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**USE AND PURPOSE OF**

**OESA MODEL GENERAL TERMS AND CONDITIONS**

These Model General Terms and Conditions (“Model Terms” or “GTC”) were designed for use in connection with the purchase and sale of automotive original equipment parts. OESA developed the Model Terms to promote a more collaborative approach to seller-customer relationships. The goal is to increase cooperation, communication, and trust between buyers and sellers, eliminate ambiguities in responsibilities, reduce transaction costs, increase certainty, and ultimately increase the industry’s competitiveness. The Model Terms should serve as a reference guide and educational tool for buyers and sellers, and are intended to help form the basis for fair and balanced contracts.

USE OF THE MODEL TERMS IS ENTIRELY VOLUNTARY. Price and other terms of sale are determined by the buyer and seller in every transaction, and the Model Terms are not intended to affect that negotiating process. Buyers and sellers are always free to negotiate whatever terms or conditions they believe appropriate in the specific situation. Each buyer and seller should independently decide whether the Model Terms are appropriate for the company or transaction. Under no circumstances should buyers or sellers discuss with their competitors the specific terms and conditions they should adopt in particular negotiations, or agree collectively not to deal with a company refusing to adhere to the recommendations in this document or any other particular terms and conditions. These terms are not intended to provide legal advice.

These Model Terms attempt to follow a more balanced approach to buyer-seller relations than many of the forms currently in use in the automotive industry, both at the OEM and tiered buyer levels. The drafters considered the interests and needs of both buyers and sellers and attempted to apply basic concepts of fairness and good faith dealing to navigate a course between the two. Where both parties had competing legitimate interests or needs, the drafters selected the approach that appeared to represent the greater interest or need.

There is, of course, no one "correct" approach that fits all situations and individuals may disagree about what constitutes "fairness" and "good faith.” However, most would agree that the forms currently in use in the automotive industry are neither fair nor balanced. Rather they reflect the ability of the party with superior bargaining power, typically the buyer, to impose terms and conditions that provide maximum protection for that party and little or no protection for the other party. OESA believes that a more collaborative approach between buyers and sellers will pay long-term dividends to all parties in a global economy, and that a more balanced approach to contract terms and conditions is an important step in that direction.

**GENERAL TERMS AND CONDITIONS**

# Scope.

These General Terms and Conditions (“GTC”) will apply to all goods and services (collectively “Supplies”) that Buyer purchases from Seller. The Supplies, the Buyer and the Seller are identified on the face of the Purchase Order into which these GTC are incorporated. “Purchase Order” includes documents titled “Purchase Order,” “Scheduling Agreement” or any other document, however titled, that performs the same function. The Buyer and Seller are sometimes identified separately as a “Party” and collectively as the “Parties.”

# The Contract.

## Contract.

 The “Contract” is exclusively comprised of the Purchase Order, together with any associated Releases, these GTC, the applicable specifications, and any other documents specifically incorporated into any of them or separately agreed to in writing by the Parties, such as policies. Buyer’s request for quotation and Seller’s quotation are not included in the Contract unless specifically incorporated in the Contract and then only to the extent specified.

## Offer and Acceptance.

 Each Purchase Order is Buyer’s offer to purchase the Supplies on the terms of the Contract. The Contract is formed upon acceptance of the offer by Seller, which occurs if: (1) Seller accepts the Contract in writing; or (2) Seller fails to object or to propose alternate or additional terms in writing within 10 business days after receipt. If Seller timely objects to a Purchase Order or proposes alternate or additional terms, a Contract is formed only if and when Buyer and Seller mutually agree in writing as to the Contract terms, except that if Seller has commenced delivery of the Supplies, a contract will be formed in accordance with the provisions of Section 2-207 of the Uniform Commercial Code.

## Entire Agreement.

 The Contract constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior oral or written representations or agreements by the Parties with respect to the subject matter of the Contract.

## Changes to the Supplies.

 Buyer may from time to time by notice to Seller make reasonable changes to the drawings, specifications, materials, manufacturing processes or location, packaging or testing of the Supplies (collectively “Buyer Change”). At Seller’s request and with with reasonable supporting documentation, the Contract Price, as defined in Section 6, and times for performance will be equitably adjusted (up or down) to reflect the impact of the Buyer Change. The Parties will engage in good-faith negotiations to agree on an equitable adjustment, but failure to agree will not defeat the right to an equitable adjustment, nor will it prevent prompt implementation of the Buyer Change. Seller may not make a change to the Supplies without Buyer’s written consent, but Buyer will not unreasonably withhold or delay consent to changes proposed by Seller. If a Buyer Change or approved change proposed by Seller makes any Supplies, work in progress or components or materials obsolete, then Buyer will compensate Seller (i) for the Supplies at the Contract Price, as defined in Section 6; (ii) for the components or materials at their acquisition cost; and (iii) for work in progress at an equitable price, provided that the quantities of Supplies, work in progress and/or components or materials are reasonable in amount under the circumstances.

## Other Changes Prohibited.

 Except for the changes described in Section 2.4, neither Party may make any changes to the Supplies, the manufacturing processes or location, or the Contract (including to the GTC) without the signed written agreement of each Party.

# Supplies.

## Quantities.

 Unless a fixed quantity is specified in the Purchase Order or elsewhere in the Contract, the Contract is a requirements contract, and Buyer will purchase and Seller will sell 100% of Buyer’s requirements for the Supplies (or a specific percentage of requirements specified in the Contract.).

## Releases.

 Unless otherwise stated in the Contract, Buyer will communicate its delivery date and quantity requirements to Seller through periodic written “Releases.” Releases specify the firm quantities and delivery dates for the first four weeks of the Release schedule. Seller will deliver the Supplies in accordance with the Releases, of which the delivery dates and quantities therein will be reasonably determined by Buyer. Whether Releases are “reasonably determined” will take into account, without limitation: (i) any capacity limitations specified in the Contract or otherwise agreed to by Buyer and Seller in writing; and (ii) unusual volume or timing fluctuations that are inconsistent with customary lead time requirements or any lead time requirements specified in the Contract or otherwise agreed to by Buyer and Seller in writing. However, in all events, Seller will use best efforts to meet Buyer’s Releases, provided that Buyer will equitably compensate Seller for expenses arising out of an unreasonable Release, such as overtime or expedited shipping. For clarity, (i) once the Contract is formed in accordance with Section 2.2, a Release may not be rejected, and (ii) if Seller is unable to fully satisfy a Release that is not reasonably determined despite best efforts, it shall nevertheless deliver the portion of the released quantity that is reasonably achievable.

## Inputs

. Seller is responsible for obtaining and maintaining at its expense all materials, components, inventories, and other resources (“Inputs”) reasonably necessary to meet Buyer’s Releases.

## Forecasts

. Buyer or its Customer may provide Seller with forecasts or estimates of delivery times and quantities, estimated program length or similar information for periods beyond the firm Release period, whether in Releases or other documents. All such information constitutes estimates provided for planning purposes only, is subject to change from time to time, and will not be binding upon Buyer or Seller.

## Service Parts

### Current-Model Service Requirements.

 During the vehicle production period (*i.e.*, the period in which the vehicle in which the Supplies are used is in serial production), Seller will make Supplies available to Buyer for Buyer’s current-model service requirements at the then-current production prices under the Contract, plus any additional costs for special packaging, shipping, handling, and other expenses specific to service parts. If only components of the Supplies are ordered for service purposes, the price shall be equitably determined by the Parties.

### Past-Model Service Requirements.

 After the vehicle production period, Seller will make Supplies available to Buyer for Buyer’s past-model service requirements for a period of 10 years. The price will be the production price at the end of the vehicle production period plus any additional costs for special packaging, shipping, handling, and other expenses specific to service parts, which price will further be equitably adjusted annually based on the cost of materials and labor. If only components of the Supplies are ordered for service purposes, the price shall be equitably determined by the Parties.

### Effect of Termination.

 Seller’s obligations under Section 3.5 will survive termination, except that the obligations will terminate if the Contract is terminated by Buyer pursuant to Section 15.2 or Seller pursuant to Section 15.3.

# Packing and Shipping.

## Packing.

 Seller will comply with Buyer’s reasonable instructions regarding the method of packing, transporting, storing and labelling, as well as associated documentation requirements. If Buyer has not provided such instructions, Seller will pack and ship Supplies in accordance with sound commercial practices. If Seller is required to use Buyer’s returnable packaging, Seller will be responsible for cleaning and returning the returnable packaging. Buyer will be responsible for replacement of returnable packaging, unless due to Seller’s neglect. If returnable packaging is not available, Seller may use expendable packaging, and Buyer will reimburse Seller for the reasonable costs of expendable packaging, unless Seller is responsible for the unavailability of returnable packaging.

## Shipping.

 Unless otherwise stated in the Contract, Supplies will be delivered FCA (Incoterms 2020), and title will transfer upon receipt of the Supplies by the freight carrier. If Supplies are not ready for delivery in time to meet Buyer’s Releases, the Party causing the delay will be responsible for additional costs of any resulting expedited or other special transportation.

# Inspection.

Buyer may, upon reasonable advance notice to Seller and in compliance with Seller’s reasonable restrictions or conditions regarding safety and confidentiality, inspect production processes and Property (as defined in Section 12) and, subject to Seller’s prior written approval, conduct testing at Seller’s premises for the sole purpose of verifying Seller’s performance under the Contract. Buyer is not required to inspect Supplies, and no inspection or failure to inspect will reduce or alter Seller’s obligations under the Contract.

# Price.

## Contract Price.

 “Contract Price” means the unit price stated in the Purchase Order, as it may be adjusted only in accordance with: (i) any provision of the Purchase Order, such as agreed raw material or currency indexing; (ii) a Contract modification consistent with Section 2.5; (iii) Sections 2.4 or 15; or (iv) Section 6.2. Unless otherwise stated in the Contract, the Contract Price includes all applicable federal, state, provincial, and local taxes and duties 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 pay or collect from Buyer.

## Equitable Adjustment.

 Notwithstanding Section 6.1, upon Seller’s showing of severe and sustained increased production costs caused by reasons outside of Seller’s control, the Parties shall engage in good-faith negotiations regarding an equitable pricing adjustment. Good-faith negotiations shall consider, without limitation, the extent by which the amount of the increase exceeds historical fluctuations, the expected duration of the increase in production costs, and the commercial likelihood that Buyer will be able to pass on any increase in the Contract Price.

# Payment.

Payment terms are as set forth in the Contract or, if not stated, 45 days net. Seller will promptly submit correct and complete invoices or other agreed billing communications with appropriate supporting documentation and other information reasonably required by Buyer after delivery of Supplies, and Buyer may withhold payment until a correct and complete invoice or other required information is received and verified. Buyer will pay Seller in the currency specified in the Contract or, if none is specified, in U.S. Dollars. Buyer may set off or deduct from sums owed to Seller under the Contract those sums owed by Seller to Buyer and agreed to in writing between the Parties prior to setoff or upon final determination. Unless Seller consents in writing, Buyer may not set off or deduct amounts owed to Buyer by Seller’s affiliates or others who are not parties to the Contract.

# Warranties.

## Seller’s Warranties.

 During the warranty period, Seller warrants to Buyer that, on delivery, the Supplies will: (i) be free from defects in workmanship and materials; (ii) conform to the specifications, drawings, samples, and performance requirements specifically incorporated in the Contract; and (iii) conform to applicable Laws, as defined in Section 10. Unless otherwise specified in the Contract, the warranty period is the period for which the automobile manufacturer warrants the Supplies to end users or, if the Supplies are not warranted to end-users, thirty-six months from delivery of the Supplies. Seller also warrants to Buyer that it will transfer to Buyer ownership and good title to the delivered Supplies. Unless otherwise specifically stated in the Contract, Seller does not warrant the design of the Supplies.

THE FOREGOING WARRANTIES ARE THE SOLE WARRANTIES, AND ALL OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, ARISING BY LAW OR CUSTOM, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED.

## Non-Conforming Supplies.

 Subject to Sections 8.3 and 9 and the following sentence of this Section 8.2, Buyer’s sole remedy for Supplies that do not conform to the warranties in Section 8.1 will be to (i) reject the non-conforming Supplies; (ii) require Seller, at Seller’s option and expense (including applicable shipping costs necessary to meet delivery schedules and avoid interruption), to either repair or replace the non-conforming Supplies; and (iii) if repair or replacement is infeasible, require Seller to refund or credit the purchase price. In addition, Buyer may: (i) require Seller to implement at Seller’s expense containment, inspection, sorting, and other quality assurance procedures if Buyer reasonably determines (through statistical sampling or other quality assessments) that a substantial quantity of incoming Supplies do not conform to the warranties in Section 8.1; and (ii) require Seller to reimburse Buyer for any reasonable, direct costs incurred in the repair or replacement of defective Supplies that had been installed during production of a new vehicle or other product. To the full extent possible, Buyer will provide Seller with access to any available warranty data and other information related to the non-conforming Supplies and any available field-returned Supplies. Buyer will also provide Seller with an opportunity to participate in any root-cause analysis performed by Buyer concerning the Supplies. Each Party will provide prompt notice to the other as soon as possible after it determines that a material non-conformity exists.

## Recalls.

 This Section 8.3 applies to any voluntary or government-mandated offer by Buyer (or the vehicle manufacturer) to vehicle purchasers to remedy a defect (a “Recall”). Seller will be liable for costs and damages resulting from a Recall only if the Recall results in whole or in part from a failure of the Supplies to conform to the warranties in Section 8.1 during the warranty period specified in the Contract. If Seller is liable for a Recall, the extent of Seller’s liability will be negotiated on a case-by-case basis based on: (i) a good-faith allocation of responsibility for the defect or non-compliance that resulted in the Recall; (ii) the reasonableness of the costs and damages incurred; (ii) the quantity purchased and Contract Price of the affected Supplies; and (iv) other relevant factors. As a condition precedent to Seller’s liability under this Section 8.3, Buyer must (i) notify Seller as soon as practicable after Buyer learns that a Recall being considered implicates the Supplies; (ii) provide Seller with available warranty data, customer complaints, performance evaluations, accident reports, engineering investigations, communications with governmental agencies, including NHTSA, and other data relating to the potential Recall; (iii) provide Seller a reasonable opportunity to participate in inquiries and discussions among Buyer, its customer, and governmental agencies regarding the need for and scope of the Recall; and (iv) consult with Seller about the most cost-effective method of remedying the alleged defect or non-compliance.

# Indemnification.

## Indemnification.

 Seller will indemnify and defend Buyer against third-party claims or demands (“Claims”) for injury or death to persons, property damage, economic loss, and any resulting damages, losses, costs, and expenses (including reasonable legal fees) (collectively, “Loss”), regardless of whether the claim or demand arises under tort, contract, strict liability, or other legal theories, if caused by (i) Seller’s delivery of non-conforming Supplies and (ii) with respect to Claims unrelated to the performance of the Supplies, Seller’s negligent acts or omissions in its performance under the Contract. However, if Buyer or other parties materially contributed to the Loss, responsibility for the Loss will be equitably allocated based on relative fault. This Section 9.1 will not apply to the extent that the injury, loss, or damage results from: (i) Buyer’s design of the Supplies; (ii) any alteration or improper repair, storage, maintenance, handling, or installation of the Supplies; or (iii) the integration or interaction of the Supplies with systems or components not supplied by Seller. Indemnification under this Section 9.1, Section 11.7 and Section 12.1 are the sole indemnity rights, express or implied, under or arising out of the Contract.

## Procedure.

 Buyer will notify Seller promptly after Buyer becomes aware of the basis for a Claim under this Section 9 or under Section 11.7. The Parties will cooperate with each other to determine the root cause of a defect in or failure of the Supplies (and related systems and components) and an equitable allocation of responsibility among all responsible parties. Seller may examine and test all available Supplies and related systems and components that are subject to a third-party Claim. Buyer will endeavor to include Seller in settlement discussions where indemnity has been or will be sought from Seller, and Buyer may not settle or compromise any third-party Claim that gives rise to an indemnification claim without Seller’s prior written consent, which will not be unreasonably withheld or delayed.

# Compliance with Laws.

Seller will comply with applicable laws, ordinances, rules and regulations (“Laws”) of the United States, Canada, Mexico and any other country in which the Supplies are manufactured or delivered (as well any of their respective states, provinces or other political subdivisions). Each of the Parties will supply the other Party with all certifications and information reasonably requested by the other to assist the requesting Party in complying with its obligations under any Laws.

# Intellectual Property Rights.

## Definitions

.

### “Intellectual Property Right” means any patent, trade secret, trademark, service mark, copyright, mask work, or other intellectual property right.

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

### “Foreground Intellectual Property Rights” means any Intellectual Property Rights, except Background Intellectual Property Rights that are developed in connection with this Contract.

## Background Intellectual Property

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

## Foreground Intellectual Property

. Buyer and Seller will each retain ownership of any Foreground Intellectual Property Rights that are solely created or made by their respective employees, agents or subcontractors (“Personnel”) without material assistance of the other Party. Foreground Intellectual Property Rights that are created with material assistance of both Parties will be jointly owned, and Buyer and Seller will each have the ability to grant licenses without consultation and without any duty of accounting to each other for any use or purpose. For clarity, unless an express written period of exclusivity has been promised to Buyer, Foreground Intellectual Property Rights owned or controlled by Seller may be immediately exploited by Seller in connection with Seller’s business with Seller’s other customers and will not be exclusive to Seller's performance of the Contract.

## Seller’s License Rights

. Buyer grants to Seller a license to use Buyer’s Background Intellectual Property and Buyer’s Foreground Intellectual Property (except for jointly owned Foreground Intellectual Property) solely in connection with the performance of Seller’s obligations under the Contract. For clarity, Supplies manufactured based on Buyer’s drawings, designs, and/or specifications as well as any software code or models provided by Buyer may not be used for Seller’s own use or sold to third parties without Buyer’s express written authorization.

## Seller’s Intellectual Property.

 Except as stated in this Section 11, Seller does not transfer to Buyer any Intellectual Property Right of Seller related to the Supplies or incorporated in Buyer’s Property, other than the right to incorporate Supplies purchased from Seller in vehicles and component parts and to sell those vehicles and component parts to the public. If the Contract is terminated by Seller or Buyer pursuant to Section 15.2 or 15.3, Seller grants to Buyer a non-exclusive right and license to use Seller’s Intellectual Property Rights during the Contract term that would have applied had the Contract not been earlier terminated and, to obtain from alternate sources products and services similar to the Supplies for use only in vehicles or component parts covered by the terminated Contract. There will be no fee for this license if (i) Buyer terminates the Contract for Seller’s Default; or (ii) Seller terminates the Contract for convenience pursuant to Section 15.2.1. Otherwise, the Parties will negotiate a reasonable fee for use of Seller’s Intellectual Property Rights.

## Buyer’s License Rights.

 Seller grants to Buyer the right to use Seller’s Background Intellectual Property and Seller’s Foreground Intellectual Property (except for jointly owned Foreground Intellectual Property) to make, have made, use, reproduce, modify, improve, prepare derivative works of, distribute, display, perform, offer to sell, sell and import the goods or services that are the subject of this Contract (the “Limited License”), provided that Buyer or its affiliates will only use this Limited License in the event that (i) Seller breaches or repudiates its obligations by being unable or unwilling to deliver goods or services under this Contract; or (ii) in the event Seller is unable to supply goods or services under this Contract as a result of an Excusable Event as described in Section 19, but in such event only for the duration of Seller’s inability to supply. In no event will the term of the Limited License extend beyond the expiration date of this Contract.

## Infringement.

 Subject to the following paragraph, Seller will indemnify and defend Buyer and its customers against third-party claims, liabilities, losses, damages, costs, and expenses, including reasonable legal fees, arising out of the actual or alleged infringement by the Supplies of a third-party Intellectual Property Right (i) in the United States, the United Kingdom, the European Union, or Japan; and (ii) in another jurisdiction if Seller is aware of the actual or alleged infringement in that other jurisdiction at the time the Purchase Order is issued and fails to disclose it to Buyer within 10 days after accepting the Purchase Order. If a claim under this Section 11.7 results, or is likely to result, in an injunction or other order that would prevent Seller from supplying or Buyer from using Supplies for their intended purpose, Seller will, at its option and expense, either (i) secure a license of the Intellectual Property Right that permits Seller to continue supplying the Supplies to Buyer; or (ii) modify the Supplies so that they become non-infringing, so long as the modification does not materially alter the operation or performance of the Supplies, or (iii) replace the Supplies with a non-infringing but practically equivalent alternative. However, Seller will have no liability under this Section 11.7 if (i) Buyer fails to provide Seller with reasonable information, cooperation, and assistance regarding, and authority to defend, a claim, or (ii) a claim of infringement is based on (A) a modification to the Supplies made by Buyer or a third party or at Buyer’s request, (B) use or interconnection by Buyer of the Supplies in combination with other products not made or sourced by Seller, or (C) Supplies made to designs or specifications not provided by Seller.

## Copyright.

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

# Buyer’s Property.

##  Definition.

 Buyer will own the tooling, jigs, dies, gauges, fixtures, molds, patterns, supplies, materials, and other equipment and property used by Seller to manufacture, store, and transport Supplies (“Property”) if (i) Buyer or its customer has provided the Property; or (ii) Buyer or its customer has fully paid for the Property (in either case, “Buyer’s Property”). Seller will not purchase any Property for the account of Buyer or charge Buyer for any Property except as authorized in writing by Buyer. Seller will assign to Buyer contract rights or claims in which Seller has an interest with respect to Buyer’s Property and execute bills of sale, financing statements, or other documents reasonably requested by Buyer to evidence its or its customer’s ownership of Buyer’s Property. Seller will indemnify and defend Buyer against claims or liens adverse to Buyer’s or its customer’s ownership of Buyer’s Property except those that result from the acts or omissions of Buyer or its customer. Seller will hold Buyer’s Property on a bailment basis and will be responsible for loss or damage to Buyer’s Property while in its possession or control. To the extent permitted by law, Seller waives any lien or similar right it may have with respect to Buyer’s Property. Buyer will be responsible for personal property taxes assessed against Buyer’s Property.

## Maintenance.

 Seller will (i) at its expense, maintain Buyer’s Property in good condition and repair, normal wear and tear excepted, throughout the useful life of Buyer’s Property; (ii) use Buyer’s Property only in connection with its performance under the Contract, unless Buyer otherwise approves in writing; (iii) at Buyer’s request and expense, mark Buyer’s Property as belonging to Buyer or its customer; and (iv) not remove Buyer’s Property (other than shipping containers and the like) from Seller’s premises without Buyer’s written approval. All replacement parts, additions, improvements, and accessories to Buyer’s Property will become part of Buyer’s Property unless they can be removed without damaging Buyer’s Property. If Buyer’s Property exceeds its useful life, as determined based on Buyer’s volume estimates provided at the time the Property was quoted or requires replacement or refurbishment due to normal wear and tear, Buyer will be responsible for the cost of refurbishing or replacing Buyer’s Property.

## Payment

. Buyer will pay for Buyer’s Property that Buyer is required to purchase at the amount specified in the Contract or, if no amount is specified in the Contract, at (i) if manufactured by a third party, Seller’s actual cost, including a reasonable markup; or (ii) if manufactured by Seller, Seller’s actual cost of purchased materials, components, and services, plus Seller’s actual cost of labor and overhead allocable to the Buyer’s Property. Unless otherwise stated in the Contract, final payment for Buyer’s Property is due (i) on the PPAP (Production Part Approval Process) approval date; or (ii) within 60 days after the Property is tendered for PPAP approval if no action has then been taken on the request for PPAP approval.

##  Possession

. Subject to Section 12.3, Seller will immediately release to Buyer upon request, and Buyer may retake immediate possession of, Buyer’s Property at any time, with or without cause and without payment of any kind unless otherwise provided in the Contract. Seller will release the requested Buyer’s Property FCA (Incoterms 2020), properly packed and marked in accordance with the requirements of Buyer’s carrier. If the release or recovery of Buyer’s Property or other property renders Seller unable to produce Supplies, the release or recovery will be deemed a termination of the Contract by Buyer for convenience with respect to those Supplies. If Buyer and Seller dispute in good faith whether Buyer’s Property has been paid in full, Seller will release and allow Buyer possession upon payment by Buyer of the undisputed portion of the amount claimed by Seller to be owed. Seller’s relinquishment of possession will not prejudice any claim or right to payment of Seller for the disputed amounts.

##  Failure to Release Buyer’s Property.

 If Seller does not release Buyer’s Property in accordance with Section 12.4, Buyer may, at Seller’s cost, (i) obtain an immediate court order for possession, and (ii) enter Seller’s premises, with or without legal process, and take immediate possession of Buyer’s Property. To the extent permitted by law, Seller waives any right to object to Buyer’s repossession of Buyer’s Property in a bankruptcy or other proceeding.

# Seller’s Property.

Seller will own all Property that is not Buyer’s Property (“Seller’s Property”). Seller will, at its expense, furnish, maintain in good condition, and replace when necessary Seller’s Property needed to perform the Contract. While a Contract for Supplies remains in effect, Buyer may purchase Seller’s Property used exclusively to produce those Supplies and not needed by Seller to produce Supplies or products for other customers, for a purchase price equal to the greater of fair market value or Seller’s unamortized acquisition cost.

# Default.

## Events of Default.

 Either Party will be in “Default” under the Contract if it (i) fails to perform any obligation under the Contract and fails to cure the non-performance within 15 business days after written notice from the other party specifying the non-performance, provided that the cure period can be shortened if necessary to prevent irreparable harm; (ii) admits in writing its inability to pay its debts as they become due, commences a bankruptcy, insolvency, receivership, or similar proceeding, or makes a general assignment for the benefit of creditors; (iii) becomes a debtor in a bankruptcy, insolvency, receivership, or similar proceeding commenced by a third party that is not dismissed within 30 days after commencement; or (iv) fails to provide adequate assurance of performance under the Contract within 5 business days after written demand by the Party having reasonable grounds for insecurity.

## Remedies.

 Except for termination for default pursuant to Section 15.3, Sections 8.2, 8.3 and 9 provide Buyer’s exclusive remedies for claims arising out of non-conforming Supplies, and Section 11.7 provides the exclusive remedies for infringement, regardless of the legal theory under which those claims are asserted. Otherwise, either Party may assert and exercise any right and obtain any remedy available at law or equity.

##  Damages.

 Subject to Section 14.2, either Party may recover from the other Party direct damages caused by the other Party’s breach of the Contract. In all cases, damages under this Section 14.3 will be reasonably determined based on the nature, type, price, and profitability of the Supplies, industry practices, and the overall volume, scope, and profitability of other business relationships between Seller and Buyer. For clarity, if Buyer terminates the Contract pursuant to Section 15.3, Buyer’s direct damages include its reasonable costs actually incurred to relocate the work to an alternate source.

##  Limitation of Damages

. EXCEPT AS OTHERWISE EXPRESSLY AUTHORIZED IN THE CONTRACT, ALL INDIRECT, SPECIAL, CONSEQUENTIAL (INCLUDING LOST PROFITS OR MARKET SHARE OR DAMAGE TO BRAND VALUE), INCIDENTAL, PUNITIVE, AND EXEMPLARY DAMAGES, WHETHER OR NOT FORESEEABLE, ARE EXCLUDED TO THE EXTENT PERMITTED BY APPLICABLE LAW.

# Duration and Termination.

##  Duration.

 The Contract will remain in effect for the Term, unless earlier terminated in accordance with Sections 15.2 or 15.3 “Term” means the time period specified in the Contract or, if the Contract does not specify a term, the period in which the original vehicle program into which the Supplies are incorporated is in production, including any extensions or renewals, provided that at the time of extension or renewal the Contract Price will be adjusted to reflect changes in Seller’s costs.

## Termination for Convenience.

 Buyer may terminate the Contract for convenience on at least 60 days written notice.

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Seller may terminate the Contract for convenience on reasonable written notice based on the time required for a Buyer to diligently transition supply to a successor Seller, but not less than 60 days or more than 360 days. In all cases, Buyer will use its best efforts to promptly transition supply.

## Termination for Default.

 Upon the occurrence of a material uncured Default by a Party, the other Party may terminate the Contract by notice, effective upon the date specified by the terminating Party in writing.

## Seller’s Obligations on Termination

. Following notice of termination, Seller will comply with Buyer’s reasonable instructions to provide Transition Support during the Transition Support Period. “Transition Support Period” means: (i) if termination is by Seller for Default, the date specified by Seller, but not less than thirty days from the termination notice; (ii) otherwise, the period reasonably needed by Buyer to complete an orderly transition to the alternate Seller, but not to exceed 360 days from the termination notice. Unless terminated by Buyer for breach, during the Transition Support Period, the Contract Price will be adjusted to reflect changes in Seller’s costs, subject to reasonable documentation. All amounts due to Seller for Supplies provided during the Transition Support Period shall be invoiced and paid for in accordance with Section 7 during the Transition Support Period. “Transition Support” means that Seller will

15.4.1 at no cost to Buyer, promptly provide reasonable information and documentation, excluding trade secrets and Seller’s Intellectual Property (unless licensed pursuant to Section 11.6).

15.4.2 continue to fill Buyer’s reasonable requirements; and

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15.4.3 use best efforts to provide special overtime production, storage and/or management of extra inventory of Supplies, extraordinary packaging and transportation and other special services as expressly requested by Buyer in writing. Buyer will pay the reasonable, actual cost of the assistance under this Section 15.4, subject to reasonable documentation, and (B) if the Parties disagree on the cost of Transition Support, Buyer will pay the agreed portion to Seller without prejudice to Seller’s right to seek to recover any disputed amounts.

## Buyer’s Obligations on Termination or Expiration

. Following termination or expiration for any reason, Buyer will: (i) purchase from Seller completed Supplies at the Contract Price and merchantable work-in-process, components and materials at Seller’s actual cost, each of which will be owned by Buyer upon payment in full, provided that the quantities of Supplies, work in progress or components or materials are reasonable in amount under the circumstances; (ii) reimburse Seller for the amounts, if any, reasonably paid to third parties by Seller on account of commitments made by Seller; and (iii) pay any amounts owed for Transition Support pursuant to Section 15.4. In addition, if the Contract is terminated by Buyer for convenience or Seller for Default, Buyer will pay to Seller the reasonable cost of unreimbursed and unamortized research and development, capital equipment purchased specifically to perform the terminated Contract, and Property. In all cases, Buyer’s obligations will be subject to documentation of costs reasonably requested by Buyer.

# Information and Data.

## Confidential Information

. “Confidential Information” means trade secrets, specifications, drawings, notes, instructions, engineering data and analyses, compositions of matter, financial data, and other technical and business data which are supplied or disclosed by Buyer or Seller in connection with the Contract, in each case that are marked or otherwise identified as confidential or where their confidential nature is apparent at the time of disclosure. The Party disclosing Confidential Information is referred to herein as the “Disclosing Party,” and the Party receiving Confidential Information is referred to herein as the “Receiving Party.” Confidential Information will be deemed confidential and proprietary to, and remain the sole property of, the Disclosing Party. The Receiving Party may not disclose Confidential Information or use Confidential Information for any purpose other than as contemplated under the Contract without in each case the written consent of the Disclosing Party. Confidential Information will not include information that (i) is or becomes generally available to the public other than as a result of a violation of this Section 16 by the Receiving Party, (ii) was obtained by the Receiving Party on a non-confidential basis from a third party who had the apparent right to disclose it, or (iii) is legally required to be disclosed. Buyer and Seller will each use the same degree of care to safeguard Confidential Information that it uses to protect its own confidential information from unauthorized access or disclosure (but not less than a reasonable degree of care). Upon request by the Disclosing Party, the Receiving Party will promptly return or destroy the original and all copies of Confidential Information received, except that each party may maintain one copy for legal purposes and need not delete or return copies stored through routine backup or archival processes and not accessible in the ordinary course.

## Rights in Data.

 “Buyer Data” means all data and information: (i) provided to Seller by or on behalf of the Buyer or its Affiliates; (ii) obtained, developed or produced by Seller in connection with the Contract; or (iii) to which Seller has access in connection with the provision of the Supplies.  “Affiliates” means an entity that controls, is controlled by or is under common control with Buyer. As between Buyer and Seller, all Buyer Data created, collected, generated, stored, transmitted, or otherwise processed is and will remain the property of Buyer.  Seller will have no rights in or to such Buyer Data except as expressly set forth in the Contract.  Further, Seller agrees that Buyer will own all derivative works of Buyer Data created by Seller but not containing the Seller’s Confidential Information, including, but not limited to reports and analysis tools. Seller has a limited, non-exclusive, non-transferable, and revocable license to access, copy, and use the Buyer Data solely for the performance of the Contract.

# Cybersecurity.

## Enterprise Cybersecurity.

 Seller must: (i) maintain reasonable, risk-based cybersecurity programs, supported by appropriate technical and operational measures including policies and procedures, to protect the confidentiality, integrity, and availability of Confidential Information and Buyer Data, prevent disruption of the production or delivery of Supplies, and respond in a timely and effective manner to any cybersecurity incident that may compromise any Confidential Information and Buyer Data or disrupt production or delivery of Supplies; (ii) promptly, but no less than 48 hours subsequent to Seller’s first knowledge of the incident, notify Buyer of any attempted or actual unauthorized possession, access, use, or knowledge of Buyer’s Confidential Information and Buyer Data by any person or entity that may become known or suspected by Seller; (iii) promptly furnish all known details of the attempted or actual unauthorized possession, access, use, or knowledge; (iv) take commercially reasonable measures to investigate, remediate or prevent the recurrence of any incursion or attempted or actual unauthorized possession, access, use, or knowledge of Confidential Information and Buyer Data; and (v) upon request, at Seller’s expense, demonstrate compliance through a third-party audit or other reasonable measure agreed upon by Buyer.

##  Product Cybersecurity.

 Seller must maintain a reasonable, risk-based program, supported by appropriate technical and operational measures including policies and procedures, to ensure the cybersecurity of any Supplies that include software, hardware, or other electrical components. Seller’s product cybersecurity program must provide for security by design, vulnerability management, governance, and any other elements identified by Buyer in a manner consistent with industry best practices, including but not limited to ISO/SAE 21434.

##  Supply Chain Cybersecurity.

 Seller will ensure its subcontractors are contractually bound to comply with the provisions of this Section 17 or its equivalent.

##  No Personal Data.

 No Personal Data protected under applicable Law is or will be disclosed or processed by either Party.

# Assignment and Subcontracting.

Neither Party may assign or subcontract its duties or responsibilities under the Contract without the prior written consent of the other Party, which will not be unreasonably withheld or delayed. Unless otherwise stated in the consent, any assignment or subcontracting by either Party, with or without the required consent, will not relieve that Party of its duties or obligations under the Contract or its responsibility for non-performance or Default by its assignee or subcontractor. If Buyer requires Seller to subcontract all or a portion of its duties or obligations under the Contract to a designated subcontractor, Seller will not be responsible for a breach of the Contract caused by that subcontractor’s failure to meet its warranty, delivery, or other contractual obligations.

#  Excusable Non-Performance.

A delay or failure by either Party to perform its obligations under the Contract (except Buyer’s payment obligations) will be excused, and will not constitute a Default, only if caused by an event or occurrence beyond the reasonable control of that party and without its fault or negligence (an “Excusable Event”). The Party unable to perform will give notice of the non-performance (including its anticipated duration) to the other Party promptly after becoming aware that it has occurred or is reasonably likely to occur, followed by prompt notices of any material changes in the facts relative to its ability to perform and/or the anticipated duration of the non-performance. Seller and Buyer will share information, confer, seek agreement and otherwise act cooperatively to avoid or mitigate the effects of the potential or actual excused non-performance. If Seller is unable to perform for any reason, Buyer may purchase Supplies from other sources and reduce its purchases from Seller accordingly without liability to Seller. Within three business days after written request by the other Party, the non-performing Party will provide adequate assurances that the non-performance will not exceed 30 days. If the non-performing Party does not provide those assurances, or if the non-performance exceeds 30 days, the other Party may terminate the Contract pursuant to Section 15.2 by notice given to the non-performing Party before performance resumes. If Seller reasonably incurs extraordinary costs in order to maintain or restore supply in response to an inability to perform (or what would be an inability to perform except for those extraordinary costs), including expedited shipping and/or increased costs to obtain substitute materials or components, the costs will be equitably shared between the Parties. Buyer may not require Seller to use substitute materials or components for the Supplies that are not fully validated or tested unless and until the Parties first reach written agreement to reasonably share the risk.

#  Labor Contracts.

Seller will notify Buyer of a labor contract expiration date at least six months (6) before the expiration of a current labor contract that has not yet been extended or replaced. Buyer may thereafter direct Seller in writing to manufacture up to 30 days of additional inventory of Supplies, specifying the quantities of Supplies required and any packaging and storage requirements. Seller will use commercially reasonable efforts to comply with Buyer’s written directions prior to expiration of the current labor contract and until the current labor contract has been extended or a new contract completed. By authorizing the additional inventory, Buyer commits to buy the entire quantity of conforming Supplies requested and produced. Seller is responsible for carrying costs and any additional costs of manufacture.

#  Customs.

Transferable credits or benefits associated with Supplies purchased, including trade credits, export credits, or rights to the refund of duties, taxes, or fees, belong to Buyer unless otherwise prohibited by applicable law. Seller will provide Buyer with all information and records relating to the Supplies necessary for Buyer to (i) receive these benefits, credits, and rights; (ii) fulfill any customs obligations, origin marking, labeling, or disclosure requirements, and certification or local content reporting requirements; (iii) claim preferential duty treatment under applicable trade preference agreements or regimes; and (iv) participate in any duty deferral or free trade zone programs of the country of import. Seller will obtain all export licenses and authorizations and pay all export taxes, duties, and fees unless otherwise stated in the Contract, in which case Seller will provide all information and records necessary to enable Buyer to obtain those export licenses or authorizations.

# Insurance.

Prior to commencing work on Buyer’s premises or utilizing Buyer’s Property, Seller will maintain and upon request furnish to Buyer a certificate evidencing (i) general liability insurance with coverage limits reasonably acceptable to Buyer; (ii) all risk property perils insurance covering the full replacement value of Buyer’s Property while in Seller’s care, custody, or control and naming Buyer as loss payee; (iii) worker’s compensation insurance as required by applicable law; and (iv) other insurance required by applicable law. Insurance coverage required under this section will be subject to commercially reasonable self-insured retentions.

#  Miscellaneous.

## Advertising.

 During and after the term of the Contract, Seller will not advertise or otherwise disclose its relationship with Buyer or Buyer’s customers without Buyer’s prior written consent, except as may be required to perform the Contract or as required by law.

## Audit Rights.

 Seller will maintain records as necessary to support amounts charged to Buyer under the Contract in accordance with Seller’s document retention policies. Buyer and its representatives may audit Seller’s records of transactions directly related to the Supplies and completed within one year prior to the audit date, to the extent needed to verify the quantities shipped and that the prices charged match the Contract Prices, and subject to Seller’s reasonable restrictions or conditions regarding confidentiality. Any audit will be conducted at Buyer’s expense (but will be reimbursed by Seller if the audit uncovers material errors in the amounts charged), at reasonable times, and at Seller’s usual place of business.

## Electronic Communication.

 Seller will comply with the method of electronic communication specified by Buyer in Buyer’s request for quotation and confirmed in the Contract, including requirements for electronic funds transfer, Purchase Order transmission, electronic signature, and communication. Seller will also make commercially reasonable efforts to comply with any modification to Buyer’s specified method of electronic communication after the date of the Contract.

## Relationship of the Parties.

 Buyer and Seller are independent contractors, and nothing in the Contract makes either Party the agent or legal representative of the other Party for any purpose. Neither Party has authority to assume or to create any obligation on behalf of the other Party.

##  Waiver.

 The failure of either Party to enforce any right or remedy provided in the Contract or by law on a particular occasion will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy.

## Severability.

 A finding that any provision of the Contract is invalid or unenforceable in any jurisdiction will not affect the validity or enforceability of any other provision of the Contract or the validity or enforceability of that provision in any other jurisdiction.

## Interpretation.

 When used in these GTC, “including” means “including without limitation,” and terms defined in the singular include the plural and vice versa.

## Notices.

 Any notice or other communication required or permitted in the Contract must be in writing and delivered by means and to the person(s) commercially reasonable under the circumstances. Notice will become effective on the date of actual receipt if the date of actual receipt is a business day or on the next business day if the date of actual receipt is not a business day.

## Governing Law and Forum.

 Unless otherwise agreed in writing, the Contract will be governed by and interpreted according to the internal laws of Michigan, excluding its choice of law principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the Contract. Any litigation arising out of or related to the Contract will be commenced in the State or Federal courts of the State of Michigan.