

MAHINDRA NORTH AMERICAN TECHNICAL CENTER

Terms and Conditions of Purchase for

TOOLING USPS Programs

1. Offer; Acceptance; Exclusive Terms.

- 1.1. A purchase order issued by Mahindra North American Technical Center ("**Mahindra**") for the purchase of Tooling, together with these *Terms and Conditions of Purchase for Tooling* ("**Terms and Conditions**"), is an offer by Mahindra or its applicable affiliate, subsidiary or division ("**Purchaser**") to the party to whom this Order is addressed and that party's affiliates and subsidiaries ("**Seller**") to enter into a contract for the production, construction, and purchase and sale of Tooling. As used throughout these Terms and Conditions, the term "**Order**" includes, as applicable, (i) the purchase order issued by Purchaser to Seller; (ii) any Change Orders; (iii) a formal, approved Engineering Change Notice; (iv) all releases and authorizations issued by Purchaser to Seller including those related to raw material, fabrication, shipment, and design; and (v) these Terms and Conditions. Notwithstanding the foregoing, if Purchaser attaches to the Order Seller's quotation or any other Seller-generated documentation, whether for purposes of reference to applicable specifications or otherwise, any references to terms and conditions or other terms specified by Seller will be disregarded and do not apply to the terms of the Order. The term "**Tooling**" means the tooling identified in the Order from Purchaser to Seller including, even if not identified in the purchase order, prototype and production tools, dies, test and assembly fixtures, gauges, jigs, patterns, casting patterns, cavities, molds, software, accessories, and documentation (including engineering specifications and test reports) used by Seller in connection with the Order.
- 1.2. A contract for the Order is formed when Seller accepts Purchaser's offer. Each Order will be deemed accepted by Seller upon the occurrence of one or both of the following: (i) Seller's performance under the Order; or (ii) Seller's written acknowledgement accepting the Order.
- 1.3. Seller's acceptance is expressly limited to these Terms and Conditions and other terms and conditions as expressly referenced on the Order. No purported acceptance of any Order on terms and conditions which attempt to modify, supersede, supplement or otherwise alter these Terms and Conditions will be binding upon Purchaser and such terms and conditions are deemed rejected and replaced by these Terms and Conditions for Purchase. For the avoidance of doubt, an Order does not constitute an acceptance by Purchaser of any offer or proposal by Seller, whether such offer or proposal is in the form of Seller's quotation, acknowledgment, invoice, or otherwise. In the event that any Seller quotation or proposal is held to be an offer (even if all or a portion of Seller's quotation is included within the Order for any purposes including, for reference to specifications or otherwise), that offer is expressly rejected and is replaced in its entirety by the offer made by Purchaser in the Order.
- 1.4. In the event of a conflict between the Order and any prior or contemporaneous agreement or document exchanged between Purchaser and Seller, the Order will govern. To the extent of any conflict between drawings and written specifications provided by Purchaser, the written specifications will govern.

2. Applicability of Tooling Terms and Conditions. These Terms and Conditions, or as may be amended from time to time, apply to and are part of all Orders issued by Purchaser to Seller with respect to Tooling. No exception to, deviation from, or waiver of these Terms and Conditions are valid or binding on Purchaser unless specified on the face of an Order.

3. **Changes.**

- 3.1. Purchaser reserves the right at any time to direct changes, or cause Seller to make changes, to the Tooling under any Order, including, without limitation, changes in the design (including drawings and specifications), processing, methods of packing and shipping (as applicable), and the date or place of delivery of Tooling (as applicable) or to otherwise change the scope of work covered by the Order including work with respect to matters of inspection and testing or quality control. Purchaser will notify Seller of such change by sending Seller a written notice of such change ("**Order Revision**") and Seller agrees to promptly make such change. Seller must immediately forward any such Order Revision to Seller's third party suppliers or assignees, if any.
- 3.2. An Order Revision will be deemed to be incorporated into the Order to which it pertains as if originally stated therein. Further, any additional changes identified after an Order Revision is issued will not affect the time for performance or cost under the Order unless (i) Seller provides Purchaser with written notice of a claim for adjustment to time for performance or cost (the "**Adjustment Notice**") within ten (10) days after Seller's receipt of an Order Revision, (ii) Purchaser acknowledges in writing that the adjusted time for performance is acceptable, and (iii) after auditing such claim, Purchaser determines that an additional price adjustment (up or down) is appropriate. Any such claim by Seller for adjustment to the time for performance or cost under an Order must be solely and directly the result of an Order Revision issued by Purchaser and any Adjustment Notice will only be effective if accompanied by all relevant information sufficient for Purchaser to verify such claim. In addition, Purchaser has the right to audit all relevant records, facilities, work or materials of Seller to verify any claim. Nothing in this Section 3.2 excuses Seller from proceeding with the Order as changed.
- 3.3. Without the prior written approval of Purchaser, Seller may not make any changes to any Order or the Tooling covered by the Order, including, without limitation, changing (i) any third party supplier to Seller of services, raw materials or goods used by Seller in connection with its performance under the Order, (ii) the facility from which Seller or such supplier operates, (iii) the price of any of the Tooling covered by the Order, (iv) the nature, type or quality of any services, raw materials or goods used by Seller or its suppliers in connection with the Order, (v) the fit, form, function, appearance, performance of any Tooling covered by the Order, or (vi) the production method, or any process or software used in the production or provision of any Tooling under the Order. Any change by Seller to any Order or the Tooling covered by the Order without written approval by Purchaser constitutes a breach of the Order and is null and void.

4. **Lead Time.** Seller will complete the manufacture and/or acquisition of Tooling in the time frame set forth on the Order. Seller agrees that time is of the essence for each Order and if Seller fails to meet any lead times or performance milestones specified in the Order, Purchaser reserves the right, without liability of any kind, to cancel the Order in whole or in part and/or refuse to accept such late Tooling.

5. **Specifications.** Seller will construct and design the Tooling in accordance with Purchaser's specifications and/or the specifications deemed appropriate by Purchaser in writing for the Tooling to produce the parts to be manufactured (the "**Goods**") as specified in the Order. Seller will promptly inform Purchaser of any inconsistencies or ambiguities in the specifications applicable to the Tooling of which Seller is or becomes aware. After reviewing the specifications applicable to the Tooling, Seller must immediately notify Purchaser in writing of any questions that Seller has concerning whether the Tooling will meet Purchaser's needs for the Goods or otherwise. If requested by Purchaser, Seller will provide Purchaser with a schedule for completion of the Tooling so that Purchaser may monitor the ability and likelihood that Seller will meet its delivery requirements in connection with the Goods.

6. **Inspection and Approval of Tooling.**

- 6.1. Seller agrees Purchaser has the right to inspect and test all Tooling at all reasonable times and places including, when practicable, during manufacture. As part of such inspection or testing, whether or not

- at Seller's facilities, Seller will provide, if requested by Purchaser, the following: (i) all documentation related to the production, construction, or acquisition of Tooling; (ii) a detailed status report of the Tooling, including, without limitation, digital photos of the Tooling that display the current status of the construction and/or production of the Tooling; and (iii) a sample of Goods manufactured from the Tooling. In addition, Seller will make available the Tooling for completion of a full "run at rate" test by Purchaser's Engineering or Quality Department in a prototype or production environment at Seller's facility, when applicable.
- 6.2. If any such inspection or test is made on Seller's premises, Seller will furnish all reasonable facilities and assistance for a safe and convenient inspection or test without additional charge to Purchaser.
 - 6.3. Purchaser's inspection of the Tooling or documentation related to the construction of the Tooling, no matter how or when occurring, does not constitute acceptance of any work-in-process, finished Goods, or finished Tooling. Further, notwithstanding prior inspection, payment, or use of the Tooling, Purchaser has the right to reject any Tooling that does not conform to the requirements of the Order.
 - 6.4. Purchaser will not make final payment of funds for Tooling until Seller (i) can provide clear evidence of tooling completion free and clear of all liens, claims or other encumbrances and completes all related services required under the Order or (ii) at Purchaser's option, provides adequate assurance of continued performance in such form as requested by Purchaser.
 - 6.5. Seller will submit the documentation of construction breakdown as Tooling lineups to Purchaser as part of the quoting process.
7. **Acceptance.** For purposes of each Order, acceptance of Tooling means receipt by Seller of signoff by Purchaser's authorized representative that acknowledges (i) compliance of the Tooling with all specifications applicable to the Tooling (including, without limitation, manufacturing specifications); (ii) completion of a partial or full "run at rate" in a prototype or production environment at Seller's facility conducted by Purchaser's Engineering or Quality Department; and (iii) completion of the PPAP process by Purchaser as in the case of production tooling. If so requested by Purchaser, Seller will provide a pre-acceptance run-off to Purchaser at Seller's facility, at no cost to Purchaser.
 8. **Delivery of Tooling Layouts and Drawings.** Upon request, Seller will immediately deliver all Tooling layouts, models, prints, and engineering drawings by first-class mail, electronic communication, courier service, or in-person at the destination identified in such request.
 9. **Price and Payment Terms.**
 - 9.1. The purchase price for the Tooling set forth on the Order (the "**Purchase Price**") must include all charges, costs, and profit (if allowed) associated with the design, development, and manufacture of the Tooling. Seller is solely responsible for the payment of any taxes, tariffs and duties and all costs associated with freight, transportation, insurance, shipping, storage, handling and similar charges associated with the Tooling. Unless otherwise expressly stated in the Purchase Order, the Purchase Price is a fixed price, and is not subject to increase for any reason, including, without limitation, increased raw material costs, increased labor, or other manufacturing or supply costs, increased development costs, inflation, changes in foreign exchange rates, changes in availability of material or supplies, or any other changes.
 - 9.2. Subject to the terms and conditions of the Order, Purchaser will pay the Purchase Price in the amounts and at the times specified on the Order.
 10. **Purchase Price Adjustments and Cost Audits.** Upon request, Seller must provide Purchaser with a detailed breakdown of the costs of the Tooling which are the basis for the Tooling purchase price. Purchaser reserves the right to review and audit all costs of the Tooling. If the Tooling costs are reviewed or audited by Purchaser, Seller must make available all documents supporting the actual and reasonable costs associated with the Tooling selected for audit. Seller must submit evidence of what was actually paid to sub-suppliers.

If Purchaser's analysis demonstrates that Seller's actual aggregate costs were in fact lower than the purchase price set forth in the purchase order, Seller will be obligated to reduce the purchase price, or if the purchase price has been paid, refund the excess to Purchaser within thirty (30) days of receipt of Purchaser's request.

11. Ownership of Tooling.

- 11.1. All rights, title, and interest in and to any part of Tooling to be paid for by Purchaser or Purchaser's customer will vest immediately in Purchaser as soon as the Tooling is acquired by Seller or fabricated by Seller in accordance with the Order, and such Tooling shall be held as Purchaser's property by Seller. All such rights, title, and interest shall so pass regardless of final payment; provided, however, ownership will not affect Purchaser's obligation to pay for the Tooling as provided in and according to the terms of the Order. In the event a court of competent jurisdiction determines Purchaser has not retained or obtained ownership of any Tooling, Seller agrees to be deemed to have granted Purchaser a security interest giving Purchaser all the rights of a secured creditor as to such items under the Uniform Commercial Code as in effect in that jurisdiction.
- 11.2. Unless specified otherwise by Purchaser, Purchaser owns the Tooling, and it is essential that the Tooling be clearly identified and marked or tagged with the part number(s) provided by Purchaser. The physical asset tag must be attached. Seller shall provide to Purchaser photographic evidence of compliance with this Section 11.2. Photographic evidence shall include: a close-up picture of the tag on the Tooling (clear and legible) and a picture of the whole Tooling showing that the tag is attached. If the Tooling is a mold or die, a photo of the mold or die in the open and closed position is required. Seller shall comply with additional instructions regarding Tooling tagging and photographic evidence as may be provided by Purchaser in written format. Seller may not take any action concerning the Tooling that is inconsistent with the Purchaser's ownership of the Tooling.
- 11.3. Once title to Tooling passes to Purchaser, the Tooling and related blueprints, designs, specifications, drawings, photographic negatives and positives, art work, and copy layout provided by Purchaser or developed by Seller or its subcontractors in connection with or related to any Order (collectively, "**Bailed Property**"), will be held by Seller as a bailee-at-will for the benefit of Purchaser. Seller bears the risk of loss of and damage to the Bailed Property and, at its own cost and expense, must keep such Bailed Property insured for the benefit of Purchaser, naming Purchaser as the loss payee and additional insured per Seller's Certificate of Insurance. Seller must at all times, and without charge to Purchaser, properly house the Bailed Property and protect it against destruction and damage. Seller will be responsible for the cost of repairing or replacing the Bailed Property if it is stolen, damaged, or destroyed while in the possession of Seller. Subject to the terms contained herein, Purchaser's ownership of such Bailed Property will not affect Purchaser's obligation to pay for the Tooling.
- 11.4. Seller acknowledges that the Bailed Property: (i) will not be used by Seller for any purpose other than pursuant to the terms of the Order; (ii) will be deemed personal property of Purchaser; (iii) must be conspicuously marked by Seller to identify it as property of Purchaser (including indicating Purchaser's name and address); (iv) must not be commingled with the property of Seller or with that of a third party; and (v) must not be moved from Seller's premises without the prior written approval of Purchaser. Seller must also, at its sole cost and expense, conduct normal maintenance on Bailed Property in order to keep Tooling in first class condition. All replacement parts, additions, improvements and accessories for such Bailed Property automatically become Purchaser's property upon their incorporation into or attachment to the Bailed Property.
- 11.5. Seller will ensure the operational readiness of the Tooling and maintain it at Seller's own cost including normal repair and replacement at all times in the condition necessary to produce the Goods in the required quality and quantities. Tooling replacement requires the approval of new initial samples by Purchaser or approval from Purchaser's Engineering or Quality Department.
- 11.6. Unless Purchaser directs an earlier release by Seller, Seller must have the capability to store, and must store, all Bailed Property for a minimum of ten (10) years after termination of serial production or a maximum of three (3) years after prototype builds, depending on which may be applicable.

Notwithstanding the expiration of the time period in the preceding sentence, Seller will not destroy any Tooling without the prior written consent of Purchaser.

- 11.7. Seller must immediately inform Purchaser if the projected lifetime quantities of Goods reaches up to 85% of available Tooling capacity to allow Purchaser to plan for further production quantities in the future in the case of production Tooling.
- 11.8. Upon notification from Purchaser, Seller agrees to disassemble, destroy and remove at Purchaser's expense all bailed property of Purchaser.
12. **Claims, Lien, and Other Encumbrances.** Seller represents and warrants that neither Seller nor any other person or entity other than Purchaser has any right, title, interest, or liens in the Tooling, other than Seller's rights, subject to Purchaser's unfettered discretion, to utilize the Tooling in the manufacture of the Goods. In the event Seller has, or obtains, any intellectual property rights in the Tooling and/or documentation related to such Tooling, Seller hereby conveys, assigns, and otherwise grants Purchaser all of Seller's right, title, and interest in such intellectual property and Seller agrees not to transfer, assign, or otherwise grant such intellectual property rights, by operation of law or otherwise, to any other person or entity.
13. **Use of Tooling.** Seller must use the Tooling exclusively for production of Goods required by Purchaser. Seller will not, without the prior written consent of Purchaser, use the Tooling for the production of (i) larger quantities of Goods than those specified by Purchaser or (ii) goods or services for Seller or any other person.
14. **Return of Tooling.** Seller agrees that Purchaser has the right, at any time and from time to time, with or without reason and without payment of any kind, to retake possession of or request the return of Purchaser-owned or Purchaser's customer-owned Tooling. Without further notice, or court hearings, which rights, if any, are hereby waived, Purchaser or its designee(s) will have the right to enter Seller's premises and take possession of any and all of Purchaser's Tooling. Upon Purchaser's request and in accordance with Purchaser's instructions, Purchaser's Tooling will be immediately released to Purchaser or delivered to Purchaser by Seller, either (i) per the Incoterm(s) identified by Purchaser and will be properly packed and marked in accordance with the requirements of the carrier selected by Purchaser to transport such Purchaser's Tooling or (ii) to any location Purchaser designates in which event Purchaser will pay Seller the reasonable costs of delivering Purchaser's Tooling to the location Purchaser designates. If Seller does not release and deliver Purchaser's Tooling in accordance with this Section 14, Purchaser may obtain an immediate writ of possession without notice and without the posting of any bond and/or enter Seller's premises, with or without legal process, and take immediate possession of Purchaser's Tooling. Seller has no right to withhold any Tooling, documentation, or production equipment that has been paid for by Purchaser. This especially applies to Seller's insolvency and/or bankruptcy.
15. **Force Majeure.** Any delay or failure on the part of either Seller or Purchaser to perform its obligations hereunder will be excused if, and to the extent that, the party is unable to perform specifically due to an event or occurrence beyond its reasonable control and without its fault or negligence, including, without limitation, the following: acts of God or a public enemy; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority; fires; floods; epidemics; quarantine, restrictions; strikes; embargoes; natural disasters; riots; wars; sabotage; inability to obtain power; unusually severe weather; or delays of a subcontractor due to the foregoing. As soon as possible (but no more than five (5) business days) after the occurrence of such event, Seller must provide written notice to Purchaser describing such delay and assuring Purchaser of the anticipated duration of the delay and the time that the delay will be cured. During the delay or failure to perform by Seller, Purchaser may at its option: (a) purchase Tooling from other sources and reduce its Order commitment to Seller by such quantities, without liability of Purchaser to Seller and if Seller is the cause of any delay, require Seller to reimburse Purchaser for any additional costs to Purchaser for obtaining the substitute Tooling compared to the prices set forth in the Order; (b) require Seller to deliver to Purchaser at Purchaser's expense all finished Tooling, Goods, work in process and parts and materials produced or acquired for work under the Order; or (c) require Seller to provide the Tooling from other sources in quantities and at a time requested by Purchaser and at the price set forth in the Order. In addition, Seller at its expense will take all actions deemed reasonably necessary by Seller to ensure that in the event of any anticipated labor disruption, strike or worker slowdown resulting from the expiration of Seller's labor contracts,

the Tooling will be available to Purchaser in an area that will not be affected by any such disruption for a period of at least thirty (30) days. If upon request of Purchaser, Seller fails to provide within ten (10) days (or such shorter period as Purchaser requires) adequate assurances that any delay will not exceed thirty (30) days or if any delay lasts longer than thirty (30) days, Purchaser may terminate the Order without liability and Seller will reimburse Purchaser for costs associated with the cancellation.

16. **Indemnification.** In addition to Seller's other indemnification obligations arising hereunder, Seller agrees to defend, indemnify and hold harmless Purchaser from any and all claims, suits, liabilities, damages or expenses asserted against or incurred by Purchaser arising out of the manufacture and/or use of the Tooling.
17. **Termination.** Purchaser may terminate the Order, in whole or in part, at any time by written notice to Seller if: (i) Seller defaults under any of the provisions of the Order and fails to remedy such default within a ten (10)-day period; (ii) Seller becomes insolvent, files a petition in bankruptcy, or suffers any similar action in consequence of debt; (iii) the majority interest in Seller's shares of ownership in whole or in part of its assets are transferred to a third party of which Purchaser cannot be reasonably expected to continue the Order; or (iv) the customer of Purchaser has cancelled or terminated the project for which the Tooling was intended. Upon termination of Order, Seller must return the Tooling and all related documentation in accordance with Section 14 above. If an Order is terminated under subpart (iv) of this Section, Purchaser will reimburse Seller for all reasonable, actual costs and expenses incurred by Seller in respect to the Tooling (but in no event more than the purchase price stated in the purchase order) minus the amount of all progress payments made under Section 9.2 above.
18. **Warranty.**
 - 18.1. Seller warrants to Purchaser, its successors and assigns that all Tooling purchased pursuant to each Order will, following the date of acceptance for such Tooling identified in Section 8, conform to the applicable drawings, specifications and other descriptions furnished pursuant to the Order, and all applicable laws and regulations, be free of defects in design (to the extent that Seller furnished the design), materials and workmanship, and be suitable for the purpose intended. Seller's responsibility under this warranty includes, without limitation, all parts, labor and transportation costs in the event the Tooling must be returned to Seller for repair or replacement. Furthermore, Seller will require its suppliers of component parts of goods and/or equipment for Tooling purchased pursuant to the Order to provide a warranty equal to the warranties provided to Purchaser by Seller in the Order and assign to Purchaser all such warranties.
 - 18.2. Seller warrants to Purchaser, its successors and assigns that it will, whenever possible, use parts of the highest industry quality, and supply a detailed bill of materials listing all parts. Seller further agrees that it will comply with all specific product sourcing directions of Purchaser.
 - 18.3. If the Tooling fails to comply with the warranties provided in the Order or otherwise provided by the Seller ("**Defective Tooling**"), Seller must repair such Defective Tooling within the time period reasonably determined by Purchaser. If Seller is unable to repair the Defective Tooling within such time period or the repair by Seller is not suitable for Purchaser's needs, as determined by Purchaser in its sole and absolute discretion, Purchaser reserves the right to either (i) terminate the Order or (ii), at Seller's sole cost and expense, repair the Defective Tooling itself or have such repair done by a third party. Notwithstanding anything to the contrary contained in the Order, Seller must indemnify and hold Purchaser harmless against all claims, damages (including incidental, special, and consequential damages), losses, costs, and expenses (including reasonable attorney's fees), incurred by Purchaser in connection with Defective Tooling. For the avoidance of doubt, the indemnification in the preceding sentence extends to all costs Purchaser may incur in repairing the Defective Tooling, including, without limitation, transportation, sorting, investigative, and testing costs.
19. **Confidentiality.** If a non-disclosure agreement ("**NDA**") exists between Purchaser and Seller covering the Tooling or the Order, the term of such NDA is hereby extended to be co-terminus with the Order, and such NDA is incorporated into and forms a part of the Order and governs the use and disclosure of proprietary information hereunder. In the event that no NDA covering Tooling or the Order exists between Purchaser and Seller, then Seller agrees that the information contained in these Terms and Conditions and the Order

and given to Seller from Purchaser, including, without limitation, all drawings, specifications or other documents used in connection with an Order, is strictly confidential and will not be disclosed by Seller without the express written consent of Purchaser. 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 Purchaser or Seller in connection with the Order, in each case that are marked or otherwise identified as confidential or where their confidential nature is apparent at the time of disclosure (“**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 Order without, in each case, the written consent of the disclosing party.

20. **Subcontracting.** Seller may not subcontract any production of the Tooling or parts for the Tooling without the prior knowledge and written consent of Purchaser. In the event Purchaser consents to the use of a subcontractor, such subcontractor must also agree to be bound by these Terms and Conditions and the Order, Seller acknowledges that it will remain liable for the fulfillment by any such subcontractor of the obligations under these Terms and Conditions and the Order.
21. **Insurance.** Seller must, at all times, maintain the following insurance coverage, with reputable carriers, to Purchaser: Comprehensive General Liability/Product Liability of not less than combined single limits of \$2 million and Professional Liability/Error & Omission of not less than combined single limits of \$2 million. All insurance by Seller must name Purchaser as an additional insured and Seller to furnish to Purchaser certificates of insurance when requested.
22. **Setoff.** In addition to any right of setoff or recoupment provided or allowed by law, all amounts due to Seller will be considered net of indebtedness of Seller and/or its affiliates or subsidiaries to Purchaser and/or its affiliates or subsidiaries. Purchaser may deduct any amounts due or to become due from Seller and/or its affiliates or subsidiaries to Purchaser and/or its affiliates or subsidiaries from any sums due or to become due from Purchaser and/or its affiliates or subsidiaries. If an obligation of Seller is disputed or contingent, Purchaser may defer payment of all or any portion of an amount due until such dispute or contingency is resolved or the obligation is liquidated. In the event of Seller’s bankruptcy, if all Orders between Purchaser and Seller have not been assumed (under applicable bankruptcy law), Purchaser may then withhold payment to Seller for Tooling previously delivered (via administrative hold or otherwise) until the risk of potential rejection and other damages is eliminated.
23. **Fair Labor Standards.** Seller represents and warrants during the term of the Order that the manufacture, production, and sale of the Tooling are in compliance with the Fair Labor Standards Act of 1938, as amended.
24. **Dispute Resolution.** In the event Seller fails or refuses to deliver the Tooling, or otherwise repudiates any provision of the Order, Seller agrees that Purchaser may pursue any remedy available at law or equity, including, without limitation, specific performance of Seller’s obligations under the Order. At Purchaser’s option, however, any claim by either party for the threatened, alleged or actual breach of the Order (a “**Dispute**”), which cannot otherwise be resolved after good faith negotiations by the parties, must be resolved as follows: (i) the Dispute will be submitted in writing to Seller’s Account/Sales Manager and Purchaser’s Vice President of Purchasing; (2) the respective managers will attempt to resolve the Dispute within ten (10) business days of such submission; and (3) if the respective parties are unable to resolve the Dispute within ten (10) business days of such submission and either party wishes to pursue the Dispute further, the Dispute will be referred to non-binding mediation by a mediator approved by both parties. If mediation fails to resolve the dispute within thirty (30) days after the first mediation session, either party may submit the dispute to binding arbitration by notice to the other party. The arbitration proceedings will be conducted, and a single arbitrator will be selected, in accordance with the rules of the National Center for Dispute Resolution or other rules approved by the parties, and will be governed by the United States Arbitration Act, 9 U.S.C. §§1-16, and this Section 24. The arbitration will be conducted at an agreed location or at a location selected by the arbitrator if the parties are unable to agree. The arbitrator will issue a written opinion setting forth the basis for the arbitrator’s decision, which may include an award of legal fees and costs. The arbitrator’s award will be final and non-appealable absent fraud or manifest error, and judgment on the arbitrator’s award may be entered in any court having jurisdiction. While arbitration proceedings are pending, the parties will continue

to perform their obligations under the Order without setoff for any matters being contested in the arbitration proceedings. If the Dispute arises out of a difference in interpretation between the parties as to the performance requirements of the Order, then Seller will continue performance in accordance with the interpretation of performance as determined by Purchaser.

25. **Governing Law.** Each Order is to be construed according to the laws of the State of Michigan without regard to any applicable conflict of law provisions or the United Nations Convention on Contracts for the International Sale of Tooling, as amended.
26. **No Waiver, Cumulative Remedies; Unenforceability.** Neither party will, by any act, delay, indulgence, omission, or otherwise, be deemed to have waived any right or remedy contained herein. A waiver by either party of any right or remedy on any one occasion will not be construed as a bar to any right or remedy which that party would otherwise have had on a subsequent occasion. No failure to exercise, nor any delay in exercising, any right, power, or privilege contained herein will operate as a waiver, nor will any single or partial exercise of any right, power or privilege contained herein preclude the exercise of any other right, power or privilege or the future exercise thereof. The rights and remedies contained herein are cumulative, may be exercised singly or concurrently, and are not exclusive of any rights and remedies available at law, in equity, or provided by any other agreements between the parties. Should any provision hereunder be held invalid or unenforceable, the remainder of the Order will not be affected thereby. Seller acknowledges and agrees that money damages would not be a sufficient remedy for any actual, anticipatory, or threatened breach of these Terms and Conditions with respect to its timely delivery of Tooling to Purchaser and that, in addition to all other rights and remedies which Purchaser may have, Purchaser shall be entitled to specific performance and injunctive or other equitable relief to enforce these Terms and Conditions, without any requirement of a bond or other security to be provided by Purchaser.
27. **WAIVER OF JURY TRIAL.** PURCHASER AND SELLER ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH OF PURCHASER AND SELLER, AFTER CONSULTING (OR HAVING THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ARBITRATION OR ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO ANY ORDER OR ANY OTHER DOCUMENT PERTAINING TO ANY ORDER.
28. **Entire Order.** The Order, together with the attachments, exhibits or supplements specifically referenced in the Order, constitutes the entire agreement between Seller and Purchaser with respect to the matters contained in the Order and supersedes all prior oral or written representations and agreements. Except as provided in the preceding sentence or as otherwise provided in these Terms and Conditions, the Order may only be modified by an Order Revision issued by Purchaser.