

MAHINDRA NORTH AMERICAN TECHNICAL CENTER
Terms and Conditions of Purchase
for

INDIRECT SERVICES

1. Agreement Terms.

1.1 Entire Agreement. The Purchase Order, these Terms and Conditions for Purchase of Services, and any statement of work, statement of performance, requirement, or specification ("Statement of Work") attached to or incorporated by reference in the Purchase Order, establish and constitute the complete and exclusive agreement between Mahindra North American Technical Center ("Mahindra") and vendor ("Contractor") with respect to the Services, Materials, and Work Product (as those terms are defined below) (together, "Deliverables") described therein. Such agreement is referred to herein as "this Order."

1.2 Acceptance. Acceptance of this Order is strictly limited to the Purchase Order, these Terms and Conditions, and the Statement of Work, if applicable. Unless specifically agreed to in writing by Mahindra, Mahindra objects to, rejects, and is not bound by, any term or condition proposed by Contractor that differs from or adds to this Order, and any such proposed terms or conditions shall be null and void. Contractor's commencement of performance or acknowledgement of this Order in any manner shall constitute an unequivocal acceptance of this Order. Unless otherwise agreed to in writing by Mahindra, this Order shall not give rise to any obligation of Mahindra to place with Contractor any orders for continued performance, in particular orders for the serial provision of Deliverables, in addition to the performances specified in this Order.

1.3 Conflict in Terms. If there is conflict between the Purchase Order, these Terms and Conditions, or the Statement of Work, the terms of the Purchase Order (excluding these Terms and Conditions and any Statement of Work attached to or incorporated by reference in the Purchase Order) shall control. These Terms and Conditions shall control over any document other than the Purchase Order, including, without limitation, any Statement of Work attached to or incorporated by reference in the Purchase Order. The Statement of Work shall control over any document other than the Purchase Order and these Terms and Conditions.

2. Scope of Performance; Deliverables.

2.1 Services. Contractor shall furnish to Mahindra the services described in this Order ("Services"). Unless otherwise specified, Contractor shall furnish all necessary labor, supervision and other services, and shall complete the work hereunder in compliance with the terms of this Order. Contractor shall at all times keep the premises free from accumulations of waste material and rubbish resulting from its operations and, upon completion, it shall remove all surplus materials and leave the premises broom clean. During the progress of the work, Contractor shall take every precaution against the possibility of fire and any other hazard to persons or property and shall comply with all safety regulations and instructions of Mahindra.

2.2 Materials. Contractor shall furnish to Mahindra all materials, supplies, tools, and equipment necessary to perform the Services that are specified in this Order ("Materials"). All such Materials shall conform to the requirements of this Order, shall be suitable for the purpose intended, and shall be new unless otherwise specified.

2.3 Work Product. Contractor shall furnish to Mahindra all concepts, documents, reports, ideas, designs, drafts, models, samples and any other results produced in connection with Contractor's performance described or referenced in this Order and contained on any media whatsoever ("Work Product").

2.4 Acceptance of Deliverables. All Deliverables must conform to the performance criteria and other requirements set forth in this Order and are subject to acceptance by Mahindra. Mahindra is not required to accept any Deliverable that does not conform with the performance criteria and other requirements set forth in this Order. Contractor shall notify Mahindra in writing of the completion and provision of the Deliverables. Notwithstanding any payment or prior test or inspection, Mahindra shall have a reasonable time after receipt of such notice to inspect and

test the Deliverables. No inspection, test, delay, acceptance, failure to inspect or test, or failure to discover any defect or other nonconformance shall relieve Contractor of any of its obligations under this Order or impair any rights or remedies of Mahindra or Mahindra's customers.

2.5 Amendments. Mahindra may unilaterally make amendments or modifications to this Order ("Amendments"), and such Amendments shall apply to the Deliverables. If the Amendments require additional work, Contractor shall nonetheless accept Mahindra's amended Order and provide the Deliverables requested, and shall furnish proof of additional expenses acceptable to Mahindra within (fifteen) 15 business days of receiving the Amendments.

2.6 Management of Performance. Contractor shall perform under this Order, using its best skills and attention, and Contractor shall be solely responsible for all means, methods, techniques, sequences and procedures and for coordinating all portions of the work necessary to complete the Order.

2.7 Documents, Standards. Unless otherwise agreed in this Order, Contractor shall produce or maintain all drawings, data and other development and documentation records in accordance with the requirements, procedures and guidelines issued by Mahindra, if applicable.

2.8 Best Efforts. Contractor shall use best efforts, employ the latest state of the art technology, draw on its own know-how and experience, and comply with all applicable statutory and regulatory provisions in rendering the Deliverables to Mahindra.

2.9 Stop Work Order. Mahindra may, from time to time, require Contractor to stop all or any portion of the work called for by this Order for a period of up to sixty (60) days ("Stop Work Period") per occurrence. Upon receipt of a written Stop Work Notice from Mahindra, Contractor shall immediately comply with its terms at no charge. Within the Stop Work Period, Mahindra shall either: (i) cancel the stop-work order and Contractor shall resume work; or (ii) terminate the work covered by the stop-work order and negotiate any charges in good faith.

3. Price and Payment.

3.1 Fees and Expenses. As consideration for the Deliverables provided by Contractor and accepted by Mahindra, and the rights and licenses granted under this Order, Mahindra agrees to pay the Contractor the fees set forth in this Order. All payments to Contractor shall be in United States Dollars unless otherwise specified by Mahindra in writing. Contractor must submit an invoice for each payment due that includes a description of and date upon which the Deliverables were rendered to Mahindra and a description of and date upon which Mahindra-directed or approved expenses were incurred. Contractor shall deliver to Mahindra, if requested: (i) a release of all liens arising out of this Order or receipts in full covering all labor and materials for which a lien could be filed or a bond satisfactory to Mahindra indemnifying it against such liens; and (ii) a release discharging Mahindra, its successors and assigns, officers, employees and agents of and from all liabilities, obligations and claims arising under or by virtue of this Order. Mahindra shall have no liability for any expenses or costs incurred by Contractor not specifically authorized in, and invoiced in accordance with, this Order. If this Order is issued on a cost-reimbursable basis, Contractor will avail itself, for the benefit of Mahindra, of all refunds, rebates, credits, trade discounts, prompt payment discounts and insurance premium dividends that may be obtained.

3.2 Taxes. Subject to Section 2.4, Mahindra shall pay Contractor the price stated in this Order and no more. Unless otherwise specified in this Order, the price shall include, and the Contractor shall be liable for and shall pay, any federal, state, municipal, income, or other governmental excise, sales, value-added, or use taxes now in force or enacted in the future.

3.3 Setoff; Retention; Withholding. Mahindra may set off or recoup any amount due to Mahindra from Contractor, whether or not under this Order, against any amount due Contractor hereunder. Mahindra may also retain and/or withhold from payment to Contractor an amount sufficient to reimburse Mahindra for any loss, damage, expense, cost or liability relating to Contractor's failure to comply with any requirements of this Order or failure of final completion.

4. Intellectual Property.

4.1 Definition. "Intellectual Property" means, collectively, all current and future: concepts, trade secrets, works of authorship, copyright and trademark registrations and applications therefore, moral rights, patents (including

re-issuances, continuations, continuations-in-part, revisions, extensions, and re-examinations thereof), patent applications, registered and unregistered inventions, discoveries, improvements, data and databases, formulas, compositions, methods, procedures, manufacturing and production processes and techniques, utility models, industrial designs, know-how, mask works, proprietary information, and all intellectual property or other industrial property rights under the laws of the United States or any other State, country, or jurisdiction.

4.2 Mahindra Intellectual Property. Mahindra shall retain all right, title and interest in and to its Intellectual Property existing as of the date of this Order, all Foreground Intellectual Property as defined in Section 6.4 below, and any Intellectual Property developed by Mahindra independent of Contractor. To the extent that Mahindra's Intellectual Property is required by the Contractor to perform the Services and deliver the Work Product, Mahindra shall grant Contractor a limited license to use such Mahindra Intellectual Property solely during the period of performance and solely for the performance of work under this Order for Mahindra's benefit. Any such license shall extinguish upon delivery of the last Deliverable called for in this Order or termination of this Order under Section 11.

4.3 Contractor Intellectual Property. Contractor shall retain all right, title and interest in and to its Intellectual Property existing as of the date of this Order or any Intellectual Property developed by Contractor that does not arise out of or relate to this Order. To the extent that Contractor Intellectual Property is required by Mahindra to use and enjoy the Services, Deliverables, or Work Product called for in this Order, Contractor agrees to grant, and hereby grants to Mahindra, a fully paid-up, irrevocable, royalty-free, assignable, worldwide license, with the right to sublicense, to such Intellectual Property pursuant to Section 5.

4.4 Foreground Intellectual Property. Subject to the terms of Section 5, Contractor agrees that all Intellectual Property conceived or actually delivered by Contractor, alone or with others, while this Order is in effect, or within one (1) year thereafter, which arises out of or relates to the Services, Work Product or modifications shall be owned exclusively by Mahindra. Contractor hereby grants, conveys and assigns to Mahindra all right, title and interest in and to the Foreground Intellectual Property throughout the world, including, without limitation, (i) the right to make, reproduce, modify, produce derivative works based on, translate, publish, sell, offer to sell, use and dispose of the Foreground Intellectual Property, and to authorize others to do so; and (ii) the right to apply for and obtain patents, trademark registrations and copyright registrations for Foreground Intellectual Property and to own, use, and disclose any trade secrets included within Foreground Intellectual Property. Contractor further agrees, upon request of Mahindra, to execute all papers necessary or useful for, and to cooperate to the fullest degree with Mahindra, in securing, maintaining and enforcing any such patents, trademarks, copyrights and trade secrets and in recording Mahindra's title thereto, throughout the world. It is understood, however, that these obligations undertaken by Contractor will be at no expense to Mahindra. Contractor agrees that Foreground Intellectual Property shall be considered "work made for hire" as defined in Section 5.1 to the fullest extent permissible by law. Contractor and Contractor's agents and subcontractors shall promptly disclose all Foreground Intellectual Property to Mahindra.

5. Rights and Ownership of Deliverables.

5.1 Ownership of Work Product; Assignment and Transfer. All Work Product shall be solely owned by Mahindra. Contractor acknowledges and agrees that all copyrightable materials of the Work Product will be deemed a "work made for hire" for the purposes of Title 17 of the United States Code, Section 101 et seq. (the "Copyright Act"). In the event that (i) any of the Work Product may not be considered "work made for hire," or (ii) ownership of all right, title and interest to the legal rights in and to the Work Product, including, without limitation, all worldwide copyrights, industrial design rights, trademarks, patents or other intellectual property rights therein, does not vest automatically and exclusively in Mahindra, then, without further consideration, Contractor agrees to, and hereby does irrevocably, assign, convey, and otherwise transfer to Mahindra, and Mahindra's respective successors and assigns, all such right, title and interest, in and to all Work Product and any derivative works thereof.

5.2 Cooperation by Contractor; Additional Documents. Contractor and Contractor's employees and subcontractors will cooperate with Mahindra to ensure the effective and complete transfer and license of rights contemplated under these Terms and Conditions. Without limiting the foregoing, at Mahindra's request and expense, Contractor agrees to perform any acts necessary or useful to vest fully recordable title in and to the Deliverables in Mahindra and to otherwise perfect, defend and enforce Mahindra's ownership of and rights in and to the Deliverables, including, but not limited to:

a. reviewing, commenting and executing all documents necessary or useful for securing patent, trademark and copyright protection for the Deliverables ("Applications");

- b. reasonably explaining the nature of the Deliverables to persons designated by Mahindra;
- c. providing any other assistance reasonably required for the orderly prosecution of Applications or defense of any patent, trademark, copyright, or other intellectual property-related claims or any litigation or other proceedings involving any Deliverables.

6. Assignment and Subcontracting.

6.1 Assignment of Order Void. This Order, or any interest therein, including any claims for monies due or to become due with respect thereto, may only be assigned upon the written consent of Mahindra. Any payment to any assignee of any claim under this Order, in consequence of such consent, shall be subject to set-off, recoupment or other reduction for any claim that Mahindra may have against Contractor.

6.2 Use of Subcontractors. Contractor hereby represents, certifies and warrants that it shall not employ the use of any subcontractor for the performance of this Order without notification to Mahindra if deemed as such.

7. Insurance, Indemnity and Limitation of Liability.

7.1 Contractor and its subcontractors shall maintain for the performance of this Contract worker's compensation, commercial general liability (CGL) and automobile liability (AL) (third party bodily injury and property damage liability insurance) insurance with a minimum of \$1,000,000 per occurrence limit. Such coverage shall be maintained with carriers.

7.2 Contractor will indemnify, defend, and hold Mahindra (and its successors, assigns, officers, directors, members, agents and employees) harmless for, from and against any and all actions, claims, demands, costs, liabilities, expenses, and damages, including, without limitation, attorneys' fees and expenses, for:

- a. injury to or death of any person or persons and for loss of or damage to any real or tangible personal property occurring in connection with, or in any way incident to or arising under, this Order, resulting in whole or in part from any acts or omissions of Contractor to the extent permitted by applicable law;
- b. any acts or omissions of Contractor, its employees, agents or subcontractors which constitute a breach of Contractor's representations and warranties to the extent permitted by applicable law; or
- c. any claim that the Deliverables furnished under this Order infringe, dilute, misappropriate or otherwise violate any copyright, patent, trademark, trade secret or other proprietary right of any third party

7.3 If so directed by Mahindra, Contractor will defend at its own expense, on behalf of Mahindra, any claims based upon contingencies against which Contractor is obligated to indemnify Mahindra hereunder.

7.4 Limitation of Liability. To the extent permitted by applicable law, Mahindra will not be liable, under any circumstances for any anticipatory or lost profit, goodwill, or similar compensation for the termination or cancellation of this order, or for any special, consequential, punitive, exemplary, incidental, or indirect damages of any kind resulting from the performance or non-performance of its obligations under this order, even if those damages are attributed to breach of this order, tort, negligence, or other cause of action. The parties agree that this limitation will apply even if Mahindra has been advised of the possibility of non-direct damages or if, under applicable law, non-direct damages are considered to be direct damages. Mahindra's liability for any claim, including, without limitation, any of the foregoing, will be limited to the price for the services as stated in this order.

8. Relationship of the Parties.

This Order does not constitute, create, give effect to, or otherwise imply a joint venture, partnership, or business organization of any kind. Mahindra and Contractor are independent parties, and neither Party may act as an agent for or partner of the other for any purpose. Nothing in this Order grants to either Party any right to act or make any commitments of any kind for or on behalf of the other Party without the prior written consent of the other Party.

9. Employees of Contractor.

If Contractor engages any person or firm to perform work for Contractor in connection with the Services, either as an employee of Contractor or a subcontractor in accordance with the requirements of Section 8 above, Contractor will be solely responsible for payment to that person or firm, including, without limitation, payment of any taxes related to employment and workers' compensation insurance. Contractor's employees are not eligible for any Mahindra fringe benefits, including, without limitation, health insurance, paid vacation, sick leave, retirement plans, or other employment benefits, that may be provided to employees of Mahindra and will not be a participant in any Mahindra qualified benefit plan.

10. No Solicitation.

To the extent permitted by applicable law, Contractor agrees that it will not, without the prior written consent of Mahindra, solicit, recruit, hire, or otherwise employ or retain any employee of Mahindra to perform any of the Services. This restriction includes any former employee of Mahindra who has performed work for Mahindra related to any of the Services any time during the period commencing 1 year preceding the date of this Order and ending on the date of Contractor's final completion of work under this Order. The provisions of this Section will not restrict in any way the right of Contractor to solicit or recruit generally, and will not prohibit either Party from hiring an employee of the other who answers any advertisement or who otherwise voluntarily applies for hire without having been personally solicited or recruited by the hiring Party.

11. Termination.

11.1 Termination for Convenience. Notwithstanding any other provision or requirement of this Order, Mahindra may terminate this Order, in whole or in part, at any time, for any reason or for no reason, with or without cause.

11.2 Effect of Termination:

a. Upon termination, Contractor must immediately cease all work related to this Order and must cause its subcontractors, if any, to immediately cease all work related to this Order. In the event of termination Mahindra shall not be liable to Contractor for Deliverables not accepted and Contractor shall be liable to Mahindra for any and all rights and remedies provided by law.

b. In the event of a termination for convenience, as described above in Section 11.1, Mahindra will pay Contractor an equitable amount for work already performed, which in no case will exceed the corresponding amount specified in this Order.

12. Miscellaneous.

12.1 Time of the Essence. Time is of the essence in performing this Order. Should Contractor experience or anticipate any delay in performing this Order, whether or not such delay is excusable under any provision hereof, Contractor shall immediately notify Mahindra of such delay, its expected duration, and the reasons therefor. Neither such notification nor an acknowledgment by Mahindra shall constitute a waiver of this Order's delivery schedule. Contractor shall be liable for any direct or consequential damages resulting from a delay if such delay will affect Mahindra's final work operation.

12.2 Partial Invalidity; Waiver. If any provision of this Order is or becomes void or unenforceable, the other provisions shall remain valid and enforceable. Waiver of one provision of this Order by Mahindra shall in no way act as a waiver of any other provision herein, nor shall it be construed as a waiver of that provision in any later instance.

12.3 Entire Agreement. Consistent with Section 1.1, this Order constitutes the entire understanding and agreement between the Parties and supersedes any prior agreements, written or oral, that are not specifically referenced and incorporated in this Order.

12.4 Modification. This Order may not be modified, amended, or supplemented, and no agreement to allow this Order to be modified orally will be valid or binding, unless made in writing and issued by Mahindra

Purchasing. Contractor may submit requests for changes/adjustments; however, Contractor must continue performance while both parties are in discussion regarding any type of Order modification.

12.5 Force Majeure. Neither party shall be liable for any delay or failure of performance due solely to strikes, fires or other causes beyond its control and without its fault or negligence, provided that the party subject to such cause shall have given written notice thereof to the other as soon as the same could reasonably be anticipated, and if it could not reasonably be anticipated, promptly following the commencement thereof. However, if Mahindra believes the delay or anticipated delay in Contractor's performance may impair Mahindra's ability to meet its prototype/production schedules or may otherwise interfere with its operations, Mahindra may, at its option and without liability to Contractor, cancel any outstanding performance hereunder wholly or in part.

12.6 Publicity. Contractor shall not, without prior written consent of Mahindra, make any disclosure, news release or public announcement, denial or confirmation of same, of any part of the subject matter of this Order or in any manner advertise or publish the fact that Contractor has supplied or contracted to supply to Mahindra the Deliverables except as may be required to perform this Order. Contractor is not entitled to use any of Mahindra's trademarks or trade names in any advertising materials or other documents.

12.7 Governing Law. This Order, and the performance hereunder, shall in all respects be governed by the substantive laws of the State of Michigan, United States of America, without regard to its choice of law rules.

12.8 Disputes. All disputes arising in connection with this Order that cannot be resolved by mutual agreement of the parties shall be brought exclusively in the state courts for Oakland County, Michigan, United States of America, or in the United States District Court for City of Troy, Michigan. Contractor hereby consents to the jurisdiction of the state courts for Oakland County, Michigan, and the United States District Court for the City of Troy, Michigan, over it and any such dispute and waives any objection which Contractor may have based on improper venue to the conduct of any proceeding in any such court.