



STANDARD TERMS AND CONDITIONS OF SUPPLY

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1. ACCEPTANCE.

Seller, including its affiliates and subsidiaries (“Seller”) confirms that these Standard Terms and Conditions of Supply (“Standard Terms”) are expressly incorporated into, and form an integral part of, Seller’s contract with Buyer, including its affiliates and subsidiaries (“Buyer”), for the goods and services (collectively, the “Supplies”) to be provided by Seller. Seller confirms that it has read understands and agrees with these Standard Terms.

Each purchase order, release, requisition, work order, shipping instruction, specification and other document, whether expressed in written form, by electronic data interchange, electronic or tangible format, relating to the Supplies (such items are collectively referred to as the “Contract”), constitutes an offer by Buyer to purchase the Supplies identified on the Contract’s face or otherwise identified in any attachments, schedules, exhibits, requests for quotations, designs or drawings provided to Seller.

Seller will be deemed to have accepted each Contract on the Contract’s terms and conditions by Seller’s: (i) shipment of any goods, performance of any services, provision of any Supplies, or commencement of any work or services in any way related to the subject of the Contract, (ii) written acknowledgement, or (iii) other conduct that recognizes the existence of a contract pertaining to the subject matter of the Contract. Seller will also be deemed to have accepted each Contract on the Contract’s terms and conditions if Seller fails to object to such Contract within five business days after Buyer delivers the Contract to Seller. Seller’s acceptance of any Contract is limited to acceptance of the express terms and conditions set forth in the Contract and in these Standard Terms. Notwithstanding Buyer’s acceptance of or payment for any shipment of goods, provision of Supplies or similar Buyer act, Buyer will not be bound by any purported acceptance of any Contract on terms and conditions which modify, supersede, supplement or otherwise alter the Contract or these Standard Terms and such terms and conditions shall be deemed rejected and replaced by the Contract unless Seller’s proffered terms or conditions are accepted in a physically signed writing by Buyer’s authorized representative.

The parties have agreed and it is their intent that the battle of the forms described in Section 2207 of the Uniform Commercial Code will not apply to these Standard Terms or to any invoice or acceptance form of Seller relating to these Standard Terms or any Contract. The parties intend that these Standard Terms shall exclusively control their relationship, and in the event of any inconsistency between any invoice or acceptance form sent by Seller to Buyer and these Terms, these Standard Terms will control.

Unless a Contract requires Seller to manufacture, ship and/or provide or perform a specified quantity of Supplies, the Contract is a requirements contract under which Seller is required to supply a portion of Buyer’s requirements, in an amount not less than 10% but which could be up to 100% of Buyer’s requirements. Only Buyer (in its sole discretion) may determine the portion of its requirements to be supplied by Seller and Buyer may change this portion at any time and from time to time. If Buyer provides Seller any projected or estimated volumes (including forecasted volumes in any requests for quotation), these are for planning purposes only and do not represent a commitment or obligation to purchase a specified quantity.

Unless stated otherwise on the face of the Contract, the duration of each Contract (the “Term”) shall be the life of the automotive vehicle program(s) into which the Supplies ultimately are incorporated, plus the period of applicable service and replacement parts requirements. If the Supplies are not utilized by Buyer for the production of automotive parts or systems, the Contract will be binding for one year from the date the Contract is transmitted to Seller; in such case only, the Contract will automatically renew for successive one-year periods after the initial term unless either party provides written notice at least 180 days prior to the end of the current Term of its desire that the Contract not be renewed. Seller acknowledges, however, that this provision does not affect or otherwise change Buyer’s termination rights herein. When any Contract expires, Seller will cooperate with Buyer and provide all reasonably



requested support and information Buyer requires to facilitate Buyer's sourcing of the Supplies to a replacement supplier.

Any Contract which contain any multi-year pricing and/or price-related terms are firm commitments by Seller for the specified periods, if the Contract continues by its terms or is renewed or extended, but such pricing or price-related terms do not define or otherwise modify the Term of the Contract. Specified productivity improvements and price reductions are the minimum adjustments expected by Buyer, and committed to by Seller, in the specified periods and do not necessarily represent competitive pricing for such periods. Seller will provide Buyer with pricing that is as least as low as the pricing Seller charges its other customers for the similar type of goods or services and in similar quantities, during the period of performance of each Contract or six months before such period. Prices charged for Supplies listed in the Contract are not subject to increase, including any increase based upon changes in raw material or component prices, labor or overhead, unless such increase is specifically agreed to by Purchaser on the face of a Contract amendment or in a signed writing delivered by Buyer's Vice President - Purchasing.

From time to time Buyer may administer purchasing for its affiliates and subsidiaries and issue Contracts employing one of Buyer's logos, but identifying a different related or affiliated entity as buyer. Seller acknowledges and agrees that no such act of administration or any Contract resulting therefrom shall constitute or be interpreted as Buyer's guaranty of any obligations or liabilities of the entity identified as the buyer on the Contract. Seller will look only to the buyer entity identified in the Contract for performance thereunder.

2. DELIVERY & BILLING.

2.1. Shipping.

All shipments must be suitably packed, marked and shipped in accordance with all common carrier shipment requirements and in a manner which secures the lowest transportation cost (unless otherwise noted on the Contract), and must comply with any additional shipping requirements set forth in the Contract or releases. Seller will bear all expenses of boxing, packaging, crating and freight (to Buyer's "ship to" location set forth in the Contract), unless specifically indicated otherwise in the Contract. Seller shall not procure, produce or ship any Supplies unless authorized in writing by Buyer or as necessary to meet specific delivery dates. Buyer may return Shipments in excess of those it authorized to Seller at Seller's expense, and Buyer may debit Seller for the cost of such returns. Buyer may change shipping schedules or direct temporary suspension of such scheduled shipments. Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which shall entitle Seller to a modification of the price of Supplies covered by any Contract. With each delivery, Seller shall be deemed to have made the representations, warranties and covenants with respect to its financial and operating condition provided herein.

Seller will (a) properly pack, mark and, ship Supplies in the manner instructed by Buyer or any carriers and in accordance with all laws or regulations, (b) route shipments as Buyer instructs, (c) not charge for costs relating to handling, packaging, storage or transportation (including duties, taxes, fees, *etc.*) unless otherwise expressly stated in the Contract, (d) provide packing slips with each shipment that identify Buyer's contract and release number and the date of the shipment, and (e) promptly forward the original bill of lading or other shipping receipt with respect to each shipment as Buyer instructs. On bills of lading or other shipping receipts, Seller will include the correct classification identification of the Supplies shipped as Buyer or the carrier requires. The marks on each package and identification of the Supplies on packing slips, bills of lading, and invoices must enable Buyer to identify the Supplies easily.

Seller shall reimburse Buyer for all expenses, including damage to the Supplies, incurred due to improper packing, marking, loading or routing. The risk of loss or damage in transit shall be upon Seller, except where shipment is by Buyer's vehicle, in which case the risk of loss or damage shall pass to Buyer



upon completion of loading. Upon submission of proper invoices, Buyer shall process such invoices for payment. All cash discounts will be computed from the date of receipt by Buyer of a final invoice or receipt of the Supplies, whichever occurs later. Cash discounts will be based on the full amount of invoice, less freight charges and taxes if itemized separately on the invoice.

2.2. Billing.

Seller will (a) accept payment based upon Buyer's evaluated-receipt-record/self-billed invoice, unless Buyer requests that Seller issue and deliver an actual invoice and (b) accept payment by electronic funds transfer. If the payment due date is not otherwise specified in the Contract, the payment due date will be the later of net forty-five days following the date Buyer receives the Supplies or receives the invoice for such Supplies. Buyer may withhold payment for any Supplies until Buyer receives evidence, in such form and detail as Buyer requires, of the absence of any liens, encumbrances, and claims on such Supplies.

2.3. Taxes.

Unless prohibited by law, Seller will pay all federal, state or local tax, transportation tax, or other tax, including but not limited to customs duties and tariffs, which is required to be imposed upon the Supplies ordered, or because of their sale or delivery. Unless otherwise stated in the Contract, the price includes all applicable federal, state, provincial, regional and local taxes other than sales, value added, or similar turnover taxes or charges. Seller will separately invoice Buyer for any sales, value added, or similar turnover taxes or charges that Seller is required by law to collect from Buyer. Seller will provide Buyer with whatever information and documentation that is required under local law in order to enable Buyer to recover any sales, value added, or similar turnover taxes or charges. Invoices shall also be in the appropriate form as required by local law to permit deduction of payments for income tax purposes by the Buyer.

2.4. Buyer's Withholding of Taxes.

If Buyer is legally required to make any deduction or withholding from any sum otherwise payable to Seller under the Contract, Buyer will be entitled to deduct or withhold such amount and effect payment thereof to the applicable tax authority. Upon receipt of Seller's request, Buyer will provide official tax receipts or other evidence issued by the applicable tax authorities sufficient to establish the payment of any taxes that have been withheld.

2.5. Delivery Schedules.

Seller will make deliveries in the quantities, on the dates, and at the times Buyer specifies in the Contract or any subsequent delivery releases or instructions which Buyer issues under the Contract. Time and quantity of delivery are of the essence with respect to all delivery schedules Buyer establishes. Buyer will not be required to pay for any Supplies that exceed the quantities specified in Buyer's firm releases or delivery schedules nor to accept Supplies that are delivered in advance of the delivery date specified in Buyer's delivery schedules. Seller bears the risk of loss of all Supplies supplied, performed or delivered in advance of the delivery date specified in Buyer's delivery schedules. Notwithstanding any agreement concerning payment of freight expenses, delivery shall not have occurred and the risk of loss shall not have shifted to Buyer until the Supplies have been delivered to Buyer's facility and have been accepted at that facility. However, under no circumstances shall Buyer be liable for any premium shipping expenses that Buyer has not pre-approved in writing and for which a timely claim has not been submitted in accordance with the requirements of Section 2.6 below. If Buyer's customers' requirements or market, economic or other conditions require changes in delivery schedules, Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments without entitling Seller to any price adjustment or other compensation.



2.6. Premium Shipment Charges.

Seller is solely responsible for premium shipping expenses and/or other related expenses necessary to meet delivery schedules set forth in releases, unless: (i) the expense arises solely a result of Buyer's negligence and (ii) Seller provides Buyer with reasonably detailed notice of any claim within ten (10) days after the occurrence of Buyer's alleged negligent action giving rise to such claim.

2.7. Volume Forecasts.

Buyer may provide Seller with estimates, forecasts or projections of its future anticipated volume or quantity requirements for Supplies ("Projections"). Projections, unlike a release for a firm quantity, are not binding on Buyer. Seller acknowledges that any Projections are provided for informational purposes only and, like any other forward-looking projections, are based on a number of economic and business factors, variables and assumptions, some or all of which may change over time. Buyer makes no representation, warranty, guaranty or commitment of any kind or nature, express or implied, regarding any such forecasts provided to Seller, including with respect to the accuracy or completeness of such forecasts. Seller accepts that Projections may not be accurate and that actual volume or duration could be less than or greater than the projections. Seller expressly accepts this risk and acknowledges this possible reward.

3. SPECIFICATION, DESIGN AND SCOPE CHANGES.

At any time, Buyer reserves the right to require Seller to implement changes to the Supplies' specifications or design or to the scope of any services or work covered by the Contract, including, but not limited to, work related to changes in the design (including drawings and specifications), quality control, inspection, testing, processing, methods of packaging and shipping, or the date or place of delivery. Seller will promptly make such changes

Any such changes will be deemed not to affect the time for performance or price under the Contract unless (i) Seller provides Buyer with a a reasonably detailed written claim for adjustment to time for performance or cost within ten (10) days after Buyer's notice to Seller of the change, and (ii) after auditing such claim, Buyer reasonably determines that an adjustment (up or down) is appropriate. Any such claim by Seller for adjustment to time for performance or price under a Contract must be solely and directly the result of the change directed by Buyer and any notice of such claim shall be effective only if accompanied by all relevant information sufficient for Buyer to verify such claim. In addition, Buyer shall have the right to audit all relevant records, facilities, work or materials of Seller to verify any claim. Seller shall consider and advise Buyer of the impact of a design change on the system, sub-system, component or part in which the Supplies covered by the Contract are used. In the event of any disagreement arising out of such changes, Buyer and Seller will work in good faith to resolve the disagreement, provided, however, that Seller will continue to timely perform its obligations under the Contract, including the manufacture and delivery of Supplies and prompt implementation of Buyer's required changes, while Buyer and Seller endeavor in good faith to resolve any disagreement arising out of such changes. Nothing in this paragraph shall excuse Seller from proceeding with and performing its obligations under the Contract as changed.

4. QUALITY AND INSPECTION.

Seller will participate in Buyer's supplier quality and development program(s) and comply with all engineering release and validation requirements and procedures, including Buyer's production part approval processes, which Buyer specifies from time to time. Buyer shall have the right (but not the obligation) to inspect, to review work progress, and to test all Supplies, special tooling, materials and workmanship to the extent practicable at all times and places during the period of manufacture. Seller will permit Buyer and its representatives and consultants to enter Seller's facilities at reasonable times to inspect such facilities and any goods, inventories, work-in-process, materials, machinery, equipment, tooling, fixtures, gauges and other items and processes related to Seller's performance of the Contract.



No such inspection by Buyer or its representatives or consultants will constitute acceptance by Buyer of any work-in-process or finished goods. If any Supplies are defective in material or workmanship or otherwise not in conformity with the requirements of any Contract, Buyer shall have the right, notwithstanding payment, any prior inspection or test, custom or usage of trade, to either to reject them or to require their correction by Seller and/or at Seller's expense, promptly after notice.

Based on Buyer's assessment of responsibility, Seller may be held responsible for all costs associated with quality issue investigation, containment and remedial actions because of Supplies provided by Seller to Buyer (including third party activities identified and initiated by Buyer). Seller will immediately provide all reasonable support Buyer requests to address and correct concerns regarding the quality of Supplies provided. Seller will provide additional resources, as necessary and as identified by Buyer, to support product development, process development, validation, production launch, or any issue that may jeopardize the success of the manufacture or assembly of any Supplies or of the program.

Seller represents that its overall equipment (shared and specific) and plant capacity are adequate to meet Buyer's needs. Seller is also responsible for the due and timely performance of all sub-tier providers of goods or services involved in the Supplies. Seller must maintain adequate development, validation, launch and ongoing supervision to assure that all goods or services provided to Buyer conform to all specifications, standards, drawings, samples and descriptions, including, without limitation, as to quality, performance, fit, form, function, and appearance, under the Contract.

Seller must also comply with all terms of Buyer's Supplier Quality Manual, a current copy of which Buyer will provide upon request or is available on Buyer's website. In the event that there exists any direct conflict between a term contained in these Standard Terms and a term contained in the Supplier Quality Manual, the term of these Standard Terms control.

5. CUSTOMER SPECIFICATIONS.

To the extent that the Contract or any other contract covers Supplies which are parts, components, items, tooling, or services being supplied to or for the benefit of any Buyer customer, Seller acknowledges and agrees that such Supplies must be in compliance with all of the applicable specifications, requirements, standards, pricing requirements (even if such pricing differs from the Contract price), audit standards, and terms and conditions for such Supplies which are set forth in the customer's purchase documents.

6. BASIC WORKING CONDITIONS AND EMPLOYMENT STATUS.

6.1. Basic Working Conditions.

Seller does not: (i) use forced labor, regardless of its form; (ii) employ any person below the age of 15, unless it is part of a government-approved job training, apprenticeship or other like program that would be clearly beneficial to its participants; or (iii) engage in physically abusive disciplinary practice or corrupt business practice. Neither Seller nor any of its subcontractors will utilize slave, prisoner or any other form of forced or involuntary labor in the supply of Supplies under the Contract.

6.2. Subcontractors.

Where Seller retains subcontractors who are involved in Seller's provision of the Supplies, Seller uses only subcontractors that adhere to this Section's requirements. Seller monitors all subcontractors' compliance with this Section.

6.3. Adoption of Code.

Buyer adheres to a code of social principles that includes the requirements of this section and other workplace practices. Buyer's code applies to all Buyer operations and can be found on the Flex|N|Gate website at http://flex-n-gate.com/co/Social_Principles.pdf. Seller will adopt, maintain and reinforce a similar code of practice and endeavor to procure that its subcontractors will do so.



6.4. Compliance Certificate.

When it delivers Supplies, Seller will be deemed to repeat each representation in this section. Buyer may retain an independent third party, or request Seller to retain one reasonably acceptable to Buyer, to: (i) audit Seller's compliance with the requirements of this section; and (ii) provide Seller and Buyer with written certification of Seller's compliance, including areas for potential improvement.

6.5. Cost of Audit.

Seller may bear the cost of any third party audit and certification, regardless of which party retained the auditor. Buyer, at its option, may accept an audit certification by Seller in lieu of a third party certification.

6.6. Temporary Assignment of Employees.

Any temporary assignment of employees of one party to facilities operated by the other party will not affect the status or change the employment relationship of the assigned employees.

7. NON-CONFORMING GOODS.

Buyer need not perform incoming inspections of any Supplies, and Seller waives any right to require Buyer to conduct any such inspections. Seller will not substitute any supplies for the Supplies covered by the Contract, without Buyer's prior written consent. If Buyer rejects any Supplies as non-conforming, Buyer may, at its option: (a) reduce the quantities of Supplies ordered under the Contract by the quantity of non-conforming Supplies, (b) require Seller to replace the non-conforming Supplies, and/or (c) exercise any other applicable rights or remedies. If within forty-eight (48) hours of Seller's receipt of Buyer's notice of rejection of non-conforming Supplies (or such shorter period as is reasonable under the circumstances) Seller fails to inform Buyer in writing of the manner in which Seller desires that Buyer dispose of non-conforming Supplies, Buyer will be entitled to dispose of the non-conforming Supplies without any liability to Seller, provided, however, that in any event, Buyer may elect at Seller's expense to arrange for the shipment of any non-conforming Supplies back to Seller. Seller will bear all risk of loss with respect to all non-conforming Supplies and will promptly pay or reimburse all costs incurred by Buyer to return, store or dispose any non-conforming Supplies. Buyer's payment for any non-conforming Supplies will not constitute acceptance by Buyer, limit, or impair Buyer's right to exercise any rights or remedies, or relieve Seller of responsibility for non-conforming Supplies.

8. FORCE MAJEURE.

If as a result of an event or occurrence beyond the reasonable control of the affected party and without such party's fault or negligence: (A) Seller is unable to produce, sell or deliver any Supplies covered by the Contract, or (B) Buyer is unable to accept delivery, buy or use any Supplies covered by the Contract, then any delay or failure to perform under the Contract that results from such event or occurrence will be excused for only so long as such event or occurrence continues, provided, however, that the affected party gives written notice of each such delay (including the anticipated duration of the delay) to the other party as soon as possible after the event or occurrence (but in no event more than three days thereafter). Such events and occurrences may include, without limitation, natural disasters, fires, floods, windstorms, severe weather, explosions, riots, wars, sabotage, labor problems (including lockouts, strikes and slowdowns), equipment breakdowns and power failures. Seller acknowledges and agrees that the following events will not excuse Seller's performance under theories of *force majeure*, commercial impracticability or otherwise and Seller expressly assumes these risks: (i) change in cost or availability of materials, components or services based on market conditions, supplier actions or contract disputes; and (ii) failure of Seller's internal business systems related to the proper processing of information that results in any defect or failure in products or services, deliveries, or any other aspect of performance by Seller or its subcontractors. During any delay or failure to perform by Seller, Buyer may (i) purchase substitute Supplies from other available sources, without any liability to Seller, in which case the quantities under



the Contract will be reduced by the quantities of such substitute Supplies and Seller will reimburse Buyer for any additional costs to Buyer of obtaining the substitute Supplies compared to the prices set forth in the Contract and/or (ii) direct Seller to provide substitute Supplies from other available sources in quantities and at times Buyer requests and at the prices set forth in the Contract. If Seller fails to provide adequate assurances that any delay will not exceed 30 days or if any delay lasts more than 30 days, Buyer may (in its sole discretion) terminate the Contract, and all outstanding releases without any liability to Seller or obligation to purchase raw materials, work-in-process or finished goods under Article 15.

Buyer may cancel the Contract and any outstanding release(s) at any time prior to delivery or performance if its business is interrupted for reasons beyond Buyer's reasonable control. Buyer shall give prompt notice of such cancellation to Seller.

9. LABOR DISPUTES.

Before any of Seller's labor contracts expire and as soon as Seller anticipates or learns of any impending strike, labor dispute, work stoppage or other disruption at Seller's facilities that might adversely affect the delivery of Supplies to Buyer, Seller will produce (and locate in an area that will not be affected by any such disruption) a finished inventory of Supplies in quantities sufficient to ensure the supply of Supplies to Buyer for at least 30 days after such disruption commences. Seller will notify Buyer in writing of any actual or potential labor dispute delaying or threatening to delay timely performance of the Contract. Seller will notify Buyer in writing six months in advance of the expiration of any current labor contracts.

10. WARRANTIES.

10.1. General; Buyer's Inventory & Property.

Seller represents to Buyer, its successors, assigns and applicable customers that the Supplies covered by the Contract will: (a) strictly conform to the then current release/revision level (based on date Buyer's release is issued to Seller) of Buyer's applicable specifications and drawings; (b) conform to all samples, descriptions, brochures and manuals furnished by Seller or Buyer; (c) be merchantable; (d) be of good material and workmanship; (e) be free from defects in design, material and workmanship and shall be new and of the highest quality, (f) be fit and sufficient for the particular purposes intended by Buyer and any customer of Buyer, which purposes Seller acknowledges are known to it; (g) strictly conform with all industry standards, laws and regulations in force in countries where such Supplies or vehicles equipped with such Supplies are to be sold; (h) do not, and are not claimed to, violate any patent, trademark or copyright, and may be properly imported into the United States or any other country; (i) shall be free and clear of all liens, claims or other encumbrances, and that Seller is conveying good title to Buyer; (j) shall be adequately contained, packaged, marked and labeled; (k) in the case of services, all services performed on behalf of Buyer shall be performed in a competent, workmanlike manner; and (l) the Supplies shall be manufactured in accordance with all applicable federal, state, and local laws, regulations, industry standards or other standards, labeling, transporting, licensing approval or certification requirements in the United States or any other country where the Supplies will be sold or used. These representations will survive Buyer's inspection, test, delivery, acceptance, use and payment and shall inure to the benefit of Buyer, its successors, assigns, applicable customers, and the end users of Buyer's goods and services. These representations may not be limited or disclaimed. Seller waives any claim against Buyer and its customers, including any hold-harmless or similar claim, whether known or unknown, contingent or latent, in any way related to a claim asserted against Seller or Buyer for breach of warranty, infringement of any patent, trademark, copyright or other proprietary right, including claims arising out of compliance with specifications furnished by Buyer. If Buyer requests, Seller will enter into a separate agreement for the administration or processing of warranty charge backs for non-conforming Supplies.



All inventory, supplies and materials supplied by Buyer to Seller (“Inventory”) and tools, jigs, dies, gauges, fixtures, molds, patterns, equipment, ancillary products, and related drawings on technical information and other items furnished by Buyer to Seller including such items owned by Buyer’s customers and provided to Seller by Buyer or its customers (“Tools”) for use in manufacturing goods, or for which Seller has been reimbursed by Buyer (or Buyer’s customers), shall be and remain the property of Buyer or Buyer’s customers, as applicable. Seller bears the risk of loss of and damage to the Tools (excluding normal wear and tear) and Inventory even though Seller exercises reasonable care to preserve and protect such property. At its expense, Seller shall repair and maintain all Tools in good operating condition, normal wear and tear excepted. Seller shall also assume all risk of death or injury to persons and damage to property arising from use of Tools and Inventory. Seller shall: (1) inspect and approve all Tools and Inventory prior to use; (2) properly house the Tools and Inventory on Seller’s premises; (3) maintain the Tools and Inventory in good condition; (4) use the Tools and Inventory only for performance under a Contract and not for production or services for any third party; (5) to the extent practicable, prominently mark the Tools and Inventory as property of Buyer or Buyer’s customer, as applicable; (6) refrain from commingling the Tools and Inventory with Seller’s or any third party’s property; (7) adequately insure the Tools and Inventory against loss or damage, including but not limited to maintaining full fire and extended coverage insurance for replacement value and naming Buyer as an additional insured; (8) take reasonable steps to ensure that the Tools and Inventory do not become subject to any liens or other claims; and (9) not move the Tools or Inventory to a location other than that set forth in a Contract without Buyer’s prior written consent, except that, in the case of an emergency, Seller may move the Tools and Inventory if Seller gives Buyer notice that the Tools and Inventory have been moved and the location of the Tools and Inventory as soon as practicable thereafter;

Buyer and Buyer’s applicable customer(s) may enter Seller’s premises during normal business hours (or after normal business hours upon reasonable request) to inspect Tools (in operation, if requested) and Inventory and Seller’s records related to the Tools and Inventory. Seller assigns to Buyer any claims Seller has against third parties with respect to any Tools or Inventory. Upon Buyer’s request, and without regard to whether Seller is in breach of a Contract, Seller will immediately deliver the Tools and Inventory (at Buyer’s option, F.O.B. Seller’s facility or F.O.B. Buyer’s premises), properly packaged and marked in accordance with the requirements of Buyer’s carrier, Buyer and all applicable laws and regulations. Seller shall cooperate with Buyer’s removal of the Tools and Inventory from Seller’s premises.

Seller expressly waives any lien or security interest which Seller might otherwise have on any Tools and Inventory for any amounts owing by Buyer or Buyer’s customer, including for Services shipped or provided by Seller for work done or value added to the Tools or Inventory. The previous waiver includes but is not limited to molders’, builders’ and artisans’ liens, and applies regardless of whether such liens arise by statute, regulation or common law;

Buyer does not guarantee the performance of any Tools or the suitability of Inventory it furnishes to Seller. Upon Buyer’s request, Seller will provide Buyer with a listing of all Tools and Inventory in Seller’s possession or control, showing Buyer’s part number(s) for Supplies made using Buyer’s property, the location(s) of the Tools and Inventory and a certification acknowledging Buyer’s or Buyer’s customer’s, as applicable, ownership of the Tools and Inventory.

10.2. Durations of Seller’s Warranties.

In the case of Supplies supplied for use as, or incorporation into, parts, components or systems for automotive vehicles or other finished products, the period for each of the representations and covenants in Section 10.1 above will commence upon Seller’s delivery of Supplies to Buyer and, except as provided in Section 10.4 or as otherwise expressly agreed in writing by Buyer’s authorized employee, end at the later of: (i) sixty months following the date the vehicle or other finished product on which such parts, components or systems are installed is first sold and delivered or otherwise utilized for consumer or



commercial purposes; (ii) the period provided under applicable law; or (iii) if the Supplies are utilized for new vehicles, the same period as the new vehicle warranty period offered to retail buyers in the country in which the vehicle incorporating the Supplies are sold, provided, however, that if Buyer offers and provides a longer warranty to its customers with respect to any such parts, components or systems, then such longer warranty period will apply to the Supplies. In the case of Supplies supplied for other uses, the period for each of the foregoing warranties will be that provided by applicable law unless otherwise expressly agreed in writing by an authorized employee of Buyer. Notwithstanding the foregoing, Seller agrees to waive the expiration of the warranty period in the event there are failures or defects discovered after the Warranty Period of a significant nature or in a significant portion of the Supplies, or a defect is discovered which, in Buyer's reasonable opinion, constitutes a threat of damage to property or to the health and safety of any person.

10.3. Buyer's Remedies and Damages.

If Buyer experiences any breaches of the foregoing representations or covenants, Buyer will have the right, in addition to exercising all other rights Buyer may have under the Uniform Commercial Code and any other applicable statutes or law, to take the following actions, at Buyer's option: (i) retain the defective Supplies in whole or in part with an appropriate adjustment in the price for the goods; (ii) require Seller to repair or replace the defective Supplies in whole or in part at Seller's sole expense, including all shipping, transportation, and installation costs; (iii) correct or replace the defective Supplies with similar items and recover the total cost relating thereto, including the cost of product recalls from Seller; or (iv) reject the defective Supplies.

Without limiting the generality of the foregoing, if any Supplies are reasonably determined (including by use of statistical analysis or other sampling methodology) to fail to conform to the warranties set forth in the Contract, Buyer shall notify Seller and Seller shall reimburse Buyer for all losses, costs and damages caused by such nonconforming Supplies. Such costs and damages may include, without limitation, costs, attorney and expert or professional fees, expenses and losses of Buyer and/or its customers arising from (i) inspection, sorting, testing, repair or replacement of any nonconforming Supplies or any system or component that incorporates such nonconforming Supplies, (ii) production interruptions or slowdowns, (iii) off-lining of vehicles or component systems, (iv) field service campaigns and other corrective service actions, including, without limitation, the amounts paid to distributors and/or dealers for materials and replacement parts (including reasonable mark-up to recover administrative costs or other capital expenses) and the labor costs to perform such work, and (v) claims for personal injury (including death) or property damage caused by such nonconforming Supplies.

10.4. Product Recalls.

Notwithstanding the expiration of the warranty period set forth in Section 10.2, if Buyer and/or the manufacturer of the vehicles (or other finished product) on which the goods, or any parts, components or systems incorporating the Supplies, are installed, voluntarily or pursuant to a government order or mandate, initiates a service campaign or makes an offer to owners of such Supplies or vehicles to provide remedial action to address: (i) a defect that relates to motor vehicle safety, (ii) the failure of the Supplies or vehicle to comply with any applicable law, safety standard or guideline, or (iii) any other defect or quality or performance deficiency that in Buyer's reasonable opinion constitute a threat of damage to property or to the health and safety of any person ("Recall"), Seller will nonetheless be liable for costs and damages associated with the conduct of such recall to the extent that such recall is based upon Buyer's reasonable determination (including by use of statistical analysis or other sampling methodology) that the goods fail to conform to the warranties set forth in the Contract.

As Buyer reasonably requests, Seller shall cooperate and assist Buyer in investigating potential defects, noncompliances, or deficiencies; communicating with relevant governmental authorities;



completing any necessary filings; performing the necessary corrective action; and providing replacement parts for recalls.

11. INGREDIENTS AND HAZARDOUS MATERIALS.

If Buyer requests, Seller will promptly furnish to Buyer, in such form and detail as Buyer directs: (a) a list of all ingredients in the Supplies, (b) the amount of all ingredients, and (c) information concerning any changes in or additions to the ingredients. Prior to, and together with, the shipment of the Supplies, Seller will furnish to Buyer and all carriers sufficient written warning and notice (including appropriate labels on the goods, containers and packing) of any hazardous material that is an ingredient or a part of any of the Supplies, together with all special handling instructions, safety measures and precautions as may be necessary to comply with applicable law, to inform Buyer and all carriers of any applicable legal requirements and to best allow Buyer and all carriers to prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the Supplies, containers and packing.

All purchased materials used in manufacture of the Supplies shall satisfy current governmental and safety constraints on restricted, toxic and hazardous materials as well as environmental, electrical and electromagnetic considerations applicable to the country of manufacture and sale. Prior to shipment, Seller will furnish applicable Material Safety Data Sheets as well as information on the safe use and hazards associated with use of the Supplies. At all times, Seller will comply with ISO14001, TS16949 and ELV or their successors, as amended, replaced or substituted, from time to time.

12. SELLER'S FINANCIAL AND OPERATIONAL CONDITION.

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

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

13. SELLER'S INSOLVENCY.

In any of the following events or any similar or comparable event, Buyer may immediately terminate the Contract and any outstanding release(s) without any liability to Seller or obligation to purchase raw materials, work-in-process or finished goods under Article 15: (a) insolvency or financial difficulties of Seller, (b) filing of a voluntary petition in bankruptcy by Seller, (c) filing of any involuntary petition in bankruptcy against Seller, (d) appointment of a receiver or trustee for Seller, (e) execution of



an assignment for the benefit of creditors by Seller, (f) any accommodation by Buyer, financial or otherwise, not contemplated by the Contract, that are necessary for Seller to meet its obligations under the Contract, (g) Seller's inability to promptly provide Buyer with adequate and reasonable assurance of Seller's financial capability to perform timely any of Seller's obligations under the Contract. Seller will reimburse Buyer for all costs Buyer incurs in connection with any of the foregoing whether or not the Contract is terminated, including, but not limited to, all attorneys' fees or other professional fees.

14. TERMINATION FOR BREACH.

Buyer may terminate all or any part of the Contract without any liability to Seller or any obligation to purchase raw materials, work-in-process or finished goods under Article 15 if Seller (a) repudiates, breaches, or threatens to breach any of the terms of the Contract, including Seller's representations, (b) fails to perform or threatens not to perform services or deliver goods in accordance with the Contract; (c) fails to provide Buyer with adequate and reasonable assurance of Seller's ability to perform timely any of Seller's obligations under the Contract, including, without limitation, proper completion of services or delivery of goods; or (d) fails to remain competitive with respect to price, quality, delivery, technology, payment terms, or customer support. In the event that an act of termination by Buyer is determined to be improper for any reason, the damages available to Seller shall be limited to the damages that Seller would have been entitled to receive if Buyer had terminated for convenience pursuant to Article 15.

15. TERMINATION FOR CONVENIENCE.

In addition to any other of Buyer's rights to terminate the Contract, Buyer may immediately terminate all or any part of the Contract, at any time and for any reason, by notifying Seller in writing. Because Buyer's commitments to its customers are made in reliance on Seller's commitments under the Contract, Seller has no right to terminate the Contract.

16. TERMINATION FOR CHANGE OF CONTROL.

In addition to its other remedies, Buyer may, at its option, terminate the Contract without any liability to Seller for a change of control of Seller. A change of control of Seller includes: (a) the sale, lease or exchange of a substantial portion of Seller's assets used for the production of goods, or the entrance into an agreement by Seller regarding the same; (b) the sale or exchange of more than 20% of Seller's stock or other ownership interest (or of such other amount as would result in a change of control of Seller), or the entrance into an agreement regarding the same; (c) the execution of a voting or other agreement providing a person or entity with control of Seller or control of more than 20% of Seller's stock or other ownership interest (or of such other amount as would result in a change of control of Seller). Seller shall notify Buyer promptly in writing in the event of the earlier of (i) the entrance into an agreement, or (ii) the occurrence of an event, described above in this paragraph. In the event of a termination pursuant to this paragraph, Buyer shall give Seller written notice of the termination at least thirty days prior to the effective termination date.

17. TERMINATION CLAIMS.

17.1. Seller's Obligations Upon Termination.

Upon receipt of notice of termination (or in the case Seller fails to give notice and Buyer first learns of its right to terminate and exercises such right) pursuant to Articles 14, 15, or 16, Seller, unless otherwise directed in writing by Buyer, will (i) immediately terminate all work under the Contract; (ii) promptly settle all claims by subcontractors approved by Buyer on the face of a Contract or Contract amendment or in a signed writing, if any, for reasonable actual costs that are rendered unrecoverable by such termination; (iii) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest and (iv) upon Buyer's request, cooperate with Buyer in effecting the resourcing of the goods covered by the Contract to an alternative supplier designated by Buyer.



17.2. Buyer's Obligations Upon Termination Under Articles 15 or 16.

Upon termination by Buyer under Articles 15 or 16, Buyer shall pay to Seller the following amounts without duplication: (i) the Contract price for all accepted Supplies that conform to the requirements of the Contract and for which payment has not been made; and (ii) the fair market value or actual cost, whichever is less, of raw material procured by Seller specifically for fabrication of Supplies, provided however, Buyer will not be responsible or liable to purchase any such raw materials that exceed the amount of raw materials needed to fabricate Supplies in the quantity Projections issued for the four weeks subsequent to the date of termination.

17.3. Buyer's Obligations Upon Termination Under Article 14.

Upon termination pursuant to Article 14, Seller shall not be entitled to any payments by Buyer except for the Contract price for all accepted Supplies that conform to the requirements of the Contract and for which payment remains due.

17.4. Buyer's Option to Purchase.

Upon termination by Buyer under Articles 14, 15, or 16, Buyer may, at its option, purchase from Seller any or all raw materials, work-in-process and finished goods inventory related to the goods under the Contract which are useable and in a merchantable condition. The purchase price for such finished goods, raw materials and work-in-process, and Seller's sole and exclusive recovery from Buyer (without regard to the legal theory which is the basis for any claim by Seller) on account of such termination, will be (a) the contract price for all goods or services that as of termination date have been completed in accordance with the Contract and delivered and accepted by Buyer and not previously paid for, plus (b) the actual costs of work-in-process and raw materials incurred by Seller in furnishing the goods or services under the 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 the Contract less (c) the reasonable value or cost (whichever is higher) of any goods or materials used or sold by Seller with Buyer's written consent. In no event will Buyer be required to pay for finished goods, work-in-process or raw materials which Seller fabricates or procures in amounts that exceed those Buyer authorizes in delivery releases nor will Buyer be required to pay for any goods or materials that are in Seller's standard stock or that are readily marketable. Payments made under this Article will not exceed the aggregate price for finished goods that would be produced by Seller under delivery or release schedules outstanding at the date of termination.

17.5. Termination Claim.

Within 60 days after the effective date of termination under Articles 15 or 16, Seller will furnish Buyer with its comprehensive termination claim, together with all supporting data that will consist exclusively of the items of Buyer's obligation to Seller that are listed in the Contract, and will thereafter promptly furnish any supplemental and supporting information Buyer requests. Buyer may audit Seller's records before or after payment to verify amounts requested in Seller's termination claim. If Seller fails to submit a termination claim in strict accordance with this Article, then Seller's claims shall be deemed thereafter waived and of no further force or effect.

18. SUPPLY TRANSITION AT END OR TERMINATION OF CONTRACT.

Upon the expiration or termination by Buyer of any Contract for whatever reason, Seller will take all actions necessary in order to ensure that there is no interruption in the supply of Supplies to Buyer. Among other things, Seller will take such actions as may be reasonably required by Buyer to accomplish the transition from Seller to an alternative seller, including without limitation the following: (a) Seller will provide all necessary or desirable notices for Buyer to resource the Contract to an alternative seller; (b) Seller will provide a sufficient bank of Supplies covered by the Contract to ensure the orderly transition to any alternative seller chosen by Buyer; and (c) Seller shall provide to Buyer all tooling and any other



property furnished by or belonging to Buyer or any of Buyer's customers in as good a condition as when received by Seller, reasonable wear and tear excepted; (d) Buyer and the alternative seller reserve the right to access and actively participate during the disconnect or disassemble process for the Buyer's Property, and Buyer alone will determine the location, time and date of the removal; and (e) at Buyer's sole option, Seller will: (i) assign to Buyer any or all supply contracts or Contracts for raw material or components relating to the Contract; (ii) sell to Buyer, at Seller's cost or fair market value, whichever is less, any or all perishable tooling and Inventory relating to the Contract; and/or (iii) sell to Buyer any of Seller's property relating to the Contract, at a price equal to the unamortized portion of the cost of such items less any amounts Buyer previously has paid to Seller for the cost of such items. Seller will provide documentation supporting the original cost of any unamortized items. The term "alternative seller" expressly includes, but is not limited to, one or more Buyer-owned facilities or affiliated or related facilities.

19. TECHNICAL INFORMATION.

19.1. Information Disclosed by Seller.

Seller will create, maintain, update, and provide to Buyer, in compliance with Buyer's drafting and math data standards, all technical information about the goods and their manufacture which is reasonably necessary or Buyer requests in connection with its use of the Supplies, including, without limitation, the engineering validation and qualification of the goods for automotive production and other applications and compliance with any legal or regulatory requirements. Such technical information will not be subject to any use or disclosure restrictions, except as provided in Section 19.2 below.

19.2. Waiver of Claims.

Seller will not assert any claim (other than a claim for patent infringement) against Buyer, Buyer's customers or their respective suppliers with respect to any technical information that Seller shall have disclosed, or may hereafter disclose, in connection with the Supplies covered by the Contract.

19.3. Repair and Rebuild.

Seller authorizes Buyer, its affiliates, agents and subcontractors, and Buyer's customers and their subcontractors to repair, reconstruct or rebuild the Supplies delivered under the Contract without payment of any royalty or other compensation to Seller.

19.4. Software and Written Works.

Seller grants to Buyer a permanent, paid-up license to use, repair, modify and sell any operating software incorporated in the Supplies in conjunction with the use or sale of the Supplies. In addition, all works of authorship, including without limitation, software, computer programs and databases (including object code, micro code, source code and data structures), and all enhancements, modifications and updates thereof and all other written work products or materials, which are created in the course of performing the Contract, separately or as part of any goods and components, are "works made for hire" and are Buyer's sole property. To the extent that such works of authorship do not qualify under applicable law as works made for hire, Seller hereby assigns to Buyer all Seller's right, title and interest in any intellectual property rights in such works of authorship. If such assignment is not possible under any applicable law, Seller hereby grants Buyer an exclusive, royalty-free, fully paid up perpetual license with respect to such works of authorship.

19.5. Development, Engineering And Consulting Services.

Engineering, consulting or development services ("Development Services") funded under the Contract that result in any idea, invention, concept, discovery, work of authorship, patent, copyright, trademark, trade secret, know-how or other intellectual property ("IP") shall be the sole property of Buyer. Seller will assign to Buyer all right, title and interest in and to IP which results from Development



Services (“Developed IP”). Seller will notify Buyer of the existence of Developed IP and assist Buyer in every reasonable way to perfect Buyer’s right, title and interest in Developed IP, such as by executing and delivering all additional documents Buyer reasonably requests in order to perfect, register, and/or enforce the same, and Buyer will reimburse Seller for the actual amount of reasonably-incurred out-of-pocket which Seller incurs in providing such assistance.

19.6. Confidentiality.

Seller shall keep confidential, not disclose to any person or entity and not use for any purpose other than fulfilling its obligations under a Contract, any product technology, trade secrets, process advancements, drawings, plans, specification, blueprints, equipment designs, tests or test results, experimentation, prototypes, models or any other proprietary information (“Confidential Information”) that Buyer provides to Seller under the Contract. By accepting a Contract, Buyer grants Seller a limited, terminable at-will limited license (without right to further sub-licence) to use the Confidential Information for the sole purpose of performing under a Contract and not for use in providing goods or services to other customers and not to directly or indirectly compete with Buyer. Seller agrees that it will not disclose Confidential Information to or use Confidential Information with or for the benefit of itself or any third party without Buyer’s prior written authorization that Buyer may arbitrarily withhold or delay. Seller also agrees to adopt measures to protect the secrecy and confidentiality of Confidential Information that are reasonable under the circumstances. Seller agrees that it will not use Buyer’s or Buyer’s customer’s name or the fact that Seller is selling goods or providing services to Buyer in any press releases, media statements or public communications or otherwise publicize a Contract without Buyer’s prior written consent. Seller also agrees that it will not use any of Buyer’s names, logos, trademarks, service marks, or trade names in any way without Buyer’s prior written consent, and by entering into a Contract, Buyer shall not be deemed to have granted Seller a license of, or any rights in, any of the foregoing. Seller waives the right to assert any claims against Buyer, other than for patent infringement, arising out of any Confidential Information that Seller discloses to Buyer in connection with a Contract. The provisions of this Section 19.6 shall survive the termination, cancellation or expiration of the Contract. At Buyer’s request, Seller will return all materials (in any form) that include, incorporate, or otherwise Buyer’s Confidential Information. Seller shall not sell or dispose of, as scrap or otherwise, any completed or partially completed or defective Supplies manufactured hereunder without defacing or rendering them unsuitable for use.

20. INDEMNIFICATION.

20.1. Infringement.

Seller will defend, hold harmless and indemnify Buyer and its applicable customers, and their respective successors and assigns, against any claims of infringement (including patent, trademark, copyright, moral, industrial design or other proprietary rights, or misuse or misappropriation of trade secret) and resulting damages and expenses (including, without limitation, attorney and other professional fees and disbursements) relating to the Supplies covered by the Contract, including any claims in circumstances where Seller has provided only part of the Supplies. Seller waives any claim against Buyer that any such infringement arose out of compliance with Buyer’s specifications.

20.2. Activities on Buyer’s Premises.

Seller will defend, hold harmless, and indemnify Buyer from and against any liability, claims, demands, damages, costs or expenses (including, without limitation, reasonable attorney and other professional fees and disbursements) arising from or in connection with the performance of any service or work by Seller or its employees, agents, representatives and subcontractors on Buyer’s or Buyer’s applicable customer’s premises or the use of Buyer’s property or that of any customer of Buyer, except to the extent such liability arises out of Buyer’s or Buyer’s customer’s gross negligence or willful misconduct.

20.3. Product Liability and Recalls.

Seller will defend, hold harmless, and indemnify Buyer and its customers, and their respective successors and assigns, from and against any liability and expenses (including, without limitation, attorney and other professional fees and disbursements) arising from or in connection with any third party claims or demands to recover for personal injury or death, property damage or economic loss caused by any of the goods or services supplied by Seller (regardless of whether such claim or demand arises under tort, negligence, contract, warranty, strict liability or any other legal theories), except to the extent such injury, damage or loss results from Buyer's specifications as to design or materials or from alteration or improper repair, maintenance or installation by any party other than Seller. Seller will defend, indemnify and hold harmless Buyer and its applicable customer under the Contract, and their respective successors and assigns, against all damages, losses, claims, liabilities and expenses (including reasonable attorneys' and other professional fees, settlements and judgments) arising out of or resulting from any defective Supplies, or from any negligent or wrongful act or omission of Seller or any breach or failure by Seller to comply with any of Seller's warranties hereunder, including without limitation the cost of recall campaigns, Buyer field service actions or other corrective service actions that, in Buyer's reasonable judgment, are required because of defects, deficiencies, nonconformities or noncompliances in some or all of the Supplies provided by Seller.

20.4. Seller's Obligation to Defend.

Within a reasonable time of becoming aware of any actual or potential liabilities, claims, demands, damages, costs or expenses under this Article 20.4 (collectively, "Liabilities"), Buyer will notify Seller. Seller, at Buyer's option and at Seller's expense, will undertake defense of such actual or potential Liabilities through counsel approved by Buyer. Provided, however, that Seller shall first obtain authorization from Buyer before settlement is made of the actual or potential Liabilities if the terms of such settlement could materially adversely affect Buyer, including any terms which admit the existence of a defect in Supplies or Buyer's failure to fully and faithfully perform its obligations. In the alternative, Buyer may elect to undertake defense of such Liabilities to the extent asserted against Buyer, and Seller shall reimburse Buyer on monthly basis for all expenses, attorney fees, and other costs incurred by Buyer.

21. COMPLIANCE WITH LAWS.

Seller and all Supplies will comply with all applicable laws, rules, regulations, orders, conventions, ordinances and standards of the country(ies) of origin and destination or that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval, performance and/or certification of the goods or services, including, but not limited to, those relating to environmental matters, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety, and each Contract shall be deemed to incorporate by reference all the clauses required by the provisions of said laws, contracts, rules, regulations and ordinances. Seller will defend, hold harmless and indemnify Buyer from and against any liability, claims, demands, damages or expenses (including reasonable attorney or other professional fees and disbursements) arising from or relating to Seller's non-compliance with this Article.

Without restricting the above, if Seller's shipment contains any wood packing material, Seller represents and warrants that the material is: (i) made entirely of Canadian origin wood or U.S. origin wood; (ii) derived totally from trees harvested in Canada or the United States or (iii) treated in compliance with the *International Standard for Phytosanitary Measures on Wood Packaging* (ISPM No. 15) adopted by the *International Plant Protection Convention* in March, 2002, as amended from time to time.

Seller shall indemnify and hold Buyer harmless from and against any liability claims, demands or expenses (including, without limitation, attorneys' or other professional fees) arising out of or in connection with Seller's non-compliance with the provisions of this Article 21.

22. INSURANCE.

Seller will maintain insurance coverage as required by applicable law or as reasonably requested by Buyer in amounts and with carriers reasonably acceptable to Buyer, naming Buyer as an additional insured, and covering general liability, public liability, product liability, product recall, completed operations, contractor's liability, automobile liability insurance, worker's compensation, and employer's liability insurance as will adequately protect Buyer against such damages, liabilities, claims, losses and expenses (including attorney's fees). With respect to any such insurance coverage, Seller will furnish to Buyer either a certificate evidencing satisfaction of the above-mentioned insurance requirements under the Contract or certified copies of all insurance policies within ten days after receipt of Buyer's written request. The certificate must provide that Buyer will receive not less than thirty days prior written notice from the insurer of any termination or reduction in the amount or scope of coverage. No furnishing of certificates of insurance or purchase of insurance will limit or release Seller from Seller's obligations or liabilities under the Contract.

23. SELLER'S EQUIPMENT.

Seller, at its expense, will furnish, keep in good condition, and replace when necessary all of its machinery and equipment, including related tooling, jigs, dies, gauges, fixtures, molds, patterns, fixtures and other accessories, required for the production of Supplies (collectively, "Seller's Equipment"). Seller will insure Seller's Equipment with fire and extended coverage insurance for its full replacement value. Seller grants Buyer an irrevocable option to take possession of, and title to, all or part of Seller's Equipment that is specially designed or outfitted for the production of Supplies, in which event Buyer will, within 45 days following delivery of such Seller's Equipment to Buyer, pay to Seller of the lower of (i) the net book value of such Seller's Equipment (*i.e.*, actual cost, less amortization) or (ii) then current fair market value of such Seller's Equipment, in each case less any amounts that Buyer has previously paid to Seller on account of such Seller's Equipment. The foregoing option will not apply to the extent that Seller uses Seller's Equipment to produce goods that are Seller's standard stock and are then being sold by Seller to other customers. Buyer's right to exercise the foregoing option is not conditioned on Seller's breach or Buyer's termination of the Contract or upon payment of any other amounts due under the Contract.

24. BUYER'S PROPERTY AND INFORMATION

24.1. Acquisition of Tools.

To the extent that the Contract covers Buyer's purchase of, or reimbursement to Seller for, any Tools to be used in connection with Seller's actual or anticipated supply of goods to Buyer, Seller will acquire such Tools as Buyer's agent and Buyer shall pay to or reimburse Seller the lower of (i) the amount specified in the Contract for such Tools or (ii) Seller's actual out-of-pocket cost to acquire the Tools or materials from an unrelated third party or, if the Tools are constructed or fabricated by Seller or any affiliate of Seller, the actual direct costs for materials, labor and overhead associated with such construction and fabrication. Seller assigns to Buyer any contract rights or claims in which Seller has an interest with respect to such Tools. Seller will establish and maintain a reasonable and customary accounting system that readily enables the identification of Seller's costs as described above. Buyer or its agents shall have the right to audit and examine all books, records, facilities, work, material, inventories and other items relating to any such Tools. Upon Seller's acquisition of such Tools, title thereto shall vest immediately in Buyer and such Tools shall be held by Seller as Buyer's Property (as defined in Section 24.2 below) in accordance with this Article 24.

24.2. Bailment of Buyer's Property.

All Tools which Buyer furnishes, either directly or indirectly, to Seller or which Buyer buys from, or gives reimbursement to, Seller in whole or in part (collectively, "Buyer's Property") will be and remain the property of Buyer and be held by Seller on a bailment basis. Title to all replacement parts, additions,

improvements and accessories purchased by Seller will vest in Buyer immediately upon attachment to or incorporation into Buyer's Property. Seller expressly waives and releases, and agrees not to file or otherwise assert or prosecute or suffer to permit any statutory, equitable or other liens, including but not limited to equitable or other liens, including but not limited to any molder liens, tool liens, builder liens and the like, that Seller has or might have on or in connection with the Buyer's Property for all work, including but not limited to, designing, manufacturing, improving, maintaining, servicing, using, assembling, fabricating or developing the Buyer's Property. Seller hereby agrees to indemnify, defend and hold harmless Buyer from and against any loss, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings, including without limitation all attorney's fees and all other cost of litigation that are in any way related to releasing, terminating or otherwise removing all such liens placed on the Buyer's Property. Seller will assign to Buyer any claims Seller has against third parties with respect to Buyer's Property. Seller shall assume all risk of death or injury to persons or damage to property arising from use of the Buyer's Property.

24.3. Seller's Duties Concerning Buyer's Property.

While Buyer's Property is in Seller's possession and until Seller delivers Buyer's Property back to Buyer, Seller bears the risk of loss, theft and damage to Buyer's Property. Seller will be responsible for the cost of repairing or replacing Buyer's Property if it is stolen, damaged or destroyed regardless of cause or fault. Seller will at all times: (a) regularly inspect, maintain in good condition, and repair Buyer's Property at Seller's own expense, (b) use Buyer's Property only for the performance of the Contract, (c) deem Buyer's Property to be personal property, (d) conspicuously mark Buyer's Property as the property of Buyer and maintain such markings, (e) not commingle Buyer's Property with the property of Seller or with that of a third person, (f) not move Buyer's Property from Seller's applicable shipping location (as shown by the shipping address of Seller) without prior written approval from an authorized employee of Buyer, (g) use Buyer's Property in compliance with Buyer's or the manufacturer's instructions and in compliance with all federal, state and local laws, ordinances and regulations (h) adequately insure the Buyer's Property against loss or damage, including but not limited to maintaining full fire and extended coverage insurance for replacement value and naming Buyer as an additional insured, and (i) take reasonable steps to ensure that the Buyer's Property does not become subject to any liens or other claims. Buyer 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. Seller will not sell, lend, rent, encumber, pledge, lease, transfer or otherwise dispose of Buyer's Property. Furthermore, Seller will not assert, or permit any person claiming an interest through Seller to assert any claims of ownership to or any other interest in Buyer's Property.

All right, title, and interest in and to any part of Tools shall pass to Buyer as soon as it they are acquired or fabricated in accordance with a Tooling Contract. During the term of a Contract, all such Tools in the possession of Seller shall be deemed bailed property and shall not be deemed a fixture or a part of Seller's real property. Seller will (i) properly house and maintain such property on Seller's premises, (ii) prominently mark it Property of Buyer, (iii) refrain from commingling it with the property of Seller or with that of a third party, and (iv) adequately insure it against loss or damage and (v) not move it to another location whether owned by Seller or a third party, without the prior written consent of Buyer, except in the case of an emergency, Seller may move the Tools provided that it gives Buyer prior written notice that the tooling is to be moved and the location of the Tools. Seller shall indemnify Buyer against any claim adverse to Buyer's ownership of or interest in the Tools, except as such claims may result from any acts or omissions of Buyer. To the extent permitted by law, Seller waives its right to object to the repossession of the Tools by Buyer in the event Seller is involved in bankruptcy proceedings. While in its possession, Seller, at Seller's expense, shall maintain the Tools in first class condition and immediately replace any items that are lost or destroyed or become worn out. All repaired or replaced Tools shall be the property of Buyer. Wear and repair of the Tools is Seller's responsibility. Title to any modifications, changes or accessions to Tools shall be vest in Buyer regardless of whether Buyer has reimbursed Seller for such modification, changes or accessions. Seller will keep such records



in relation to the Tools as Buyer may reasonably require. None of the Tools shall be used in the production, manufacture or design of any goods or materials except to the order of Buyer. Seller's responsibility continues beyond the expiry date of the related parts Contract. If the Tools are not utilized to produce any parts for Buyer for a period of two years, Seller shall so notify Buyer and request instruction as to the disposition of the Tools. If Seller subcontracts all or any portion of the manufacture of the Tools, Seller shall so notify Buyer in advance and obtain for Buyer all of the rights contained in this Section 24.3 from each subcontractor retained or used by Seller.

Seller authorizes Buyer to file a UCC-1 financing statement or equivalent document with the appropriate filing authority to give notice of Buyer's ownership interest in the Buyer's Property. Failure to file a financing statement will not alter or amend Buyer's ownership rights to the Buyer's Property. Seller shall provide Buyer, upon Buyer's request, with a written inventory of all Buyer's Property.

24.4. Return of Buyer's Property.

Seller agrees that Buyer has the right, at any time and from time to time, with or without reason and without payment of any kind, to retake possession of or request the return of Buyer's Property. Without further notice or court hearings, which rights, if any, are hereby waived, Buyer or its designee(s) will have the right to enter Seller's premises and take possession of any and all of Buyer's Property. Upon Buyer's request and in accordance with Buyer's instructions, Buyer's Property will be immediately released to Buyer or delivered to Buyer by Seller, either (i) Ex Works (IncoTerms 2000) at Seller's plant properly packed and marked in accordance with the requirements of the carrier selected by Buyer to transport such Buyer's Property or (ii) to any location Buyer designates, in which event Buyer will pay Seller the reasonable costs of delivering Buyer's Property to the location Buyer designates. If Seller does not release and deliver any Buyer's Property in accordance with this Article, Buyer may obtain an immediate writ of possession without notice and without the posting of any bond and/or enter Seller's premises, with or without legal process, and take immediate possession of Buyer's Property.

24.5. Disclaimer of Warranties.

Seller acknowledges and agrees that (i) Buyer is not the manufacturer of Buyer's Property nor the manufacturer's agent nor a dealer therein, (ii) Buyer is bailing Buyer's Property to Seller for Seller's benefit, (iii) Seller has inspected the Buyer's Property and is satisfied that Buyer's Property is suitable and fit for its purposes, and (iv) BUYER HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF BUYER'S PROPERTY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE.

24.6. Use of Buyer's Information.

Seller will (i) keep all Buyer's Information (as defined below) confidential and disclose it only to its employees who need to know such Buyer's Information in order for Seller to supply goods and services to Buyer under the Contract and (ii) use the Buyer's Information solely for the purpose of supplying goods and services to Buyer. Goods manufactured based on Buyer's Information may not be used for Seller's own use or sold by Seller to third parties without prior express written consent from an authorized employee of Buyer. "Buyer's Information" means all information provided to Seller by Buyer or its representatives or subcontractors in connection with the business, programs, goods and services covered by the Contract, including, without limitation, pricing, pricing adjustments, multi-year commercial arrangements and other terms of the Contract, specifications, data, formulas, compositions, designs, sketches, photographs, samples, prototypes, test vehicles, manufacturing, packaging or shipping methods and processes and computer software and programs (including object code and source code). Buyer's Information also includes any materials or information that contain or are based on, any Buyer's Information, whether prepared by Buyer, Seller or any other person.

25. SERVICE AND REPLACEMENT PARTS.

During the term of the Contract, Seller will sell to Buyer all Supplies necessary to fulfill Buyer's service and replacement parts requirements to Buyer's customers at the then current production price(s) under the Contract. If the Supplies 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. If the Contract is in effect at the end of the automotive vehicle production program into which the Supplies covered by the Contract are incorporated, Seller will also sell Supplies to Buyer to fulfill Buyer's and its customers' service and replacement parts requirements during the fifteen (15) year period following the end of such vehicle production program (the "Past Service Model Production Period"), and the Contract will automatically remain in effect during the entire Past Service Model Production Period. During the initial five (5) years of the Past Service Model Production Period, the price(s) for such goods will be the production price(s) which were in effect at the commencement of the Past-Service Model Production Period. For the remainder of the Past Service Model Production Period, the price(s) for such service goods will be as reasonably agreed to by the parties. If a dispute arises between Seller and Buyer regarding the price of service or replacement parts under this paragraph, Seller shall continue to supply Buyer's requirements for service and replacement parts at the production prices set forth in the Contract pending resolution of such dispute. If requested by Buyer, Seller will also make service literature and other materials available at no additional charge to support Buyer's service activities.

26. REMEDIES AND INJUNCTIVE RELIEF.

The rights and remedies reserved to Buyer in the Contract are cumulative with, and in addition to, all other or further remedies provided in law or equity. To the extent that the Contract is for the supply of Supplies for use as, or fabrication into, parts, components or systems, Seller acknowledges and agrees that money damages would not be a sufficient remedy for any actual, anticipatory or threatened breach of the Contract by Seller with respect to its delivery of goods to Buyer and that, in addition to all other rights and remedies which Buyer may have, Buyer shall be entitled to specific performance and temporary, preliminary and permanent injunctive or other equitable relief as a remedy for any such breach, without proof of actual damages and without bond or other security being required.

Seller also acknowledges and agrees that shutting down a customer's plant creates issues for which money damages are not a sufficient remedy. While the cost of a plant shutdown may easily generate substantial costs, the damages to Buyer's relationship with Buyer's customer through potential loss of business, and other damages which are equally difficult to calculate, are far worse. Because of these risks, in the event of a breach or threatened breach by Seller of any of Seller's representations, warranties or covenants, Buyer may, without notice to Seller, resource the production of Supplies from Seller to another supplier or dual source any of the Supplies covered hereby (*i.e.*, have another supplier produce or be prepared to produce Supplies being produced by Seller), to protect Buyer and its customers. This process of moving business may take a considerable amount of time and Seller understands that, given the risks posed by the possible shutdown of Buyer's customer, Buyer is justified in initiating and transferring business without prior notice to Seller.

Further, in the event of any breach of the Contract by Seller, Buyer shall be entitled to recover all actual, special, incidental and consequential damages caused by the breach, including, but not limited to, costs, expenses and losses incurred by Buyer (i) in inspecting, sorting, testing, repairing or replacing such nonconforming Supplies; (ii) resulting from production interruptions, (iii) in conducting remedial actions, and (iv) in connection with claims for personal injury (including death) or property damage caused by such breach. If requested by Buyer, Seller shall, without charge to Buyer, administer and process warranty charge-backs for nonconforming Supplies in accordance with Buyer's directions.



Notwithstanding anything to the contrary contained in any Contract, Buyer does not release any claim against Seller that is based in whole or in part on any fraud or duress in connection with the Contract or any breach or anticipatory breach of the Contract or any other contract between Buyer and Seller (even if that contract relates to other services or products). All payments by Buyer to Seller under the Contract are without prejudice to Buyer's claims, rights, or remedies.

Buyer will not be liable to Seller for any lost profits or for any incidental, consequential, special, exemplary or punitive damages. Without limiting the foregoing, the parties further agree that: (i) with respect to a claim arising out of or in connection with the termination of any Contract, Seller's damages, if any, shall be limited to the damages set forth in Article 17; and (ii) with respect to all other claims, Seller's damages shall be limited to the lesser of: (A) the value of Supplies purchased by Buyer from Seller in the three months immediately preceding the alleged breach; or (B) \$10,000.

Buyer shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontracts, for any other alleged losses or costs, including but not limited to loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment acquisition or rearrangement costs or rental, unamortized depreciation costs, ancillary exit charges (including, but not limited to, costs of riggers, warehousing, premium manufacturing costs, material costs, loading of trucks or other standard business procedures related to transitioning production to an alternative supplier), attorneys fees or collection costs, or general and administrative burden charges resulting from termination of the Contract, alleged breach of the Contract, or for any other reason. Notwithstanding anything to the contrary, Buyer's obligation to Seller upon termination shall not exceed the obligation Buyer would have had to Seller in the absence of termination.

27. CUSTOMS AND EXPORT CONTROLS.

27.1. Credits and Refunds.

Transferable credits or benefits associated with or arising from goods purchased under the Contract, including trade credits, export credits or rights to the refund of duties, taxes or fees, belong to Buyer. Seller will, at its expense, provide all information necessary (including written documentation and electronic transaction records in Buyer-approved formats) to permit Buyer to receive these benefits, credits, or rights. Seller will furthermore, at its expense, provide Buyer with all information, documentation, and electronic transaction records relating to the goods necessary for Buyer to fulfill any customs -related obligations, origin marking or labeling requirements and certification or local content reporting requirements, to enable Buyer to claim preferential duty treatment for goods eligible under applicable trade preference regimes, and to make all arrangements that are necessary for the goods to be covered by any duty deferral or free trade zone program(s) of the country of import. Seller will, at its expense, provide Buyer or Buyer's nominated service provider with export documentation to enable the goods to be exported, and obtain all export licenses or authorizations necessary for the export of the goods unless otherwise indicated in the Contract, in which event Seller will provide all information as may be necessary to enable Buyer to obtain such licenses or authorization(s).

27.2. Customs-Trade Partnership Against Terrorism.

If any Supplies covered by the Contract are to be imported into the United States of America, Seller shall comply with all applicable recommendations or requirements of the Bureau of Customs and Border Protection's Customs-Trade Partnership Against Terrorism ("C-TPAT") initiative. Upon request, Seller shall certify in writing its compliance with the C-TPAT initiative.

28. SETOFF/RECOUPMENT

In addition to any right of setoff or recoupment allowed by law, all amounts due Seller, or any of its subsidiaries or affiliates shall be considered net of indebtedness or obligations of Seller, or any of its



subsidiaries or affiliates to Buyer or any of its subsidiaries or affiliates, and Buyer may set off against or recoup from any amounts due or to become due from Seller, or any of its subsidiaries or affiliates to Buyer or any of its subsidiaries or affiliates however and whenever arising, including the Buyer's attorneys' fees and costs of enforcement. In the event that Buyer or any of its subsidiaries or affiliates reasonably feels at risk, Buyer may withhold and recoup a corresponding amount due Seller or any of its subsidiaries or affiliates to protect against such risk.

If an obligation of Seller or any of its subsidiaries or affiliates to Buyer or any of its subsidiaries or affiliates is disputed, contingent or unliquidated, Buyer or any of its subsidiaries or affiliates may defer payment of all or any portion of the amount due until such obligation is resolved. Without limiting the generality of the foregoing and by way of example only, in the event of a bankruptcy of Seller, if the Contract between Buyer and Seller has not been assumed, then Buyer may defer payment to Seller, via an administrative hold or otherwise, for Supplies against potential rejection and other damages.

In the event that Seller becomes insolvent as described in Article 13 of these Standard Terms, Buyer also may set off, recoup, and/or withhold from amounts due Seller or any of its subsidiaries or affiliates any amounts that Seller is obligated to indemnify Buyer pursuant to the Contract, regardless of whether such amounts become due before or after the filing of a petition for bankruptcy protection by Seller.

29. NO ADVERTISING.

Seller will not, in any manner, advertise or publish that Seller has contracted to furnish Buyer the goods or services covered by the Contract or use any trademarks or trade names of Buyer in Seller's goods, advertising or promotional materials unless Buyer consents in writing.

30. NO IMPLIED WAIVER.

The failure of either party at any time to require performance by the other party of any provision of the Contract will not affect the right to require such performance at any later time, nor will the waiver by either party of a breach of any provision of the Contract constitute a waiver of any succeeding breach of the same or any other provision. No failure or delay in exercising any right or remedy will operate as a waiver thereof nor will any single or partial exercise thereof preclude other or further exercise thereof. No course of dealing or course of performance may be used to evidence a waiver or limitation of Seller's obligations under the Contract.

31. NO ASSIGNMENT WITHOUT BUYER CONSENT.

The Contract is made with the Seller in reliance upon Seller's personal performance of the duties imposed. Buyer may assign its rights and obligations under the Contract without Seller's prior written consent. Seller may not assign or delegate its rights or obligations under the Contract without prior written consent from an authorized employee of Buyer. Any such assignment or delegation without Buyer's prior written consent shall, at Buyer's option, effect a cancellation of the Contract.

32. RELATIONSHIP OF PARTIES.

Seller and Buyer are independent contracting parties. Nothing in the Contract makes either party the agent or legal representative of the other for any purpose whatsoever, nor grants either party any authority to assume or create any obligation on behalf of or in the name of the other party.

33. GOVERNING LAW AND JURISDICTION.

33.1. U.S. Contracts.

If (i) the Contract is issued by Buyer from a location within the United States of America or its territories (as shown by the issuing address of Buyer), (ii) the Contract is issued, in whole or part, for goods to be shipped to a Buyer location within the United States of America or its territories (as shown by



the ship to or receiving address of Buyer) or (iii) Seller's applicable shipping location is within the United States of America or its territories (as shown by the shipping address of Seller), then: (a) the Contract is to be construed according to the laws of the United States of America and the State of Michigan, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any choice of law provisions that require application of any other law, and (b) each party hereby agrees that the forum and venue for any legal or equitable action or proceeding arising out of, or in connection with, the Contract will lie in the appropriate federal or state courts in the State of Michigan and specifically waives any and all objections to such jurisdiction and venue.

33.2. Non-U.S. Contracts.

In all cases not covered by the Article above, (a) the Contract is to be construed according to the laws of the country (and state or province, if applicable) where Buyer's receiving location is located (as shown by the ship to or receiving address of Buyer), excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any choice of law provisions that require application of any other law; (b) any legal or equitable action or proceedings by Buyer against Seller arising out of, or in connection with, the Contract may be brought by Buyer in any court(s) having jurisdiction over Seller or, at Buyer's option, in any court(s) having jurisdiction over Buyer's receiving location, in which event Seller consents to such jurisdiction and venue, including service of process in accordance with applicable procedures; and (c) any legal or equitable actions or proceedings by Seller against Buyer arising out of, or in connection with, the Contract may be brought by Seller only in the court(s) having jurisdiction over the Buyer's receiving location.

34. SELLER CLAIMS.

Any action by Seller under any Order must be commenced within one year after the breach or other event giving rise to Seller's claim occurs, regardless of Seller's lack of knowledge of the breach or other event giving rise to such claim. No action for any such claim may be brought thereafter.

35. SEVERABILITY.

If any provision of the Contract is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such provision will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of the Contract will remain in full force and effect.

36. RIGHT TO AUDIT AND INSPECT.

Buyer, at its expense, has the right to audit and review all relevant books, records, income statements, balance sheets, cash flow statements, payroll data, receipts and other related supporting data, including Seller's administrative and accounting policies, guidelines, practices and procedures, as well as all materials, equipment, tooling and Supplies in the possession or under the control of Seller relating to any of Seller's obligations under the Contract, in order to (i) substantiate any charges and other matters under the Contract and (ii) assess Seller's ongoing ability to perform its obligations under the production Contract. Seller will maintain and preserve all such documents for a period of four (4) years following final payment under the Contract. Seller will provide Buyer with reasonable access to its facilities and otherwise cooperate and facilitate any such audits by Buyer.

37. ENTIRE AGREEMENT.

The Contract, together with the attachments, exhibits, supplements or other terms of Buyer specifically referenced in the Contract, constitutes the entire agreement between Seller and Buyer with respect to the matters contained in the Contract and supersedes all prior oral or written representations and agreements. Buyer may modify the Standard Terms from time to time by posting notice of such modified Standard Terms through links provided on Buyer's web site at www.flexngate.com at least ten days prior to the modified Standard Terms becoming effective. Seller periodically shall review Buyer's web site and



the Standard Terms. Seller's continued performance under the Contract without providing written notice to Buyer detailing Seller's objection to any modified Standard Terms prior to the effective date of such modified Standard Terms will be subject to and will constitute Seller's acceptance of such modified Standard Terms. Except as provided in the preceding sentences or as otherwise provided in these Standard Terms, the Contract may only be modified by a written contract amendment duly issued by Buyer.

38. TRANSLATIONS.

Buyer may provide various translated versions of these Standard Terms for informational purposes only. However, the original English language version of these Standard Terms will apply in the event of any disagreement over the meaning or construction of any provisions of these Standard Terms.