value added tax, goods and services tax, or similar tax, and these taxes should be separately identified by Seller in both Seller's quote and in this Contract even if the tax rate is zero. Buyer will not be responsible for any transactional taxes charged by the Seller that are not identified in this manner. Seller shall separately state all charges for transactional taxes on its invoices (or other such documents). Additionally, Seller shall provide Buyer with invoices in line with the applicable tax laws in its country to enable the Buyer to reclaim the transactional taxes and Seller will provide such documentation no later than when the payment to which the invoice relates is due from Buyer. Seller will be responsible for remitting the transactional tax to the applicable taxing authority except for those states or jurisdictions where Buyer has provided Seller with an appropriate exemption certificate. Seller will use reasonable efforts to apply for such exemptions where applicable. Seller will not charge Buyer for any transactional taxes charged by a subcontracting supplier if such tax is recoverable by Seller, or if not recoverable, it would have been, had the transaction been structured through other entities (either the Seller's or the Buyer's affiliated companies). If transactional taxes are not recoverable by Seller, Seller agrees to provide detailed billing, customs or other documents as requested, which set out the transactional taxes paid or payable to any of the Buyer's subcontracting supplier or to a taxing authority.

#### 20. ~~21.~~ Insolvency

Buyer may immediately terminate this Contract without liability to Seller in any one or more of the following or other comparable events: (a) insolvency of Seller (including, without limitation, a circumstance in which Seller's liabilities exceed its assets or Seller is unable to pay its debts as they come due); (b) appointment of a receiver, trustee or administrator over Seller or its assets; or (c) execution of an assignment for the benefit of creditors by Seller, provided that such petition, appointment or assignment is not vacated or nullified within 15 days of such event. Seller will inform Buyer immediately should any of these events occur or Seller becomes aware of events or circumstances likely to give rise to any such events. Seller will reimburse Buyer for all costs and expenses incurred by Buyer in connection with any of these events (regardless of

whether Buyer exercises its termination rights with respect thereto, including, without limitation, all legal or other professional fees).

#### 21. ~~22.~~ Seller's Property

Unless otherwise agreed to by Buyer, Seller, at its expense, will furnish, keep in good condition, and replace when necessary all machinery, equipment, tools, jigs, dies, gauges, fixtures, molds, patterns and other items ("Seller's Property") necessary for the production of the goods. Seller will insure Seller's Property with coverage for all losses for its replacement value. Seller grants Buyer an irrevocable option to take possession of and title to Seller's Property that is used exclusively for the production of the goods 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, but less any amounts otherwise owing to Buyer by Seller; provided, however, that this option will not apply if Seller's Property is used to produce goods that are the standard stock of Seller or if a substantial quantity of like goods are being sold by Seller to others, and this option may only be exercised in connection with a termination of this Contract under Section ~~34~~33 (Termination for Cause) below or Section ~~21~~20 (Insolvency) above.

#### 22. ~~23.~~ Buyer's Property

All supplies, materials, prototype and production tools, jigs, dies, gauges, fixtures, molds, patterns, equipment, related software and other items (together with any accessions, appurtenances, modifications, repairs, refurbishments and replacements thereof) furnished by Buyer, either directly or indirectly, to Seller to perform this Contract, or for which Seller has been paid (other than through piece price amortization) by Buyer ("Buyer's Property"), will be and remain the property of Buyer, and all right, title and interest in Buyer's Property will remain with Buyer, subject only to the limited right of possession granted to Seller under this Section. Buyer will, at any time, have the right to immediate possession of Buyer's Property, on Buyer's demand. If title in any Buyer's Property has not otherwise passed to Buyer, title will pass to Buyer immediately upon completion of Buyer's production part approval process (PPAP) for such property or the date Buyer first makes any payment to Seller relating to such property, whichever comes first. Seller will bear all risk of loss of and damage to Buyer's Property. Buyer's Property will at all times be properly housed and maintained by Seller, at its expense, will not be used by Seller for any purpose other than the performance of this Contract; will be deemed to be personalty; will be conspicuously marked by Seller as the property of Buyer; will not be commingled with the property of Seller or with that of a third person; and will not be moved from Seller's premises without Buyer's prior written approval. Buyer and its designees will have the right to enter Seller's premises at all reasonable times to inspect Buyer's Property and Seller's records with respect thereto. Upon the request of Buyer, Buyer's Property will be immediately released to Buyer or delivered to Buyer by Seller, either (i) FCA transport equipment at Seller's plant (*Incoterms* 2010), properly packed and marked in accordance with the requirements of the carrier selected by Buyer to transport such property, or (ii) to any location designated by Buyer, in which event Buyer will pay to Seller the reasonable costs of delivering such property to such location. To the fullest extent permitted by law, Seller waives any liens, claims, encumbrances, interests or other rights that Seller might otherwise have or assert on or with respect to any of Buyer's Property for work performed on such property or otherwise. To the extent any Intellectual Property Rights owned by or licensed to Seller is embodied in, or is otherwise necessary for the intended use of, any Buyer's Property, Seller hereby grants to Buyer a fully paid, irrevocable, non-exclusive, worldwide, perpetual to the

maximum extent permitted by law, royalty-free license, with the right to grant sublicenses as necessary for any use of Buyer's Property, to use such Intellectual Property Rights.

### 23. ~~24.~~ Intellectual Property Rights

#### (a) Applicability

This Section will apply where the Parties have not entered into a separate written agreement signed by their respective authorized representatives prior to or contemporaneous with the effective date of this Contract with respect to the Parties' Intellectual Property Rights (defined below) that expressly prevails over this Contract.

#### (b) Definitions

"Intellectual Property Rights" means any patent, patented articles, patent applications, designs, industrial designs, copyrights, software, source code, database rights, moral rights, inventions whether or not capable of protection by patent or registration, techniques, technical data, trade secrets, know-how, and any other proprietary right, whether registered or unregistered, including applications and registrations thereof, all related and continuing rights, and all similar or equivalent forms of protection anywhere in the world. Intellectual Property Rights excludes all brands, trademarks, trade names, slogans and logos of Seller and Buyer unless specifically identified as a deliverable or work product of Seller pursuant to this Contract.

"Background Intellectual Property Rights" means any Intellectual Property Rights of either Buyer or Seller relating to the goods or services contracted (i) existing prior to the effective date of this Contract or prior to the date Buyer and Seller began any technical cooperation relating to the goods or services contracted, whichever is earlier, or (ii) that each party acquires or develops after these dates but in a strictly independent manner and entirely outside of any work conducted under this Contract.

"Foreground Intellectual Property Rights" means any Intellectual Property Rights, except Background Intellectual Property Rights, (i) that are developed in whole or in part by Buyer alone, by Buyer and Seller jointly or by Seller alone, in connection with this Contract or (ii) relating to the goods or services contracted.

#### (c) Foreground Intellectual Property Rights

Buyer and Seller will each retain ownership of any Foreground Intellectual Property Rights that are solely created or made by their respective employees, agents or subcontractors ("Personnel"). Buyer and Seller will jointly own any Foreground Intellectual Property Rights that are jointly created or made by Personnel of both Buyer and Seller with the ability to grant licenses without consultation and no duty of accounting to each other for any use or purpose. For clarity, unless an express written period of exclusivity has been promised to Buyer, Foreground Intellectual Property Rights owned or controlled by Seller may be immediately exploited by Seller in connection with its business with its other customers and will not be exclusive to Seller's performance of this Contract. Seller hereby grants to Buyer and causes its affiliates and Personnel to grant to Buyer, an irrevocable, worldwide, nonexclusive, perpetual to the maximum extent permitted by law, royalty free, fully paid-up license, with right to sublicense, to all Foreground Intellectual Property Rights to make, have made, use, reproduce, modify, improve, prepare derivative works of, distribute, display, perform, offer to sell, sell and import, without limitation.

#### (d) Background Intellectual Property Rights

Buyer and Seller will each retain ownership of their respective Background Intellectual Property Rights.

Seller hereby grants to Buyer and causes its affiliates and Personnel to grant to Buyer, an irrevocable, worldwide, nonexclusive, royalty free, fully paid-up license, with right to sublicense to Buyer's affiliates, to all Background Intellectual Property Rights to make, have made, use, reproduce, modify, improve, prepare derivative works of, distribute, display, perform, offer to sell, sell and import the goods or services that are the subject of this Contract (the "Limited License"), provided that Buyer or its affiliates will only use this Limited License in the ~~following circumstances: (i) to the extent deemed reasonably necessary for the direct purposes of this Contract, without any additional cost to Buyer, (ii) termination of event that (i) Seller breaches or repudiates its obligations by being unable or unwilling to deliver goods or services under this Contract, or (ii) in the event Seller is unable to supply goods or services under this Contract by Buyer under Section 34 (Termination for Cause), or in case~~ as a result of a force majeure event ~~alleged by Seller under Section 28 (Force majeure), in which cases the Limited License granted hereunder is fully paid for the lifetime of the applicable product or program, or (iii) if after good faith consultation with Seller, Buyer deems the use of the Limited License reasonably necessary to prevent the interruption or delay of Buyer's production operations, in which case the Limited License will only be utilized for period(s) deemed reasonably necessary by Buyer for such purpose provided that Buyer pays to Seller a reasonable royalty to be negotiated by Seller and Buyer in good faith, but in such event only for the duration of Seller's inability to supply. In no event will the term of the Limited License extend beyond the expiration date of this Contract.~~

(e) Copyrights

To the extent that this Contract is issued for the creation of copyrightable works, the works will be considered "works made for hire" for Buyer except to the extent that the works do not qualify as "works made for hire" for Buyer in which case Seller hereby assigns to Buyer all right, title and interest in all copyrights and if lawfully permitted waives all moral rights therein.

(f) Right to Repair

For the avoidance of doubt, Buyer Group, its dealers, its customers, and its subcontractors have the right to repair, reconstruct, remanufacture, reflash, or rebuild the specific goods delivered under this Contract without payment of any royalty to Seller.

(g) Miscellaneous

Goods manufactured based on Buyer's drawings, designs, and/or specifications as well as any software code or models provided by Buyer may not be used for Seller's own use or sold to third parties without Buyer's express written authorization.

Nothing in this Contract is an admission by Buyer of the validity of any Intellectual Property Rights claimed by Seller, including an admission that any license is required by Buyer to manufacture the goods or continue the services contracted. Seller will claim and acquire all rights and waivers of Seller's personnel required to enable Seller to grant Buyer the rights and licenses in this Contract. Seller assumes full and sole responsibility for compensating Seller's personnel for such rights and waivers, including the remuneration of employees.

Seller, on behalf of itself and Buyer Group and its dealers and customers will comply with all obligations with respect to software that forms any part of the goods or services contracted, including obligations under any licenses.

#### 24. ~~25.~~ Intellectual Property Indemnification

Seller will investigate, defend, hold harmless and indemnify Buyer, its successors, its affiliates (collectively "Buyer Group") and its dealers and customers against any actual or alleged claims of infringement or other assertions of proprietary rights violations (including patent, trademark, copyright, industrial design right, or other proprietary right, misuse, or misappropriation of trade secret) and resulting damages and expenses (including attorney's and other professional fees) arising in any way in relation to the goods or services contracted, including such claims where Seller has provided only part of the goods or services (collectively "IP claims"). Seller expressly waives any claim against Buyer Group that any such IP Claims arose out of compliance with Buyer Group's or its dealers' or customers' specification or direction.

#### 25. ~~26.~~ Remedies; Indemnity

The rights and remedies reserved to Buyer in this Contract are cumulative with, and additional to, all other rights and remedies of Buyer under applicable law or in equity. Without limiting the foregoing, in the event that any goods fail to conform to the warranties set forth in this Contract or the product specifications incorporated by reference in this Contract, or if Seller otherwise breaches any of its obligations under this Contract, Buyer will be entitled to recover from Seller any and all damages, including, without limitation, any direct, indirect, incidental and consequential damages and all legal and other professional fees and costs incurred by Buyer as a result of such breach or failure, including, without limitation, costs, expenses and losses incurred by Buyer (a) in inspecting, sorting, testing, repairing or replacing nonconforming goods or nonconforming deliveries; (b) resulting from production interruptions; (c) in conducting recall campaigns or other corrective service actions; or (d) resulting from personal injury, including death, or property damage. If requested by Buyer, Seller will enter into a separate agreement for the administration and processing of warranty chargebacks for nonconforming goods.

Seller will indemnify, defend and hold harmless Buyer Group against any liability, claim, demand and expense (including, without limitation, legal and other professional fees) arising from or relating to any failure of Seller to fully perform any of its obligations under this Contract.

#### 26. ~~27.~~ Specific Performance

Seller acknowledges and agrees that money damages will not be a sufficient remedy for any actual or threatened breach of this Contract by Seller and that, in addition to all other rights and remedies that Buyer may have, Buyer will be entitled to specific performance and temporary, preliminary and permanent injunctive relief in connection with any action to enforce this Contract, without any requirement of a bond or other security to be provided by Buyer.

#### 27. ~~28.~~ Force Majeure

Any delay or failure of either party to perform its obligations under this Contract will be excused to the extent that Seller is unable to produce, sell or deliver, or Buyer is unable to accept delivery, buy or use, the goods or services covered by this Contract, directly as the result of an event or occurrence beyond the reasonable control of such party, without such party's fault or negligence (a "force majeure event"), including, if applicable, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars and sabotage; provided that written notice of such force majeure event (including the

anticipated duration of the delay) must be given by the affected party to the other party as soon as possible (but in no event more than 10 days after the force majeure event occurs).

During any force majeure event affecting Seller's performance, Buyer may, at its option, purchase goods or services from other sources and reduce its delivery schedules to Seller by such quantities, without liability to Seller, or require Seller to provide goods or services from other sources in quantities and at times requested by Buyer at the price set forth in this Contract.

Seller will use all diligent efforts to ensure that the effects of any force majeure event are minimized and, as promptly as possible, resume full performance under this Contract. If requested by Buyer in writing, Seller will, within 5 days after Buyer's request, provide adequate assurances that the delay in Seller's performance resulting from such event will not exceed 30 days. If the delay lasts more than 30 days or Seller does not provide such adequate assurances, Buyer may immediately terminate this Contract without liability to Seller.

#### 28. ~~29.~~ Insurance

Seller will maintain insurance coverage with insurance carriers acceptable to Buyer and in the amounts set forth elsewhere in this Contract. ~~Seller will name Buyer as an additional insured or a beneficiary on all liability policies.~~ Seller will furnish to Buyer either a certificate showing compliance with these insurance requirements or certified copies of all insurance policies within 10 days of Buyer's written request. The certificate will provide that Buyer will receive 30 days' prior written notice of any termination or reduction in the amount or scope of coverage. Seller's furnishing of certificates of insurance or purchase of insurance will not release Seller of any of its obligations or liabilities under this Contract.

#### 29. ~~30.~~ Technical Information

Seller agrees not to assert any claim (other than a claim for patent infringement) with respect to any technical or other information that Seller has disclosed or may hereafter disclose to Buyer or its affiliates in connection with this Contract or the goods or services contracted. Any technical or other information provided by Seller to Buyer or its affiliates will not be subject to confidentiality or nondisclosure obligations unless the parties have entered into a separate written confidentiality and nondisclosure agreement signed by their respective authorized representatives prior to the effective date of this Contract.

#### 30. ~~31.~~ Confidentiality; No Advertising

Seller will maintain the confidentiality of any information provided by Buyer or its representatives, and any materials or information that contain, or are based on, any such information. Seller may only use such information in connection with its performance under this Contract and will not provide such information to any third party (including, without limitation, Seller's subcontractors) without Buyer's advance written consent.

Seller will not, without first obtaining the written consent of Buyer, in any manner (a) advertise or publish the fact that Seller has contracted to furnish Buyer the goods or services covered by this Contract; (b) use Buyer's trademarks, trade names or confidential information in Seller's advertising or promotional materials; or (c) use Buyer's trademarks, trade names or confidential information in any form of electronic communication such as web sites (internal or external), blogs or other types of postings.

### 31. ~~32.~~ Compliance with Laws

Seller, and any goods or services supplied by Seller, will comply with all applicable laws, rules, regulations, orders, conventions, ordinances or standards of the country(ies) of destination or that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval or certification of the goods or services, including, without limitation, those relating to environmental matters, the handling and transportation of dangerous goods or hazardous materials, data protection and privacy, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety. Seller further represents that neither it nor any of its subcontractors, vendors, agents or other associated third parties will utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in abusive employment or corrupt business practices, in the supply of goods or provision of services under this Contract. Seller agrees to comply with all applicable anti-corruption laws, including, without limitation, the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act, and that neither it nor any of its subcontractors, vendors, agents or other associated third parties will engage in any form of commercial bribery, nor 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 or of any government-owned, government-controlled or government-affiliated entity to obtain or retain any contract, business opportunity or other business benefit, or to influence any act or decision of that person in his/her official capacity. At Buyer's request, Seller will certify in writing its compliance with the foregoing. Seller will indemnify and hold Buyer harmless from and against any liability, claims, demands or expenses (including, without limitation, legal or other professional fees) arising from or relating to Seller's noncompliance.

### 32. ~~33.~~ Export Controls; Sanctions Compliance

Seller agrees to comply with all applicable export control and sanctions laws and regulations of the United States of America, of member States of the European Union, and any other relevant country (the "Export Control Laws"). Seller will not violate, and will not cause Buyer to violate, any Export Control Laws (e.g. by transshipping goods through, or supplying goods or services from, sanctioned countries). Licenses or other authorizations required for the export of goods or services will be the responsibility of Seller unless otherwise indicated in this Contract, in which event Seller will provide such information as may be requested by Buyer to enable Buyer to obtain such licenses or authorizations.

### 33. ~~34.~~ Termination for Cause

Buyer may terminate all or any part of this Contract, without liability to Seller, if Seller (a) breaches any term of this Contract (including, without limitation, Seller's warranties); (b) states its intention not to perform or otherwise rejects its obligations under this Contract; or (c) fails to make progress in performance so as to endanger timely and proper completion of services or delivery of goods under this Contract; provided, however, that if any failure or breach under the foregoing (a) through (c) is curable, Buyer will provide Seller an opportunity to cure within a commercially reasonable period of time under the circumstances, in no case exceeding 10 days after Buyer provides notice of the failure or breach to Seller. In addition, Buyer may terminate this Contract upon giving at least 60 days' notice to Seller, without liability to Seller, if a direct or indirect change in control or ownership of Seller occurs without Buyer's prior written consent.

#### 34. ~~35.~~ Termination For Convenience

In addition to any other rights of Buyer to terminate this Contract, Buyer may, at its option, terminate all or any part of this Contract before the expiration date set forth in this Contract, at any time and for any reason, by giving written notice to Seller. In the event Buyer exercises its right to terminate for convenience under this Section, Buyer will pay to Seller only the following amounts, without duplication: (a) the contract price for all goods and services that have been completed in accordance with this Contract and not previously paid for; and (b) the actual costs of work-in-process and raw materials incurred by Seller in furnishing the goods or services under this Contract, to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting principles to the terminated portion of this Contract; less, however, the sum of the reasonable value or cost (whichever is higher) of any goods or materials used or sold by Seller with Buyer's written consent and the cost of any damaged or destroyed goods or material. Seller will promptly make available for delivery to Buyer, as specified by Buyer, any goods completed but not delivered as of the time of Buyer's termination hereunder. Any request for payment submitted to Buyer under this Section must include sufficient supporting data to permit an audit by Buyer, including, without limitation, such supplemental and supporting information as Buyer may request. Any request for payment under this Section must be in writing and include, without limitation, a statement setting forth the contract price for the goods or services, invoices reflecting the actual cost of work-in-process and raw materials, the basis for the allocation of such costs to the terminated portion of this Contract, and any other supporting documentation reasonably requested by Buyer. Any amount otherwise due to Seller pursuant to this Section will be reduced by any amount owed by Seller to Buyer under this Contract or otherwise. Any payment under this Section will not be deemed a waiver of any of Buyer's other rights arising under this Contract or applicable law. Notwithstanding any other provision of this Contract, Buyer will make no payments under this Section for finished goods, services, work-in-process or raw materials fabricated or procured by Seller in amounts in excess of those authorized in Buyer's delivery schedules or any undelivered goods that are in Seller's standard stock or that are readily marketable. Further, any payments made under this Section will not exceed the aggregate price payable by Buyer for finished goods or services that would have been produced or performed by Seller under Buyer's delivery schedules outstanding at the date of termination. Except as expressly provided in this Section, Buyer will not be liable for and will not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, overhead, interest on claims, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, or general and administrative burden charges from termination of this Contract. The payment specified in this Section is Seller's sole remedy for termination of this Contract under this Section.

#### 35. ~~36.~~ Governing Law and Jurisdiction

This Contract and any claims relating to the goods or services provided under this Contract will be governed by the laws of the country (and state/province, if applicable) of Buyer's location as shown by the address of Buyer as set forth in this Contract ("Buyer's Location"), excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980), as amended, and any conflict of law provisions that would require application of another choice of law.

Any action or proceedings by Buyer against Seller may be brought by Buyer in any court(s) having jurisdiction over Seller or, at Buyer's option, in the court(s) having jurisdiction over

Buyer's Location, in which event Seller consents to such jurisdiction and service of process in accordance with applicable procedures. Any actions or proceedings by Seller against Buyer may be brought by Seller only in the court(s) having jurisdiction over Buyer's Location.

36. ~~37.~~ No Waiver

The failure of either party at any time to require performance by the other party of any provision of this Contract will in no way affect the right to require such performance at any time thereafter, nor will the waiver of either party of a breach of any provision of this Contract constitute a waiver of any succeeding breach of the same or any other provision.

37. ~~38.~~ Non-Assignment

Under no circumstances may Seller transfer, assign or delegate, in whole or in part, any of its rights or obligations under this Contract (including, without limitation, any right of payment), whether directly or indirectly, by merger, acquisition or contribution to a joint venture, without Buyer's prior written consent.

38. ~~39.~~ Nature of the Relationship of Parties

Seller and Buyer are independent contracting parties and nothing in this Contract will 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.

39. ~~40.~~ Severability

If any term of this Contract is invalid or unenforceable under applicable law or regulation, such term will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such applicable law or regulation, and the remaining provisions of this Contract will remain in full force and effect.

~~July 2013~~

February 2014

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## GENERAL TERMS AND CONDITIONS

### 1. Effectiveness

As used herein, "Contract" means this document, including, without limitation, all terms, provisions, sub-parts, sections and attachments, along with any documents incorporated by reference herein. This Contract will be accepted by Seller and become effective immediately upon the first to occur of: (a) the date on which Seller provides written acceptance to Buyer (whether by electronic means or otherwise), or (b) Seller's commencement of any work under this Contract.

### 2. Entire Agreement; Applicability

This Contract sets forth the exclusive terms and conditions under which Seller will sell and Buyer will purchase the goods or services described herein for the period(s) specified in this Contract. Terms and conditions proposed by Seller that are different from or in addition to the provisions of this Contract are expressly rejected by Buyer and are not a part of this Contract, and Seller's acceptance is expressly limited to the terms of this Contract. This Contract constitutes the entire agreement between Seller and Buyer with respect to the matters contained herein and supersedes all prior or contemporaneous oral or written agreements, representations and/or communications. This Contract may be modified only by an amendment issued by Buyer.

### 3. Delivery; Scheduling; Electronic Data Interchange

Seller will comply, in all respects, with Buyer's delivery and logistics requirements, as amended or updated from time to time and as incorporated in this Contract by reference. Time is of the essence, and deliveries must be made both in quantities and at times specified in Buyer's delivery schedules. Seller will electronically communicate with Buyer in a secure (encrypted) manner and specifically utilizing electronic data interchange (EDI) with respect to all supply chain communications relating to this Contract, including, without limitation, receiving Buyer's production schedules and sending advance shipment notices to Buyer. Buyer will not be required to make payment for goods delivered to Buyer that are in excess of quantities specified in Buyer's delivery schedules. Buyer may change the rate of scheduled shipments, the quantity of shipments or direct temporary suspension of scheduled shipments. Where quantities and/or delivery schedules are not specified, Seller will deliver goods in such quantities and times as Buyer may direct in subsequent delivery schedules. Further, if Seller's acts or omissions result in or are likely to result in Seller's failure to meet Buyer's delivery requirements and Buyer requires a more expeditious method of transportation for the goods than the transportation method originally specified by Buyer, Seller will be solely responsible for all costs and expenses associated with such expedited shipments.

### 4. Shipping; Packaging

Seller will comply, in all respects, with Buyer's shipping and packaging requirements as amended or updated from time to time and as incorporated in this Contract by reference. Unless otherwise provided in this Contract, any charges or costs relating to handling, packaging, storage or transportation of goods are borne by Seller and have been included in the piece price of the goods as set forth herein. Further, Seller will (a) properly pack, mark and ship goods in accordance with the requirements of Buyer, the involved carriers, and laws and regulations of the country of manufacture, the country of destination and any country in which the goods will be transported, including, without limitation, laws and regulations governing the handling and transportation of dangerous goods or hazardous materials; (b) route shipments in accordance with Buyer's instructions and the terms and conditions stated in this Contract; (c) provide with each shipment packing slips with Buyer's Contract and/or release number and date of shipment marked thereon; (d) promptly forward the original bill of lading or other shipping

documents for each shipment in accordance with Buyer's instructions; and (e) include on bills of lading or other shipping documents the correct classification of the goods. The marks on each package and identification of the goods on packing slips, bills of lading and invoices (when required) must be sufficient to enable Buyer to easily identify the goods purchased.

#### **5. Service And Replacement Parts**

Seller will sell to Buyer goods necessary for Buyer to fulfill its current model service and replacement parts requirements at the price(s) set forth in this Contract, adjusted only for differences in packaging and logistics costs, all as approved by Buyer. If the goods are systems or modules, Seller will sell the components or parts that comprise the system or module at price(s) that will not, in the aggregate, exceed the price of the system or module less assembly costs. During the 15-year period after Buyer completes current model purchases, Seller will sell goods to Buyer to fulfill Buyer's past model service and replacement parts requirements. Unless otherwise agreed to by Buyer, the price(s) during the first 5 years of this period will be those in effect at the conclusion of current model purchases. For the remainder of this period, the price(s) for goods will be as agreed to by the parties.

#### **6. Non-conforming, Rejected or Surplus Goods**

Buyer will not perform incoming inspections of the goods and Seller waives any requirement that Buyer conduct such inspections. Payment for nonconforming goods will not constitute an acceptance of them, limit or impair Buyer's right to assert any legal or equitable remedy, or relieve Seller's responsibility for latent defects. Any goods (a) determined to be nonconforming by Seller (or its suppliers); (b) rejected by Buyer as nonconforming; or (c) that become obsolete or surplus, will be rendered unusable prior to salvage or disposal by Seller (or its suppliers). Seller will ensure that nonconforming, rejected, obsolete or surplus goods are not sold as service or replacement parts to third parties. Seller will institute appropriate controls with its suppliers to ensure compliance with this Section.

#### **7. Transfer of Title**

Title to the goods will transfer to Buyer free and clear of any liens, claims, encumbrances, interests or other rights at the moment the risk of loss transfers from Seller to Buyer with respect to such goods in accordance with the Incoterm or alternative delivery term set forth in this Contract.

#### **8. Protection Against Labor Disruptions**

Seller will, at Seller's expense, take such actions as are necessary or appropriate to ensure the uninterrupted supply of goods and services to Buyer for not less than 30 days during any foreseeable or anticipated labor disruption and/or the expiration of any of Seller's labor contracts. This Section shall not constitute a waiver of and is without prejudice to, any and all of Buyer's other rights and remedies under this Contract or applicable law, each of which are hereby reserved.

#### **9. Seller's Assurance of Performance**

In the event that Buyer has reasonable grounds for insecurity with respect to Seller's continued performance under this Contract, Buyer may, in writing, demand adequate assurance of such performance from Seller. After receipt of such demand, Seller's failure, within a reasonable period of time under the circumstances (not to exceed 20 days), to provide assurances adequate under the circumstances will be deemed a breach of this Contract by Seller.

#### **10. Changes**

By written notice to Seller, Buyer may, from time to time, direct changes, or direct Seller to make changes, to drawings and specifications of the goods or to otherwise change the scope of the work

covered by this Contract, including, without limitation, work with respect to such matters as inspection, testing or quality control, and Buyer and Seller will promptly discuss, reasonably and in good faith, any pricing adjustments (up or down) to be made in connection with such changes. Notwithstanding any such discussions, Seller will promptly implement such changes as directed by Buyer without delay. In the event that Buyer and Seller are unable to reach agreement on any pricing adjustments to be made in connection with such changes, any difference in price or time for performance resulting from such changes will be equitably adjusted by Buyer based on a fair cost assessment after receipt of documentation in such form and detail as Buyer may direct. Seller will accept any amendments issued by Buyer implementing such changes. Seller may, from time to time, propose changes to drawings and specifications of the goods or to the scope of the work covered by this Contract. If Buyer agrees, in its discretion, to implement such changes, the agreement between the parties with respect to such changes will be made in accordance with Section 2 (Entire Agreement, Applicability) above.

Seller will not relocate the production, manufacture or assembly of the goods from the facilities approved by Buyer, or change the location from which the goods are shipped, without first following Buyer's relocation requirements and obtaining Buyer's advanced written consent.

#### **11. Subcontracting**

Seller will not subcontract any of its obligations under this Contract without the prior written consent of Buyer. Any such consent of Buyer will not release Seller from, or limit, any of Seller's obligations under this Contract. Seller warrants and guarantees that any such subcontractor's performance will satisfy all requirements applicable to Seller under this Contract.

#### **12. Quality**

Seller will comply, in all respects, and will cause its subcontractors and suppliers to comply, in all respects, with Buyer's quality requirements and procedures as amended or updated from time to time and as incorporated by reference in this Contract. Seller will promote continuous improvement in the quality of the goods and Seller's manufacturing and logistics processes.

#### **13. Product Warranty; Warranty of Performance**

Seller warrants and guarantees that the goods covered by this Contract will conform to all specifications, drawings, samples, descriptions and quality standards (i) furnished by Buyer, or (ii) furnished by Seller and approved by Buyer in writing, and will be merchantable, of good material and workmanship and free from defect. In addition, Seller acknowledges that Seller knows of Buyer's intended use of the goods covered by this Contract and warrants and guarantees that such goods have been selected, designed, manufactured or assembled by Seller based upon Buyer's stated use and will be fit and sufficient for the particular purposes intended by Buyer. Unless otherwise set forth in this Contract, the duration of the warranty provided by Seller to Buyer for the goods will begin on the date of receipt of the goods by Buyer and end on the later of (a) the date of expiration of any warranty period provided under applicable law for the goods, (b) expiration of any warranty applicable to the goods provided by Buyer to Buyer's end customer for the vehicle into which the goods are incorporated, or (c) the expiration of any specific warranty period or performance standard provided in any document incorporated by reference into the Contract, including in Buyer's specifications or quality standards.

#### **14. Ingredients Disclosure; Special Warnings And Instructions**

Seller will promptly furnish to Buyer in such form and detail as Buyer may direct: (a) a list of all ingredients and materials incorporated in the goods; (b) the amount of such ingredients and materials; and (c) information concerning any changes in or additions to such ingredients and materials. Prior to and with the shipment of the goods, Seller agrees to furnish to Buyer sufficient advance warning and

notice, in writing (including, without limitation, appropriate labels on the goods, containers and packing), of any dangerous goods or hazardous material that is an ingredient or a part of any shipment of goods, together with such special handling instructions as may be necessary to advise carriers, Buyer and their respective employees of how to exercise that measure of care and precaution that will comply with any applicable laws or regulations and best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the goods, containers and packing shipped to Buyer. Upon Buyer's request, Seller will certify to Buyer in writing the origin of any ingredients or materials in the goods. Seller will promptly provide, in writing, any information regarding the goods requested by Buyer so that Buyer may comply in a timely manner with reporting requirements under applicable law with respect to consumer protection, "conflict minerals" or similar materials or ingredients, if any.

#### **15. Audit Rights; Inspection of Seller's Premises**

Seller grants Buyer access to Seller's premises and books and records solely for the purpose of auditing Seller's compliance with the terms of this Contract (including, without limitation, charges under this Contract) or inspecting or conducting an inventory of finished goods, work-in-process, raw materials, any of Buyer's Property and all work or other items to be provided pursuant to this Contract located at Seller's premises. Seller will cooperate with Buyer so as to facilitate Buyer's audit, including, without limitation, by segregating and promptly producing such records as Buyer may reasonably request, and otherwise making records and other materials accessible to Buyer. Seller will preserve all records pertinent to this Contract, and Seller's performance under this Contract, for a period of not less than one year after Buyer's final payment to Seller under this Contract. Any such audit or inspection conducted by Buyer or its representatives will not constitute acceptance of any goods (whether in progress or finished), relieve Seller of any liability under this Contract or prejudice any rights or remedies available to Buyer.

#### **16. Work Performed on Buyer's Premises**

If Seller or its subcontractors perform any work on Buyer's premises or utilizes the property of Buyer, whether on or off Buyer's premises, Seller will indemnify and hold Buyer harmless from and against any liability, claims, demands or expenses (including, without limitation, legal and other professional fees) for damages to the property of or injuries, including death, to Buyer or Seller, Buyer's or Seller's employees, subcontractors or any other person arising from or in connection with Seller's performance of work or use of Buyer's property, except for such liability, claim or demand arising out of the sole negligence of Buyer.

#### **17. Payment; Setoff and Recoupment**

If Buyer requests an invoice from Seller or if this Contract requires Seller to invoice Buyer for the goods or services covered by this Contract, promptly after each shipment of goods or performance of services, Seller will issue a single invoice for such shipment or agreed performance milestone to Buyer at the address specified in this Contract. Each invoice must comply with applicable law, if any, and include the following information regarding the corresponding shipment of goods or performance of services: (a) amount due (in the currency specified in this Contract); (b) location of delivery or performance; (c) shipment or delivery information; (d) Contract number; (e) if applicable, purchase order number; (f) if applicable, the intra-EU VAT number; and (g) for goods, net weight of the goods. Buyer may reject any invoice that is inaccurate or does not conform to these requirements, and Seller will promptly reissue any such rejected invoice. Buyer's failure to reject an invoice does not constitute Buyer's acceptance of the invoice or the goods or services to which such invoice pertains.

Buyer will pay for the goods or services provided by Seller in accordance with the payment terms and in the currency specified elsewhere in this Contract. Payments may be made electronically (including, without limitation, by bank transfer or recorded bill of exchange, where applicable). Where Buyer has reasonable grounds to believe goods provided by Seller under this Contract may be subject to any liens, claims or encumbrances, Buyer may withhold payment pending receipt of evidence, in such form and detail as Buyer may direct, that such goods are free of any liens, claims and encumbrances.

In addition to any right of setoff or recoupment provided by law, all amounts due to Seller will be considered net of indebtedness of Seller and its affiliates/subsidiaries to Buyer and its affiliates/subsidiaries; and Buyer will have the right to setoff against or to recoup from any amounts due to Seller and its affiliates/subsidiaries from Buyer and its affiliates/subsidiaries.

#### **18. Customs; Origin**

Credits or benefits resulting or arising from this Contract, including trade credits, export credits or the refund of duties, taxes or fees, will belong to Buyer. Seller will timely and accurately provide all information necessary (including written documentation and electronic transaction records) to permit Buyer to receive such benefits or credits, as well as to fulfill its import and, where required by this Contract, export customs related obligations, origin marking or labeling requirements and local content origin requirements, if any. Seller will undertake such arrangements as necessary for the goods to be covered by any duty deferral or free trade zone program(s) of the country of import. Seller will ensure compliance with the recommendations or requirements of all applicable Authorized Economic Operator (AEO), governmental security/anti-terrorism and enhanced border release programs (including, without limitation, the United States Bureau of Customs and Border Protection's Customs-Trade Partnership Against Terrorism (C-TPAT), Canada Border Services Agency's Partners in Protection initiative and Administración General de Aduanas de Mexico's Neuvo Esquema Empresa Certificada (NEEC) program). At the request of Buyer or the appropriate Customs Authority, Seller will certify in writing its compliance with the foregoing.

#### **19. Transactional Tax**

Unless otherwise provided in this Contract, the prices set forth in this Contract will be exclusive of all transactional taxes, including any sales, use, excise, services, value added tax, goods and services tax, or similar tax, and these taxes should be separately identified by Seller in both Seller's quote and in this Contract even if the tax rate is zero. Buyer will not be responsible for any transactional taxes charged by the Seller that are not identified in this manner. Seller shall separately state all charges for transactional taxes on its invoices (or other such documents). Additionally, Seller shall provide Buyer with invoices in line with the applicable tax laws in its country to enable the Buyer to reclaim the transactional taxes and Seller will provide such documentation no later than when the payment to which the invoice relates is due from Buyer. Seller will be responsible for remitting the transactional tax to the applicable taxing authority except for those states or jurisdictions where Buyer has provided Seller with an appropriate exemption certificate. Seller will use reasonable efforts to apply for such exemptions where applicable. Seller will not charge Buyer for any transactional taxes charged by a subcontracting supplier if such tax is recoverable by Seller, or if not recoverable, it would have been, had the transaction been structured through other entities (either the Seller's or the Buyer's affiliated companies). If transactional taxes are not recoverable by Seller, Seller agrees to provide detailed billing, customs or other documents as requested, which set out the transactional taxes paid or payable to any of the Buyer's subcontracting supplier or to a taxing authority.

## **20. Insolvency**

Buyer may immediately terminate this Contract without liability to Seller in any one or more of the following or other comparable events: (a) insolvency of Seller (including, without limitation, a circumstance in which Seller's liabilities exceed its assets or Seller is unable to pay its debts as they come due); (b) appointment of a receiver, trustee or administrator over Seller or its assets; or (c) execution of an assignment for the benefit of creditors by Seller, provided that such petition, appointment or assignment is not vacated or nullified within 15 days of such event. Seller will inform Buyer immediately should any of these events occur or Seller becomes aware of events or circumstances likely to give rise to any such events. Seller will reimburse Buyer for all costs and expenses incurred by Buyer in connection with any of these events (regardless of whether Buyer exercises its termination rights with respect thereto, including, without limitation, all legal or other professional fees).

## **21. Seller's Property**

Unless otherwise agreed to by Buyer, Seller, at its expense, will furnish, keep in good condition, and replace when necessary all machinery, equipment, tools, jigs, dies, gauges, fixtures, molds, patterns and other items ("Seller's Property") necessary for the production of the goods. Seller will insure Seller's Property with coverage for all losses for its replacement value. Seller grants Buyer an irrevocable option to take possession of and title to Seller's Property that is used exclusively for the production of the goods 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, but less any amounts otherwise owing to Buyer by Seller; provided, however, that this option will not apply if Seller's Property is used to produce goods that are the standard stock of Seller or if a substantial quantity of like goods are being sold by Seller to others, and this option may only be exercised in connection with a termination of this Contract under Section 33 (Termination for Cause) below or Section 20 (Insolvency) above.

## **22. Buyer's Property**

All supplies, materials, prototype and production tools, jigs, dies, gauges, fixtures, molds, patterns, equipment, related software and other items (together with any accessions, appurtenances, modifications, repairs, refurbishments and replacements thereof) furnished by Buyer, either directly or indirectly, to Seller to perform this Contract, or for which Seller has been paid (other than through piece price amortization) by Buyer ("Buyer's Property"), will be and remain the property of Buyer, and all right, title and interest in Buyer's Property will remain with Buyer, subject only to the limited right of possession granted to Seller under this Section. Buyer will, at any time, have the right to immediate possession of Buyer's Property, on Buyer's demand. If title in any Buyer's Property has not otherwise passed to Buyer, title will pass to Buyer immediately upon completion of Buyer's production part approval process (PPAP) for such property or the date Buyer first makes any payment to Seller relating to such property, whichever comes first. Seller will bear all risk of loss of and damage to Buyer's Property. Buyer's Property will at all times be properly housed and maintained by Seller, at its expense, will not be used by Seller for any purpose other than the performance of this Contract; will be deemed to be personalty; will be conspicuously marked by Seller as the property of Buyer; will not be commingled with the property of Seller or with that of a third person; and will not be moved from Seller's premises without Buyer's prior written approval. Buyer and its designees will have the right to enter Seller's premises at all reasonable times to inspect Buyer's Property and Seller's records with respect thereto. Upon the request of Buyer, Buyer's Property will be immediately released to Buyer or delivered to Buyer by Seller, either (i) FCA transport equipment at Seller's plant (*Incoterms* 2010), properly packed and marked in accordance with the requirements of the carrier selected by Buyer to transport such property, or (ii) to any location designated by Buyer, in which event Buyer will pay to Seller the reasonable costs of delivering such property to such location. To the fullest extent permitted

by law, Seller waives any liens, claims, encumbrances, interests or other rights that Seller might otherwise have or assert on or with respect to any of Buyer's Property for work performed on such property or otherwise. To the extent any Intellectual Property Rights owned by or licensed to Seller is embodied in, or is otherwise necessary for the intended use of, any Buyer's Property, Seller hereby grants to Buyer a fully paid, irrevocable, non-exclusive, worldwide, perpetual to the maximum extent permitted by law, royalty-free license, with the right to grant sublicenses as necessary for any use of Buyer's Property, to use such Intellectual Property Rights.

## **23. Intellectual Property Rights**

### **(a) Applicability**

This Section will apply where the Parties have not entered into a separate written agreement signed by their respective authorized representatives prior to or contemporaneous with the effective date of this Contract with respect to the Parties' Intellectual Property Rights (defined below) that expressly prevails over this Contract.

### **(b) Definitions**

"Intellectual Property Rights" means any patent, patented articles, patent applications, designs, industrial designs, copyrights, software, source code, database rights, moral rights, inventions whether or not capable of protection by patent or registration, techniques, technical data, trade secrets, know-how, and any other proprietary right, whether registered or unregistered, including applications and registrations thereof, all related and continuing rights, and all similar or equivalent forms of protection anywhere in the world. Intellectual Property Rights excludes all brands, trademarks, trade names, slogans and logos of Seller and Buyer unless specifically identified as a deliverable or work product of Seller pursuant to this Contract.

"Background Intellectual Property Rights" means any Intellectual Property Rights of either Buyer or Seller relating to the goods or services contracted (i) existing prior to the effective date of this Contract or prior to the date Buyer and Seller began any technical cooperation relating to the goods or services contracted, whichever is earlier, or (ii) that each party acquires or develops after these dates but in a strictly independent manner and entirely outside of any work conducted under this Contract.

"Foreground Intellectual Property Rights" means any Intellectual Property Rights, except Background Intellectual Property Rights, (i) that are developed in whole or in part by Buyer alone, by Buyer and Seller jointly or by Seller alone, in connection with this Contract or (ii) relating to the goods or services contracted.

### **(c) Foreground Intellectual Property Rights**

Buyer and Seller will each retain ownership of any Foreground Intellectual Property Rights that are solely created or made by their respective employees, agents or subcontractors ("Personnel"). Buyer and Seller will jointly own any Foreground Intellectual Property Rights that are jointly created or made by Personnel of both Buyer and Seller with the ability to grant licenses without consultation and no duty of accounting to each other for any use or purpose. For clarity, unless an express written period of exclusivity has been promised to Buyer, Foreground Intellectual Property Rights owned or controlled by Seller may be immediately exploited by Seller in connection with its business with its other customers and will not be exclusive to Seller's performance of this Contract. Seller hereby grants to Buyer and causes its affiliates and Personnel to grant to Buyer, an irrevocable, worldwide, nonexclusive, perpetual to the maximum extent permitted by law, royalty free, fully paid-up license, with right to sublicense, to all Foreground Intellectual Property Rights to make, have made, use, reproduce, modify, improve, prepare derivative works of, distribute, display, perform, offer to sell, sell and import, without limitation.

**(d) Background Intellectual Property Rights**

Buyer and Seller will each retain ownership of their respective Background Intellectual Property Rights.

Seller hereby grants to Buyer and causes its affiliates and Personnel to grant to Buyer, an irrevocable, worldwide, nonexclusive, royalty free, fully paid-up license, with right to sublicense to Buyer’s affiliates, to all Background Intellectual Property Rights to make, have made, use, reproduce, modify, improve, prepare derivative works of, distribute, display, perform, offer to sell, sell and import the goods or services that are the subject of this Contract (the “Limited License”), provided that Buyer or its affiliates will only use this Limited License in the event that (i) Seller breaches or repudiates its obligations by being unable or unwilling to deliver goods or services under this Contract, or (ii) in the event Seller is unable to supply goods or services under this Contract as a result of a force majeure event, but in such event only for the duration of Seller’s inability to supply. In no event will the term of the Limited License extend beyond the expiration date of this Contract.

**(e) Copyrights**

To the extent that this Contract is issued for the creation of copyrightable works, the works will be considered “works made for hire” for Buyer except to the extent that the works do not qualify as “works made for hire” for Buyer in which case Seller hereby assigns to Buyer all right, title and interest in all copyrights and if lawfully permitted waives all moral rights therein.

**(f) Right to Repair**

For the avoidance of doubt, Buyer Group, its dealers, its customers, and its subcontractors have the right to repair, reconstruct, remanufacture, reflash, or rebuild the specific goods delivered under this Contract without payment of any royalty to Seller.

**(g) Miscellaneous**

Goods manufactured based on Buyer’s drawings, designs, and/or specifications as well as any software code or models provided by Buyer may not be used for Seller’s own use or sold to third parties without Buyer’s express written authorization.

Nothing in this Contract is an admission by Buyer of the validity of any Intellectual Property Rights claimed by Seller, including an admission that any license is required by Buyer to manufacture the goods or continue the services contracted. Seller will claim and acquire all rights and waivers of Seller’s personnel required to enable Seller to grant Buyer the rights and licenses in this Contract. Seller assumes full and sole responsibility for compensating Seller’s personnel for such rights and waivers, including the remuneration of employees.

Seller, on behalf of itself and Buyer Group and its dealers and customers will comply with all obligations with respect to software that forms any part of the goods or services contracted, including obligations under any licenses.

**24. Intellectual Property Indemnification**

Seller will investigate, defend, hold harmless and indemnify Buyer, its successors, its affiliates (collectively “Buyer Group”) and its dealers and customers against any actual or alleged claims of infringement or other assertions of proprietary rights violations (including patent, trademark, copyright, industrial design right, or other proprietary right, misuse, or misappropriation of trade secret) and resulting damages and expenses (including attorney’s and other professional fees) arising in any way in relation to the goods or services contracted, including such claims where Seller has provided only part of the goods or services (collectively “IP claims”). Seller expressly waives any claim against Buyer Group

that any such IP Claims arose out of compliance with Buyer Group's or its dealers' or customers' specification or direction.

## **25. Remedies; Indemnity**

The rights and remedies reserved to Buyer in this Contract are cumulative with, and additional to, all other rights and remedies of Buyer under applicable law or in equity. Without limiting the foregoing, in the event that any goods fail to conform to the warranties set forth in this Contract or the product specifications incorporated by reference in this Contract, or if Seller otherwise breaches any of its obligations under this Contract, Buyer will be entitled to recover from Seller any and all damages, including, without limitation, any direct, indirect, incidental and consequential damages and all legal and other professional fees and costs incurred by Buyer as a result of such breach or failure, including, without limitation, costs, expenses and losses incurred by Buyer (a) in inspecting, sorting, testing, repairing or replacing nonconforming goods or nonconforming deliveries; (b) resulting from production interruptions; (c) in conducting recall campaigns or other corrective service actions; or (d) resulting from personal injury, including death, or property damage. If requested by Buyer, Seller will enter into a separate agreement for the administration and processing of warranty chargebacks for nonconforming goods.

Seller will indemnify, defend and hold harmless Buyer Group against any liability, claim, demand and expense (including, without limitation, legal and other professional fees) arising from or relating to any failure of Seller to fully perform any of its obligations under this Contract.

## **26. Specific Performance**

Seller acknowledges and agrees that money damages will not be a sufficient remedy for any actual or threatened breach of this Contract by Seller and that, in addition to all other rights and remedies that Buyer may have, Buyer will be entitled to specific performance and temporary, preliminary and permanent injunctive relief in connection with any action to enforce this Contract, without any requirement of a bond or other security to be provided by Buyer.

## **27. Force Majeure**

Any delay or failure of either party to perform its obligations under this Contract will be excused to the extent that Seller is unable to produce, sell or deliver, or Buyer is unable to accept delivery, buy or use, the goods or services covered by this Contract, directly as the result of an event or occurrence beyond the reasonable control of such party, without such party's fault or negligence (a "force majeure event"), including, if applicable, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars and sabotage; provided that written notice of such force majeure event (including the anticipated duration of the delay) must be given by the affected party to the other party as soon as possible (but in no event more than 10 days after the force majeure event occurs).

During any force majeure event affecting Seller's performance, Buyer may, at its option, purchase goods or services from other sources and reduce its delivery schedules to Seller by such quantities, without liability to Seller, or require Seller to provide goods or services from other sources in quantities and at times requested by Buyer at the price set forth in this Contract.

Seller will use all diligent efforts to ensure that the effects of any force majeure event are minimized and, as promptly as possible, resume full performance under this Contract. If requested by Buyer in writing, Seller will, within 5 days after Buyer's request, provide adequate assurances that the delay in Seller's performance resulting from such event will not exceed 30 days. If the delay lasts more than 30

days or Seller does not provide such adequate assurances, Buyer may immediately terminate this Contract without liability to Seller.

## **28. Insurance**

Seller will maintain insurance coverage with insurance carriers acceptable to Buyer and in the amounts set forth elsewhere in this Contract. Seller will furnish to Buyer either a certificate showing compliance with these insurance requirements or certified copies of all insurance policies within 10 days of Buyer's written request. The certificate will provide that Buyer will receive 30 days' prior written notice of any termination or reduction in the amount or scope of coverage. Seller's furnishing of certificates of insurance or purchase of insurance will not release Seller of any of its obligations or liabilities under this Contract.

## **29. Technical Information**

Seller agrees not to assert any claim (other than a claim for patent infringement) with respect to any technical or other information that Seller has disclosed or may hereafter disclose to Buyer or its affiliates in connection with this Contract or the goods or services contracted. Any technical or other information provided by Seller to Buyer or its affiliates will not be subject to confidentiality or nondisclosure obligations unless the parties have entered into a separate written confidentiality and nondisclosure agreement signed by their respective authorized representatives prior to the effective date of this Contract.

## **30. Confidentiality; No Advertising**

Seller will maintain the confidentiality of any information provided by Buyer or its representatives, and any materials or information that contain, or are based on, any such information. Seller may only use such information in connection with its performance under this Contract and will not provide such information to any third party (including, without limitation, Seller's subcontractors) without Buyer's advance written consent.

Seller will not, without first obtaining the written consent of Buyer, in any manner (a) advertise or publish the fact that Seller has contracted to furnish Buyer the goods or services covered by this Contract; (b) use Buyer's trademarks, trade names or confidential information in Seller's advertising or promotional materials; or (c) use Buyer's trademarks, trade names or confidential information in any form of electronic communication such as web sites (internal or external), blogs or other types of postings.

## **31. Compliance with Laws**

Seller, and any goods or services supplied by Seller, will comply with all applicable laws, rules, regulations, orders, conventions, ordinances or standards of the country(ies) of destination or that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval or certification of the goods or services, including, without limitation, those relating to environmental matters, the handling and transportation of dangerous goods or hazardous materials, data protection and privacy, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety. Seller further represents that neither it nor any of its subcontractors, vendors, agents or other associated third parties will utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in abusive employment or corrupt business practices, in the supply of goods or provision of services under this Contract. Seller agrees to comply with all applicable anti-corruption laws, including, without limitation, the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act, and that neither it nor any of its subcontractors, vendors, agents or other associated third parties will engage in any form of commercial bribery, nor 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 or of any government-owned, government-controlled or government-affiliated entity to obtain or retain any contract, business opportunity or other business benefit, or to influence any act or decision of that person in his/her official capacity. At Buyer's request, Seller will certify in writing its compliance with the foregoing. Seller will indemnify and hold Buyer harmless from and against any liability, claims, demands or expenses (including, without limitation, legal or other professional fees) arising from or relating to Seller's noncompliance.

### **32. Export Controls; Sanctions Compliance**

Seller agrees to comply with all applicable export control and sanctions laws and regulations of the United States of America, of member States of the European Union, and any other relevant country (the "Export Control Laws"). Seller will not violate, and will not cause Buyer to violate, any Export Control Laws (e.g. by transshipping goods through, or supplying goods or services from, sanctioned countries). Licenses or other authorizations required for the export of goods or services will be the responsibility of Seller unless otherwise indicated in this Contract, in which event Seller will provide such information as may be requested by Buyer to enable Buyer to obtain such licenses or authorizations.

### **33. Termination for Cause**

Buyer may terminate all or any part of this Contract, without liability to Seller, if Seller (a) breaches any term of this Contract (including, without limitation, Seller's warranties); (b) states its intention not to perform or otherwise rejects its obligations under this Contract; or (c) fails to make progress in performance so as to endanger timely and proper completion of services or delivery of goods under this Contract; provided, however, that if any failure or breach under the foregoing (a) through (c) is curable, Buyer will provide Seller an opportunity to cure within a commercially reasonable period of time under the circumstances, in no case exceeding 10 days after Buyer provides notice of the failure or breach to Seller. In addition, Buyer may terminate this Contract upon giving at least 60 days' notice to Seller, without liability to Seller, if a direct or indirect change in control or ownership of Seller occurs without Buyer's prior written consent.

### **34. Termination For Convenience**

In addition to any other rights of Buyer to terminate this Contract, Buyer may, at its option, terminate all or any part of this Contract before the expiration date set forth in this Contract, at any time and for any reason, by giving written notice to Seller. In the event Buyer exercises its right to terminate for convenience under this Section, Buyer will pay to Seller only the following amounts, without duplication: (a) the contract price for all goods and services that have been completed in accordance with this Contract and not previously paid for; and (b) the actual costs of work-in-process and raw materials incurred by Seller in furnishing the goods or services under this Contract, to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting principles to the terminated portion of this Contract; less, however, the sum of the reasonable value or cost (whichever is higher) of any goods or materials used or sold by Seller with Buyer's written consent and the cost of any damaged or destroyed goods or material. Seller will promptly make available for delivery to Buyer, as specified by Buyer, any goods completed but not delivered as of the time of Buyer's termination hereunder. Any request for payment submitted to Buyer under this Section must include sufficient supporting data to permit an audit by Buyer, including, without limitation, such supplemental and supporting information as Buyer may request. Any request for payment under this Section must be in writing and include, without limitation, a statement setting forth the contract price for the goods or services, invoices reflecting the actual cost of work-in-process and raw materials, the basis for the allocation of such costs to the terminated portion of this Contract, and any other supporting

documentation reasonably requested by Buyer. Any amount otherwise due to Seller pursuant to this Section will be reduced by any amount owed by Seller to Buyer under this Contract or otherwise. Any payment under this Section will not be deemed a waiver of any of Buyer's other rights arising under this Contract or applicable law. Notwithstanding any other provision of this Contract, Buyer will make no payments under this Section for finished goods, services, work-in-process or raw materials fabricated or procured by Seller in amounts in excess of those authorized in Buyer's delivery schedules or any undelivered goods that are in Seller's standard stock or that are readily marketable. Further, any payments made under this Section will not exceed the aggregate price payable by Buyer for finished goods or services that would have been produced or performed by Seller under Buyer's delivery schedules outstanding at the date of termination. Except as expressly provided in this Section, Buyer will not be liable for and will not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, overhead, interest on claims, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, or general and administrative burden charges from termination of this Contract. The payment specified in this Section is Seller's sole remedy for termination of this Contract under this Section.

### **35. Governing Law and Jurisdiction**

This Contract and any claims relating to the goods or services provided under this Contract will be governed by the laws of the country (and state/province, if applicable) of Buyer's location as shown by the address of Buyer as set forth in this Contract ("Buyer's Location"), excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980), as amended, and any conflict of law provisions that would require application of another choice of law.

Any action or proceedings by Buyer against Seller may be brought by Buyer in any court(s) having jurisdiction over Seller or, at Buyer's option, in the court(s) having jurisdiction over Buyer's Location, in which event Seller consents to such jurisdiction and service of process in accordance with applicable procedures. Any actions or proceedings by Seller against Buyer may be brought by Seller only in the court(s) having jurisdiction over Buyer's Location.

### **36. No Waiver**

The failure of either party at any time to require performance by the other party of any provision of this Contract will in no way affect the right to require such performance at any time thereafter, nor will the waiver of either party of a breach of any provision of this Contract constitute a waiver of any succeeding breach of the same or any other provision.

### **37. Non-Assignment**

Under no circumstances may Seller transfer, assign or delegate, in whole or in part, any of its rights or obligations under this Contract (including, without limitation, any right of payment), whether directly or indirectly, by merger, acquisition or contribution to a joint venture, without Buyer's prior written consent.

### **38. Nature of the Relationship of Parties**

Seller and Buyer are independent contracting parties and nothing in this Contract will 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.

### **39. Severability**

If any term of this Contract is invalid or unenforceable under applicable law or regulation, such term will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with

such applicable law or regulation, and the remaining provisions of this Contract will remain in full force and effect.

February 2014

## Thomas J. Manganello

Partner | [tmanganello@wnj.com](mailto:tmanganello@wnj.com)

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Tom Manganello leads Warner's Automotive Industry Group. His practice includes supplier-focused automotive contracts, commercial supply chain and warranty issues, dispute resolution and litigation, as well as product liability litigation.

### Representative Experience

- Legal counsel to the Original Equipment Supplier Association CEO Council
- Has served as lead counsel on supplier warranty/OEM supply chain and contracting disputes for Global Tiers 1, 2 & 3s
- Representative clients are headquartered in USA, Germany, Hong Kong/China
- 2007 Co-founder of MICHauto, Michigan's only membership-based automotive industry cluster association focused on sustaining and growing Michigan's automotive industry cluster
- Maintained a 90% win rate in all product liability, premises liability and automobile negligence trial law proceedings as lead counsel representing major automotive clients in cases nationwide. Provided aggressive legal advocacy and representation for auto manufacturers and tried over 30 cases to verdict in state/appellate/federal courts across the U.S.
- Selected as co-coordinator of major automotive seat litigation project and as national counsel for automotive transmission-inadvertent vehicle movement cases and heavy truck cab design allegation
- Developed vigorous trial and case management strategies for multi-state litigation involving product liability, including retaining and managing outside counsel, coordinating expert witnesses (medical and technical) and advising client executives on case selection and motion filings to maximize opportunities for favorable interpretation of the law

### Industries

- Automotive

### Practices

- Litigation and Dispute Resolution
- Product Liability Law

### Honors and Awards

- *Best Lawyers in America*, Commercial Litigation, 2013-2014
- AV Preeminent Peer Review Rated, Martindale-Hubbell
- Named a Top Lawyer by *DBusiness* 2010

### Education

- University of Detroit J.D. 1980
- Michigan State University B.A. 1977

### Admitted

- 1980, Michigan

## Publications

- Moldbuilders/Tool Builders Beware: Permanent Means Permanent, 1/26/2011
- Automotive Meltdown - Key Points of Risk Management and Preparedness, 8/21/2009

## Professional Affiliations

- MICHauto  
Co-founder, Board Member and Steering Committee Chair  
Board of Directors (2012)
- Detroit Regional Chamber of Commerce  
Board Member (as of July 1, 2013)
- Detroit Economic Club  
Sustaining Member (2004-Present)
- Product Liability Advisory Council (PLAC)  
1989-Present
- Michigan Defense Trial Counsel  
1989-Present
- Society of Automotive Engineers
- Wayne County Mediation Tribunal  
1985-Present
- Leadership Detroit  
Class 29
- Automotive Hall of Fame  
Board Member (2010-Present)

## Community Affiliations

- Detroit Symphony Orchestra Governing Member

## Bar Associations

- American Bar Association
- State Bar of Michigan
- Oakland County Bar Association

## Speaking Engagements

- Numerous presentations in the U.S. and Asia on conducting business within the automotive industry in North America
- Various presentations on design, development and defense strategies for complex automotive products, including but not limited to, transmission systems, automotive seats and heavy truck ingress/egress access systems

## Presentations

- "Autos and Manufacturing Industry Outlook," Canadian Council of Chief Executives and Business Leaders for Michigan, November 15, 2013
- "The New GM Terms and Conditions: Congratulations on Becoming a Bank and an Insurance Company," OESA Sales and Marketing Council, MSU Management Center in Troy, Michigan, September 5, 2013

- "Warranty Liability Exposure and Management in the Automotive Supply Chain," OESA Supplier Roundtable: Issues Impacting the North American Supply Chain, 2011, 2012 and 2013, Greenville, S.C.
- South Carolina Automotive Summit 2013
- OESA Conference: Atlanta 2009 and Alabama 2011
- Japan Business Society of Detroit, Summer 2009
- Chinese Automotive Transportation and Research Conference 2007

## Jeena S. Patel

Partner | [jpatel@wnj.com](mailto:jpatel@wnj.com)

Southfield | T 248.784.5025 | F 248.603.9625



Jeena is a member of the firm's Automotive and Litigation practice groups and specializes in automotive supplier and commercial contract disputes. She has substantial experience in supply chain dispute resolution and has successfully represented suppliers in various supply chain matters, including automotive resourcing actions, pricing disputes, breach of warranty claims, terms and conditions disputes and injunction actions.

### Representative Experience

- Successfully represented numerous automotive suppliers in preliminary injunction actions, often preventing potentially catastrophic shutdown of original equipment manufacturers
- Represented Tier 1 automotive supplier in multimillion-dollar action for alleged improper termination of its contracts with Tier 2 supplier, favorably settling the matter before trial
- Second-chaired trial involving a dispute between a Tier 1 and a Tier 2 supplier as to whether the nature of their contractual relationship was that of a requirements contract or a series of individual contracts
- Assisted in obtaining \$1.5 million judgment for manufacturer of rolled aluminum products, defeating defendant's claim that the parties had a requirements contract allowing defendant to setoff damages - *Aleris Aluminum Canada LP v. Valeo, Inc.*, 718 F. Supp. 2d 825 (E.D. Mich. 2010)
- Represented manufacturer of child seats in multimillion-dollar breach of warranty action
- Represented an automotive financing company in a Fifth Amendment due process action against the District of Columbia, obtaining a very favorable settlement through facilitation

### Industries

- Automotive

### Practices

- Litigation and Dispute Resolution

### Education

- University of Michigan J.D. 2006
- University of Michigan-Dearborn  
B.A. 2002 with honors

### Admitted

- 2006, Michigan

- Obtained dismissal of fraud and breach of contract claims made against automotive financing company for allegedly failing to disclose certain defects in vehicle purchased by plaintiff
- Represented several automotive suppliers in automotive resourcing/improper termination actions
- Provides training to supplier clients in best practices in automotive contracting
- Regularly assists clients in analyzing terms and conditions and negotiating favorable commercial contracts
- Successfully briefed and argued numerous dispositive and other motions in state and federal courts throughout Michigan

### **Publications**

- Scrutinize Global Terms and Conditions, 7/24/2008

### **Bar Associations**

- American Bar Association
- State Bar of Michigan

### **Speaking Engagements**

- "The New GM Terms and Conditions: Congratulations on Becoming a Bank and an Insurance Company," OESA Sales and Marketing Council, MSU Management Center in Troy, Michigan, September 5, 2013
- "Key Contracting Principles," presentation at WNJ Automotive Legal Summit, June 13, 2013
- "Key Growth Challenges for Automotive Parts Suppliers," Automotive Parts Manufacturers' Association Annual Conference, June 6, 2013, Windsor, Ontario
- "Negotiations: Strategies and Tactics," presentation at WNJ Automotive Legal Summit, March 6, 2012