



## Merit Automotive Electronics Systems

### GENERAL TERMS AND CONDITIONS OF PURCHASE AGREEMENTS

General Terms and Conditions for the purchase of production material and spare parts which are destined for the automotive industry.

#### I. Determining Conditions

- 1.1. The legal relationship between Supplier and Purchaser shall be determined by the following conditions and any additional terms agreed between the contracting parties, if any.
- 1.2. Supplier acknowledges and agrees that it has read and understands these General Terms and Conditions (the "**General Terms and Conditions**") and that these General Terms and Conditions apply to and are incorporated in, and a part of, each purchase order, purchase or supply agreement and each amendment to any such document, delivery release, requisition, work order, shipping instruction, specification and other document, whether expressed in written form, by electronic data interchange or other format, issued or agreed to in writing by Purchaser with respect to the Goods (as defined below). All documents that are issued or otherwise agreed to in writing by Purchaser as set forth in the preceding sentence are collectively referred to as this "Contract." Changes and amendments to General Terms and Conditions, have to be made in writing. Delivery releases may also be issued by telecommunication. Any other general terms and conditions shall not be applicable, even if they were not rejected explicitly in any individual case. Supplier further acknowledges and agrees that Supplier is responsible for complying with all of Purchaser's policies, guidelines, manuals and requirements related to the provision of the Goods, including any amendments or modifications as may be implemented by Purchaser from time to time during the term of this Contract (collectively, "Purchaser's Standards"), which are also incorporated in, and a part of, this Contract.
- 1.3. The terms "Supplier" and "Purchaser" as used in these General Terms and Conditions refer to the entities designated as such on the face of the purchase order or other documents included in this Contract. The term "Goods" as used in these General Terms and Conditions refers to the Goods to be provided by Supplier to Purchaser as specified in the purchase order or other documents included in this Contract, including any service and replacement parts. The term "including" means "including without limitation".

#### II. Orders

- 2.1. Supplier will be deemed to have accepted this Contract, which Supplier acknowledges includes these General Terms and Conditions in their entirety without modification, upon the earliest of: (a) Supplier's acknowledgement of this Contract in writing, (b) Supplier's failure to reject any purchase order or purchase order amendment in writing within two weeks after Purchaser issues it, (c) Supplier's commencement of any of the work or services which are related to or in anticipation of performance of this Contract, or (d) any other conduct by Supplier that indicates acceptance of this Contract, including any actions by Supplier in preparation for Supplier's performance under this Contract, including design work, material procurement, capacity reservation, testing, or delivery of prototype or pilot parts. In case the Supplier does not accept the order within two weeks of its receipt, the Purchaser shall have the right to revoke such order. Delivery releases may also be issued by telecommunication. Any delivery release shall become binding if the Supplier does not reject such



material release within two weeks of its receipt Any additions to, changes in, modifications of, or revisions of this Contract (including these General Terms and Conditions) which Supplier proposes (whether in a quotation, purchase order acknowledgement, invoice or other document or communication) will be deemed material and are expressly rejected by Purchaser unless agreed to in writing by Purchaser.

- 2.2. Unless otherwise expressly provided in this Contract this Contract is a "requirements contract", which is a contract that measures the quantity to be supplied by the Supplier and purchased by the Purchaser by the actual requirements of the Purchaser. Supplier acknowledges that Purchaser's requirements are dependent upon the requirements of Purchaser's customers and may not be within the control of Purchaser.
- 2.3. Purchaser may at any time require Supplier to implement changes to the specifications or design of the Goods, to the place of delivery of any Goods or to the scope of any services or work covered by this Contract, including work related to inspection, testing or quality control. While Purchaser will endeavor to discuss any such changes with Supplier as early as practical, Supplier will promptly implement such changes. Purchaser and Supplier will equitably determine any adjustment in price or delivery schedules resulting from such changes, including Purchaser's payment of reasonable costs of modifications to the production equipment necessary to implement such changes. In order to assist in the determination of any equitable adjustment in price or delivery schedules, Supplier will, as requested, provide information to Purchaser, including documentation of changes in Supplier's cost of production and the time to implement such changes. In the event of any disagreement arising out of such changes, Purchaser and Supplier will work to resolve the disagreement in good faith and Supplier will continue performing under this Contract, including the manufacture and delivery of Goods and prompt implementation of changes required by Purchaser, while Purchaser and Supplier resolve any disagreement arising out of such changes. Notwithstanding anything to the contrary contained in this Contract, Supplier acknowledges that Supplier will not be entitled to any adjustment in price or delivery schedules or any other compensation in connection with inspection, testing, quality control or any other changes implemented, as a result of Supplier's delivery of non-conforming Goods.

### **III. Deliveries and Payment**

- 3.1. Supplier will: (a) pack, mark and ship Goods as instructed by Purchaser or the carriers and in accordance with any applicable laws or regulations, (b) route shipments as Purchaser instructs, (c) not charge for costs relating to handling, packaging, storage or transportation (including duties, taxes, fees, etc.) unless otherwise expressly stated in this Contract, (d) provide packing slips with each shipment that identify Purchaser's purchase order 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 Purchaser instructs. Supplier will include on bills of lading or other shipping receipts the correct classification identification of the Goods shipped as Purchaser or the carrier requires. The marks on each package and identification of the Goods on packing slips, bills of lading and invoices must enable Purchaser to easily identify the Goods,
- 3.2. Deliveries are guaranteed by supplier in the entire period from SOP till EOP plus 15 years of service unless otherwise expressly agreed in writing by Purchaser. Deliveries will be made in the quantities, on the dates, and at the times specified by Purchaser in this Contract or any subsequent releases or instructions Purchaser issues under this Contract. Compliance with such dates or time limits shall be determined by the day of arrival of the Goods to be supplied at the Purchaser. Unless "ex works" has been agreed, the Supplier shall make the Goods available in time taking into consideration the time usually necessary for loading and shipment. Time and quantity are of the essence with respect to all delivery schedules Purchaser establishes. Purchaser will not be required to pay for any Goods that exceed the quantities specified in Purchaser's delivery schedules or to accept Goods that are

delivered in advance of the delivery date specified in Purchaser's delivery schedules. Supplier bears the risk of loss of all Goods delivered in advance of the delivery date specified in Purchaser's delivery schedules. If the requirements of Purchaser's customers require changes in delivery schedules., Purchaser may change the rate and/or quantity of scheduled shipments (i.e., increase or decrease) or direct temporary suspension of scheduled shipments without entitling Supplier to a price adjustment or other compensation.

- 3.3. If Supplier fails for any reason, other than Purchaser's failure to fulfil its obligations under this Contract, to have Goods ready for shipment in time to meet Purchaser's delivery schedules using the method of transportation originally specified or utilized by Purchaser, Purchaser will have the right to either arrange for shipment of the Goods or require Supplier to ship the Goods, in each case using a premium (more expeditious) method of transportation, and Supplier will pay or reimburse Purchaser for the entire cost of such premium shipment.
- 3.4. In case of defective deliveries, the Purchaser shall be entitled to withhold payment pro rata to the value until the defective Goods have been replaced.
- 3.5. Purchaser may assign, including to its customers any or all of its rights and obligations under this Contract, without Supplier's prior written consent. Supplier may not assign, delegate or subcontract any of its rights or obligations under this Contract without prior written consent from the Purchaser.
- 3.6. The price for the Goods is stipulated in the purchase order, if it has not been agreed by the Parties otherwise. The price shall include all related costs, including, but not limited to, packing, insurance and transport costs, costs of loading and/or unloading of the Goods as well a reasonable profit, unless the Parties agree otherwise.
- 3.7. The price will be paid by wire transfer on the basis of an invoice issued to the bank account indicated by the Supplier on the invoice after the proper and timely delivery and/or production of the Goods in accordance with the Contract. Each invoice shall include all requirements of a tax document in accordance with the applicable legal regulations. Each invoice shall include a copy of the purchase order and a copy of the delivery release and/or the bill of lading. If the invoice is not issued in accordance with the applicable legal regulations and these General Terms and Conditions, the Purchaser shall be entitled to return such invoice to the Supplier for reissuing. The invoice shall be due within 60 (sixty) days as of its delivery to the Purchaser, unless the Parties agree otherwise. The Parties declare that such maturity is considered to be standard with respect to market conditions.
- 3.8. Payment of remuneration by the Purchaser shall not be considered as a waiver of any right of the Purchaser related to any delays of the Supplier or potential defects of the Goods.
- 3.9. Unless otherwise stated in this Contract, the price of the Goods includes all applicable federal, state, provincial, and local taxes other than sales, value added, or similar turnover taxes or charges. Supplier will separately indicate on invoice or invoice Purchaser for any sales, value added, or similar turnover taxes or charges that Supplier is required by law to collect from Purchaser. Supplier will provide Purchaser with whatever information and documentation that is required under local law in order to enable Purchaser to recover any sales, value added, or similar turnover taxes or charges. Invoices will also be in the appropriate form as required by local law to permit deduction of payments for income tax purposes by the Purchaser.
- 3.10. If Purchaser is required by law to make any deduction or withholding from any sum otherwise payable to Supplier under this Contract, Purchaser will be entitled to deduct or withhold such amount and effect payment to the applicable tax authority. Purchaser will, upon request from Supplier, provide Supplier official tax receipts or other evidence issued by the applicable tax authorities sufficient to establish that any taxes which are withheld have been paid.



#### **IV. Notification of Deficiencies**

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

#### **V. Confidentiality and Intellectual Property Rights**

- 5.1. The contracting parties commit themselves to deem as business secrets all commercial and technical details which come to their knowledge during their business relationship unless such details are public.
- 5.2. Purchaser remains the owner of any Purchaser Information (as defined below) that Purchaser provides to Seller. Supplier will: (a) keep all Purchaser's Information confidential and disclose it only to its employees who need to know such Purchaser's Information in order for Supplier to supply Goods to Purchaser under this Contract, (b) use Purchaser's Information solely for the purpose of supplying the Goods to Purchaser, and (c) upon Purchaser's request or upon termination or expiration of this Contract, return all Purchaser's Information to Purchaser or, at Purchaser's option, destroy all Purchaser's Information and provide evidence reasonably acceptable to Purchaser of such destruction. Goods manufactured based on Purchaser's Information may not be used for Supplier's own use or sold by Supplier to third parties without prior express written consent from Purchaser. "Purchaser's Information" means all information: (i) provided to Supplier by Purchaser or its representatives or subcontractors in connection with the business, programs or Goods covered by this Contract, including commercial and technical details, such as pricing and other terms of this Contract, specifications, data, formulas, compositions, designs, sketches, photographs, samples, prototypes, models, matrixes, patterns, tools, molds, test vehicles, manufacturing, packaging or shipping methods and processes and computer software and programs (including object code and source code), or (ii) related in any way to the installation, operation or maintenance of Purchaser's property, including specifications, drawings, processes and operating instructions. Purchaser's Information also includes any materials or information that contain, or are based on, any Purchaser's Information, whether prepared by Purchaser, Supplier or any other person. Subsuppliers shall be made to commit themselves accordingly.
- 5.3. Models, matrixes, patterns, samples, tools and other manufacturing devices as well as confidential information provided to the Supplier by the Purchaser or paid for by him in full, may be used for supplies to third parties only after having obtained the previous written consent of the Purchaser.
- 5.4. Each contracting party may use the established business relationship for advertising purposes only after having obtained previous written consent from the other party.



- 5.5. Supplier warrants that the Goods shall not infringe any intellectual property rights ("Intellectual Property") including patent, patented articles, patent applications, designs, industrial designs, models, copyrights, software, source code, database rights, moral rights, inventions whether or not capable of protection by patent or registration, techniques, technical data, trade secrets, know-how, and any other proprietary right, whether registered or unregistered, as well as brands, trademark, trade dress of any third parties, including applications and registrations thereof, all related and continuing rights, and all similar or equivalent forms of protection worldwide.
- 5.6. Each Party shall retain exclusive ownership of all Intellectual Property which were its property prior to the date of this Agreement, provided that Supplier hereby grants to Purchaser a worldwide, nonexclusive, perpetual, nontransferable and irrevocable during the term of the Contract license to use, sell, offer to sell, practice, import, export, distribute, reproduce, modify, prepare derivative works from, display, and perform all Supplier's Intellectual Property in connection with the Goods. Any Intellectual Property which is conceived, reduced to practice, discovered, invented, and/or developed in the performance of the Contract, either by a party alone or jointly with others, shall be owned exclusively by Purchaser. Upon request, Supplier shall sign all documents and otherwise cooperate with Purchaser as necessary to assign, confirm and perfect the exclusive ownership of all such Intellectual Property rights.

## **VI. Force majeure**

- 6.1. If Supplier is unable to produce, sell or deliver any Goods covered by this Contract, or Purchaser is unable to accept delivery, buy or use any Goods covered by this Contract, as a result of an event or occurrence beyond the reasonable control of the affected party and without such party's fault or negligence, then any delay or failure to perform under this Contract that results from such event or occurrence will be excused for only so long as the affected party is unable to perform as a result of such event or occurrence, provided, 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 (3) days after the event or occurrence). Such events and occurrences may include natural disasters, fires, floods, windstorms, severe weather, explosions, riots, wars, sabotage, acts of terrorism, labor problems (including lockouts, strikes and slowdowns), equipment breakdowns and power failures but, in each case, only to the extent beyond the reasonable control of the affected party and without such party's fault or negligence. However, in no event will Supplier's performance under this Contract be excused as a result of any increase in the cost of Supplier's performance. During any delay or failure to perform by Supplier, Purchaser may do any or all of the following: (a) purchase substitute Goods from other available sources, in which case the quantities under this Contract will be reduced by the quantities of such substitute Goods and Supplier will reimburse Purchaser for any additional costs to Purchaser of obtaining the substitute Goods compared to the prices set forth in this Contract, (b) require that Supplier provide substitute Goods from other available sources (including Supplier's stock or inventory) in quantities and at times Purchaser requests and at the prices set forth in this Contract, (c) require that Supplier provide any work-in-process and raw materials useful in the manufacture of the Goods in Supplier's inventory or stock at Supplier's actual cost, and (d) require that Supplier provide substitute raw materials and components useful in the manufacture of the Goods from available sources in quantities and at times Purchaser requests at the lesser of Supplier's actual cost and the appropriate pro rata portion of the price of the Goods. If Supplier fails to





provide adequate assurances that any delay will not exceed thirty (30) days or if any delay lasts more than thirty (30) days, Purchaser may terminate this Contract without any liability to Supplier or obligation to purchase raw materials, work-in-process or finished Goods. Before any of Supplier's labor contracts expire and as soon as Supplier anticipates or learns of any impending strike, labor dispute, work stoppage or other disruption at Supplier's facilities that might affect the delivery of Goods to Purchaser, Supplier will produce (and locate in an area that will not be affected by any such disruption) a finished inventory of Goods in quantities sufficient to ensure the supply of Goods to Purchaser for at least thirty (30) days after such disruption commences. In the event and to the extent that the delivery of Goods was delayed or was expected to be delayed prior to the occurrence of a force majeure event (an "Existing Delay"), then any such Existing Delay will not be excused.

## **VII. Quality and Documentation**

- 7.1. Concerning his deliveries the Supplier shall comply with the acknowledged standards of engineering, the safety regulations, the agreed technical data and the MERIT Customer Specific Requirements (CSR - <https://www.merit-automotive.com/download>). Changes to the Goods to be delivered are subject to the previous written consent of the Purchaser. Notwithstanding the afore-stated the Supplier shall permanently control the quality of the Goods delivered. The contracting parties shall inform each other of the possibilities of improving the quality of the Goods to be delivered.
- 7.2. In the event the kind and extent of testing, as well as the instruments and testing methods, are not agreed between the Supplier and the Purchaser, the Purchaser shall, if the Supplier so desires, agree to discuss the testing with the Supplier pursuant to his Know-how, experiences and possibilities in order to find out the requisite state of testing techniques in the case being considered. In addition, the Purchaser shall, upon request, inform the Supplier about the applicable safety regulations.
- 7.3. Concerning the parts especially marked in the technical documentation or designated by separate agreement, for instance with " D", the Supplier is, moreover, required to keep special records as to when, in what manner and by whom the supplied Goods have been tested with regard to the characteristics required to be recorded and which results were achieved by the quality tests so required. The test records have to be kept for ten years and have to be presented to the Purchaser in case of need. The Supplier is required to obligate any sub-suppliers to the same extent if legally possible.
- 7.4. In the event any authorities responsible for vehicle safety, emissions standards and the like, demand inspection of the manufacturing process and disclosure of the test records of the Purchaser, to scrutinize certain requirements, the Supplier shall, upon request of the Purchaser, concede to such authorities the rights which they have with regard to the Purchaser and provide them with the support which may reasonably be expected.
- 7.5. Supplier will permit Purchaser and its representatives and consultants to enter Supplier'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 Supplier's performance under this Contract. Supplier agrees that if Supplier experiences any delivery, quality or operational problems, including late deliveries or delivery of non-conforming Goods, Supplier will permit Purchaser's designated representative to be present in Supplier's facility to observe Supplier's operations until such problems have been resolved to Purchaser's reasonable satisfaction. Supplier will ensure that Purchaser and its representatives and consultants have the same inspection rights with respect to Supplier's suppliers. No inspection by Purchaser will constitute acceptance by Purchaser of any work-in- process or finished Goods.



## **VIII. INGREDIENTS AND HAZARDOUS MATERIALS**

- 8.1. If Purchaser requests, Supplier will promptly furnish to Purchaser, in such form and detail as Purchaser directs: (a) a list of all ingredients in the Goods, (b) the amount of all ingredients, and (c) information concerning any changes in or additions to the ingredients and the origin of the Products and all ingredients that are incorporated in the Products. Prior to, and together with, the shipment of the Goods, Supplier will furnish to Purchaser 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 Goods, together with all special handling instructions, safety measures and precautions as may be necessary to comply with applicable law, to inform Purchaser and all carriers of any applicable legal requirements and to best allow Purchaser and all carriers to prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the Goods, containers and packing.

## **IX. Warranty**

- 9.1. Supplier warrants and guarantees to Purchaser, its successors, assigns and customers that the Goods covered by this Contract will: (a) conform to the then current release/revision level (based on the date Purchaser's release is issued to Supplier) of Purchaser's applicable specifications and drawings, (b) conform to all samples, descriptions, performance requirements, brochures and manuals furnished by Supplier or Purchaser, (c) be merchantable, (d) be of good material and workmanship, (e) be free from defect, (f) be fit and sufficient for the particular purposes intended by Purchaser and any customer of Purchaser, and (g) comply with all guidelines, standards and agreements incorporated and made a part of this Contract. Supplier further warrants and guarantees to Purchaser, its successors, assigns and customers, that Supplier will, at the time of delivery, convey to Purchaser good title for all Goods covered by the Contract, free and clear of all liens, claims or other encumbrances. If requested by Purchaser, Supplier will enter into a separate agreement for the administration or processing of warranty chargebacks for non-conforming Goods.
- 9.2. In the case of Goods supplied for use as, or incorporation into, parts, components or systems for automotive vehicles or other finished products, the period for each of the foregoing warranties will commence upon delivery of the Goods to Purchaser and, except as provided otherwise in the General Terms and Conditions or as otherwise expressly agreed in writing by the Purchaser, end on the expiration date of the warranty Purchaser's customer grants to its end consumer for the vehicle or other finished product on which such parts, components or systems are installed but not more than 15 years from its commencement. In the case of Goods 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 Purchaser.
- 9.3. Notwithstanding the expiration of the warranty period, Purchaser and/or the manufacturer of the vehicles (or other finished product) on which the Goods, or any parts, components or systems incorporating the Goods, are installed, voluntarily or pursuant to a government mandate, makes an offer to owners of such vehicles to provide remedial action to address a defect that relates to motor vehicle safety or the failure of the vehicle to comply with any applicable law, safety standard or guideline (a "recall"), Supplier will nonetheless be liable for costs and damages associated with the conduct of such recall to the extent that such recall is based upon a reasonable determination (including by use of statistical analysis or other sampling methodology) that the Goods fail to conform to the warranties set forth in this Contract.

- 9.4. If any Goods are reasonably determined (including by use of statistical analysis or other sampling methodology) to fail to conform to the warranties set forth in this Contract, Supplier will reimburse Purchaser for all losses, costs and damages caused by such non-conforming Goods. Such costs and damages may include costs, expenses and losses of Purchaser and/or its customers arising from: (a) inspection, sorting, repair or replacement of any non-conforming Goods or any system or component that incorporates such non-conforming Goods, (b) production interruptions or slowdowns, (c) removal of vehicles or component systems from the manufacturing or assembly process, (d) field service campaigns and other corrective service actions, including the amounts paid to distributors and/or dealers for materials and replacement parts (including reasonable markup to recover administrative costs or other capital expenses) and the labor costs to perform such work, and (e) payments made to Purchaser's customers under any applicable warranty programs or policies.
- 9.5. Supplier's warranties under are intended to protect Purchaser from any and all warranty claims brought against Purchaser by Purchaser's customers relating in any manner to the Goods. Purchaser will have the right to fully defend any claims from its customers that any Goods supplied by Supplier are defective, in breach of warranty, or otherwise did not meet applicable legal or contractual requirements, and all statements by Purchaser to its customers regarding the Goods are without prejudice to any rights Purchaser may have against Supplier with respect to the Goods. Supplier waives the right to argue that any position taken by Purchaser with its customers in response to its customers' claims in any way limits Purchaser's right to assert a claim against Supplier for breach of warranty, contribution, indemnification or any other claim that may arise from or be related to the subject matter of any of the foregoing. If Supplier wishes to participate in any negotiations with Purchaser's customers regarding any Goods supplied by Supplier under this Contract or any related claim or litigation regarding such Goods, Supplier will, promptly after being made aware of any alleged failure of such Goods to conform to the warranties set forth in this Contract, provide Purchaser with written notice of Supplier's request to participate. Supplier acknowledges that Supplier's participation in any negotiations with Purchaser's customers is solely at Purchaser's discretion and nothing in this Contract grants Supplier the right to participate in such negotiations

## **X. Liability**

- 10.1. Insofar as these conditions do not provide for other liability clauses, the Supplier shall be liable for damage directly or indirectly caused to the Purchaser as a result of delay, defective supply, violation of official safety regulations or for any other legal reason, attributable to the Supplier.
- 10.2. As far as he is legally bound the Supplier shall be liable for compensation with regard to actions which the Purchaser undertakes to avoid any damage (for instance recall actions).
- 10.3. The failure of either party at any time to require performance by the other party of any provision of this 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 this 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 of such right nor will any single or partial exercise of any right preclude other or further exercise of such right. No course of dealing or course of performance may be used to evidence a waiver or limitation of Supplier's obligations under this Contract.



## **XI. Identification**

- 11.1. Supplier will defend, hold harmless and indemnify Purchaser, Purchaser's affiliates, Purchaser's customers, and their respective successors, assigns, directors, officers, employees and agents (collectively, "Purchaser Indemnified Parties") from and against any and all lawsuits, actions, claims, demands, judgments, fines, costs (including attorney and other professional fees and disbursements), expenses, losses, liabilities and damages, including any special, incidental, consequential, punitive and exemplary damages (collectively, "Damages") that any Purchaser Indemnified Party may suffer or sustain or be in any way subjected to on account of: (a) Supplier's failure to perform its obligations under this Contract or applicable law, including claims based on Supplier's breach of warranty (whether or not the Goods have been incorporated into Purchaser's products and/or resold by Purchaser and regardless of whether such Damages arise under tort, negligence, contract, warranty, strict liability or any other legal theories); (b) infringement or alleged infringement (including patent, trademark, copyright, moral, industrial design or other proprietary rights, or misuse or misappropriation of trade secret) relating to the Goods covered by this Contract, including any claims in circumstances where Supplier has provided only part of the Goods (Supplier waives any claim against Purchaser that any such infringement arose out of compliance with Purchaser's specifications); (c) the performance of any service or work by Supplier or its employees, agents, representatives and subcontractors on Purchaser's or Purchaser's customer's premises or the use of the property of Purchaser or any customer of Purchaser, except to the extent such liability arises out of the gross negligence or willful misconduct of Purchaser or Purchaser's customer; and (d) any third party claims or demands to recover for personal injury or death, property damage or economic loss caused by any of the Goods supplied by Supplier (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 exclusively from Purchaser's specifications as to design or materials or from alteration or improper repair, maintenance or installation by any party other than Supplier. The contracting parties commit themselves to inform each other on all risks of violation or alleged violations and to give each other the opportunity to jointly oppose such claims.

## **XII. Compliance with laws and anti-corruption**

- 12.1. Supplier, its Suppliers and subcontractors, and any Goods supplied by Supplier, 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, including those relating to environmental matters, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety. Neither Supplier nor any of its Suppliers or subcontractors will: (a) utilize child (including as prohibited by International Labor Organization Conventions No. 138 and No. 182), slave, prisoner or any other form of forced or involuntary labor or engage in abusive employment in the supply of Goods under this Contract; or (b) engage in corrupt business practices in the supply of Goods under this Contract. Supplier agrees to comply and will ensure that its Suppliers, subcontractors, employees and agents comply, with all applicable anti-corruption laws, and that neither it nor any of its Suppliers, subcontractors or agents will directly or indirectly provide or offer to provide, anything of value to or for the benefit of, any official or employee of a governmental authority to obtain or retain any contract, business opportunity or other benefit, or to influence any act or decision of that person in his/her official capacity. Upon Purchaser's request, Supplier will certify in writing compliance with this Section XII and will provide Purchaser with whatever information or documentation is necessary for Purchaser to comply with applicable laws. Furthermore, Purchaser, at its expense and in addition to any other rights available to Purchaser under

this Contract or otherwise, has the right to audit Supplier's compliance with this Section XII, including the right to audit and review Supplier's and its sub-suppliers' and subcontractors' facilities and all relevant books, records, guidelines, practices and procedures of such parties. Supplier's violation of applicable anti-corruption laws in relation to this Contract, as determined by (i) Purchaser in its reasonable discretion, or (ii) an official determination of Supplier's breach of anti-corruption laws, as reflected in judgments or agreements between government enforcement agencies and Supplier, will entitle Purchaser to terminate this Contract for Supplier's breach in accordance with the provisions of this Section XII.

### **XIII. Data protection**

- 13.1. If the Supplier gains access to personal data during the contractual performance, the Supplier shall be obliged to comply with personal data protection legislation applicable for the Purchaser's country of residence, in particular to obtain, process and/or use personal data solely for the purposes of its contractual performance, to require its employees to protect personal data and instruct them on personal data protection legislation to be complied with. In particular the Supplier shall be obliged to comply with the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

### **XIV. Termination for breach and termination for convenience**

- 14.1. In addition to any other rights of Purchaser under this Contract or otherwise, Purchaser may immediately terminate all or any part of this Contract without any liability to Supplier or obligation to purchase raw materials, work-in-process or finished Goods, if Supplier: (a) repudiates, breaches, or threatens to breach any of the terms of this Contract, including Supplier's warranties, (b) fails to perform or threatens not to perform services or deliver Goods in accordance with this Contract, or (c) fails to assure timely and proper completion of services or delivery of Goods.
- 14.2. In addition to any other rights of Purchaser to terminate this Contract, Purchaser may immediately terminate all or any part (e.g., one or more individual part numbers or a portion of Purchaser's requirements if this is a requirements contract) of this Contract, at any time and for any reason, by notifying Supplier in writing. Upon such termination and subject to the terms of this section, Purchaser will purchase from Supplier all raw materials, work-in-process and finished Goods inventory related to the Goods under this Contract which are useable and in a merchantable condition as of the termination date. The purchase price for such finished Goods, raw materials and work-in- process, and Supplier's sole and exclusive recovery from Purchaser (without regard to the legal theory which is the basis for any claim by Supplier) on account of such termination, will be: (a) the contract price for all Goods that have been completed in accordance with this Contract as of the termination date, plus (b) the actual costs of work-in-process and raw materials incurred by Supplier in furnishing the Goods under this Contract to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting principles to the terminated portion of this Contract less (c) the reasonable value or cost (whichever is higher) of any Goods or materials used or sold by Supplier with Purchaser's written consent. In no event will Purchaser be required to pay for finished Goods, work-in-process or raw materials which Supplier fabricates or procures in amounts that exceed those Purchaser has authorized in delivery or release schedules outstanding at the date of termination nor will Purchaser be required to pay for any Goods or materials that are in Supplier's standard stock or that are readily marketable. Payments made under this Section will not exceed the aggregate price for finished Goods that would be produced by Supplier under delivery or release schedules outstanding



at the date of termination. Within sixty (60) days after the effective date of termination, Supplier will submit a comprehensive termination claim to Purchaser, with sufficient supporting data to permit an audit by Purchaser, and will thereafter promptly furnish any supplemental and supporting information Purchaser requests.

#### **XV. Governing Law and Jurisdiction**

- 15.1. This Contract is to be construed according to the laws of the country (and state or province, if applicable) where Purchaser is incorporated or organized, 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 Purchaser against Supplier arising out of, or in connection with, this Contract may be brought by Purchaser in any court(s) having jurisdiction over Supplier or, at Purchaser's sole option, in any court(s): (i) having jurisdiction over the Purchaser's receiving location (as shown by the ship to or receiving address of Purchaser), or (ii) in the jurisdiction where Purchaser is incorporated or organized; in which event Supplier consents to each such jurisdiction and venue, including service of process in accordance with applicable procedures; and (c) any legal or equitable actions or proceedings by Supplier against Purchaser arising out of, or in connection with, this Contract may be brought by Supplier only in the court(s) having jurisdiction over the Purchaser's receiving location.

#### **XVI. General Provisions**

- 16.1. Supplier and Purchaser are independent contracting parties. Nothing in this 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.
- 16.2. This Contract, together with the attachments, exhibits, supplements or other terms of Purchaser specifically referenced in this Contract, constitutes the entire agreement between Supplier and Purchaser with respect to the matters contained in this Contract and supersedes all prior oral or written representations and agreements. This Contract may only be modified by a written contract amendment. Notwithstanding anything to the contrary contained in this Contract, Purchaser explicitly reserves, and this Contract will not constitute a waiver or release of, any rights and claims against Supplier arising out of, or relating to, any fraud or duress in connection with the formation or modification of this Contract or any breach or anticipatory breach of any previously existing contract between Purchaser and Supplier (whether or not such previously existing contract related to the same or similar Goods or subject matter as this Contract). All payments by Purchaser to Supplier under this Contract are without prejudice to Purchaser's claims, rights, or remedies.
- 16.3. All documents that comprise this Contract will be construed, to the extent possible, as consistent and as cumulative; provided, however, that if such construction is unreasonable, then the terms of any purchase or supply agreement signed by Purchaser will control, followed by the terms of the applicable purchase order, followed by these General Terms and Conditions.
- 16.4. Should any provisions of this Contract be or become 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. The remaining provisions of this Contract will remain in full force and effect. The contracting parties are committed to replace the invalid provision by another - with respect to the commercial effect equivalent provision, in so far as this is possible.
- 16.5. All notices, claims and other communications required or permitted to be made by Supplier to Purchaser under this Contract will be made in writing and sent by: (a) first class mail, (b) nationally



recognized overnight courier service, or (c) facsimile, to the purchasing contact for Purchaser and at the address designated on the face of the purchase order or at such other address as Purchaser may communicate to Supplier in writing. Notices using method (a) or (b) will be effective as of the date of receipt. Notices using method (c) will be effective as of the date of confirmation of receipt. Any notice required to be made by Purchaser to Supplier under this Contract may be made to Supplier by any of the foregoing means of transmission at any Supplier address on the face of the purchase order, including Supplier's shipping address.

- 16.6. The obligations under this Contract will survive expiration or termination of this Contract except as otherwise expressly provided in this Contract.
- 16.7. Purchaser may provide various translated versions of these General Terms and Conditions for informational purposes only. However, the original English language version of these General Terms and Conditions will apply in the event of any disagreement over the meaning or construction of any provisions of these General Terms and Conditions.