

# MAHINDRA AUTOMOTIVE NORTH AMERICA, INC.

## Terms and Conditions of Purchase

for

## TOOLING

### 1. Offer; Acceptance; Exclusive Terms.

1.1. A purchase order issued by Mahindra Automotive North America, Inc. (“**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 change order applicable to the Order (a “**Change Order**”); (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 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. 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.

## 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. 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.

11. **Ownership of Tooling.**

11.1. All rights, title, and interest in and to any part of Tooling to be paid for by Purchaser 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 is 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 produced by the Tooling reaches up to 85% of available 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 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 party to perform hereunder will be excused if and to the extent that such delay or failure is caused by circumstances beyond the control and without the fault or negligence of either party, including, acts of God or of the public enemy, acts of the Government (including, but not restricted to, any preference, priority or allocation order), fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, unusually severe weather, and delays of a subcontractor due to such causes, provided that Seller will give Purchaser prompt notice in writing of any cause that will result in such delay (and the anticipated duration) within five (5) days. If requested by Purchaser, Seller will, within five (5) days of such request, provide adequate assurances that the delay will not exceed thirty (30) days. If the delay lasts more than thirty (30) days or Seller does not provide adequate assurance (within a commercially reasonable time not to exceed ten (10) days from the date of the request) that the delay will cease within thirty (30) days, Purchaser may immediately cancel the Order without liability.

**16. Indemnification.**

16.1. 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 by reason of the use of Tooling by Seller for the benefit of Purchaser, Purchaser's customers or others.

16.2. Purchaser shall notify Seller in writing, and with reasonable promptness, of any claim, demand, suit, cause of action or legal proceeding that may give rise to a claim against Seller for defense. If Purchaser fails to give notice, Seller is still obligated to indemnify, hold harmless and defend Purchaser, except that Seller is not liable for any expense or cost that Purchaser incurs before the time when notice is given. At the request of Purchaser, Seller shall conduct Purchaser's defense (employing counsel acceptable to Purchaser), at Seller's expense, against any claim, demand, suit, cause of action or legal proceeding within the scope of this paragraph, whether or not litigation is actually commenced, or the allegations are meritorious. At its own option, Purchaser may employ separate counsel, including in-house counsel, to conduct Purchaser's defense against such a claim. Purchaser and Seller shall cooperate in the defense of any such claim. Seller may control the defense and settlement of such a claim, but if the settlement of a claim may have an adverse effect on Purchaser, then Seller shall not settle such claim without the consent of Purchaser. Seller shall bring no claim or action for indemnification, contribution, or subrogation against Purchaser, nor shall Seller implead any of them in any action brought by another, based on injury to a person or death arising out or relating to Seller's performance under the Order. If, through any such action, Seller ever acquires a lien on a judgment against Purchaser, then Seller shall assign such lien to Purchaser. Seller waives any immunity from indemnification that Seller may hold, by virtue of Seller's compliance with its workers' compensation obligations in any jurisdiction, even if such immunity arises under the constitution or statutes of such jurisdiction. In no event shall Seller settle any Claim in whole or in part in a manner that would negatively impact Purchaser in a material way (relative to a similar settlement by any other participating parties). Seller shall make no admissions or settlement of any Claim that binds the Purchaser without the prior written consent of the Purchaser. If any compromise or settlement is made with respect to any claim, Seller shall pay all settlement amounts.

**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. Proprietary Information.**

19.1. Information, including, but not limited to, technical, process or economic information derived from drawings, specifications, blueprints or other documents or data, including copies furnished by Purchaser in connection with an Order is considered "**Confidential Information**". Seller must keep Confidential Information confidential and will not disclose or use, directly or indirectly, such Confidential Information for the benefit of Seller or any other third party except with Purchaser's prior written consent as required for performance of the Order.

19.2. In connection with the development of any ideas, inventions, improvements or discoveries, including all related information and know-how, related to the Order for Tooling and for which Purchaser has provided or is to provide support to Seller in the form of funding, including, but not limited to, payments in whole or part for prototype components or tooling, designing, testing or consulting, Purchaser will automatically be entitled to and Seller agrees to and hereby assigns all rights, title and interest in and to such ideas, inventions, improvements and discoveries to Purchaser (unless otherwise specifically agreed to in writing and in such event Purchaser is entitled to at least a nonexclusive, paid up, irrevocable, worldwide right and license including the right to fully sublicense third parties, including the U.S. Government for all Governmental purposes to practice and have practiced for its purpose such invention). Seller agrees to promptly notify Purchaser in writing of any such idea, invention, improvement or discovery so developed. The provisions of this clause shall survive termination of fulfillment of the Order.

19.3. In the event that the Seller becomes compelled by law or order of court or administrative body to disclose any Confidential Information of Purchaser, Seller shall be entitled to disclose such Confidential Information, provided that (i) Seller provides the Purchaser with prompt prior written notice of such requirements to

allow the Seller to take any necessary action to safeguard the Confidential Information, including without limitation the issuance of a protective order, and (ii) if required to do so, Seller shall furnish only that portion of the Confidential Information which is legally required to be disclosed and shall exercise commercially reasonable efforts to obtain assurances that the Confidential Information will be treated in confidence.

19.4. Seller agrees to notify Purchaser promptly in the event of any breach of its security under conditions in which it would appear that the Confidential Information is prejudiced or exposed to loss. Seller shall, upon request of the Purchaser, take all other reasonable steps necessary to recover any compromised Confidential Information disclosed to or placed in the possession of receiving party by virtue of this Agreement. The cost of taking such steps shall be borne solely by Seller.

19.5. Upon the request of Purchaser and, in any event, when this Agreement has expired or terminated, the other Seller will promptly return to Purchaser or destroy (i) all Confidential Information in Seller's possession or control and (ii) all analyses, studies, or other materials, or part thereof, that were created by Seller that are based on or contain Confidential Information of the Purchaser.

19.6. Seller's obligations under this section shall not apply to any information that was: (i) independently developed; (ii) in its possession prior to receiving the information from the disclosing Party; (iii) publicly available; or (iv) disclosed by the disclosing party to third parties without obligations of confidentiality.

**20. Intellectual Property Rights.** To the extent that the Tooling under the Order is not manufactured pursuant to the designs originated solely by Purchaser, Seller guarantees that the sale and/or use of any or all Tooling hereunder will not infringe any United States or foreign patents, trademarks, or copyrights. Seller further agrees to indemnify, hold harmless, and defend Purchaser, at Seller's own expense, (i) against any and all claims of patent, trademark or copyright infringement or of unfair competition arising out of the sale and (ii) against all liens, security interests, and/or encumbrances whatsoever asserted against such Tooling, including claims to said merchandise, asserted by others.

**21. Legal / Regulatory Compliance with Laws.** Seller agrees to comply with all federal, state and local laws, executive orders, rules, regulations and ordinances which may be applicable to Seller's performance of its obligations under the Order, and to certify its compliance in writing at Purchaser's request.

21.1. Seller warrants that the Tooling will comply with all applicable product safety and environmental regulations.

21.2. Seller declares to be aware of all economic sanction laws, anti-boycott laws and trade restrictions imposed by the U.S., including but not limited to the EAR (Export Administration Regulations), UN (United Nations) and the EU (European Union) as may be amended from time to time, and warrants to comply with them in all respects related to the performance of this Agreement. Nothing herein is meant to require either party to take any action which is likely to place it or its affiliates in a position of non-compliance with, or in contravention of, the above mentioned laws and restrictions.

21.3. In providing Tooling to Purchaser, Seller and its subcontracts agree that they will not act in any fashion or take any action that will render Purchaser liable for a violation of the FCPA (Foreign Corrupt Practices Act), which prohibits the offering, giving or promising to offer or give, directly or indirectly, money or anything of value to any official of a government, governmental entity political party or instrumentality to assist it or Purchaser in obtaining or retaining business or to gain an unfair business advantage. Seller further represents that neither it nor any of its subcontractors will utilize forced, compulsory, or child labor in connection with the supply of Tooling.

21.4. Unless otherwise required or prohibited by law, the Seller warrants, to the best of its knowledge, that in relation to the supply of Tooling under the terms of this Order, to comply with the ethical standards and human rights provided for under the ILO's (International Labour Organization) conventions and the UN's UDHR (Universal Declaration of Human Rights). Further, Seller will cooperate and provide requested documentation in support of any supply chain review or audit by Purchaser to ensure compliance with any laws related to slave, child or forced labor, or conflict materials.

21.5. Seller will notify Purchaser of any labor contract expiration date at least six (6) months before the expiration of a current labor contract that has not been extended or replaced.

21.6. To the extent that Tooling will be transported into the US, Seller represents that either: (i) it is C-TPAT (Customs-Trade Partnership Against Terrorism) certified by CBP (Customs and Border Protection), and will maintain that certification throughout the term of the Order; or (ii) it will comply with the C-TPAT security procedures that may be found on the customs website at [www.cbp.gov](http://www.cbp.gov) (or successor website). Seller agrees to comply with all applicable customs regulatory requirements and will cooperate with Purchaser in relation to any customs matter. Seller will promptly notify Purchaser of any investigations, retraction, change to information and documentation in support of Purchaser's customs and trade compliance programs. Such information includes, but is not limited to:

- i. a changed country of origin of Tooling purchased from Seller by Purchaser;
- ii. a change of free trade agreement status eligibility of Tooling purchased by Purchaser (commonly referred to as "de-certifications");
- iii. commencement of a customs investigation against Seller affecting or pertaining to Tooling.

21.7. Seller will indemnify, defend and hold Purchaser harmless from and against any liability claims, demands or expenses (including attorney's or other professional fees) arising from or relating to Seller's noncompliance with all applicable laws and regulations, including fraud or misrepresentation.

**22. Insolvency.** Purchaser may cancel the Order without liability to Seller in the event of the happening of any of the following or comparable event: (i) Seller's insolvency; (ii) Seller's inability to promptly provide Purchaser with adequate and reasonable assurance of Seller's financial and operational capability to perform timely any of Seller's obligations under the Order; (iii) Seller's filing of a voluntary petition in bankruptcy; (iv) the filing of any involuntary petition to have Seller declared bankrupt provided it is not vacated within thirty (30) days from the date of filing; (v) the appointment of a receiver or trustee for Seller provided such appointment is not vacated within thirty (30) days from the date of such appointment; or (vi) Seller's execution of an assignment for the benefit of creditors.

Purchaser's exercise of the right of cancellation reserved in this paragraph will neither impose any liability upon Purchaser by reason of the cancellation nor have the effect of waiving damages to which Purchaser might otherwise be entitled. Upon request, Seller must deliver any associated tooling with the Order, existing spare parts, and all related documentation in Seller's possession or under its control to Purchaser.

**23. Dispute Resolution.** In the event Seller fails or refuses to deliver the Goods, 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 Chief Financial Officer; (ii) the respective managers will attempt to resolve the Dispute within ten (10) business days of such submission; and (iii) 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 23. 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.

**24. Lien Waiver.** Neither the final payment nor any part of the retained percentage will become due under the Order until Seller delivers to Purchaser waivers of liens from all subcontractors providing for a complete release of all possible liens arising out of the Order, or receipts in full in lieu thereof; and, in either case, a notarized affidavit stating that said releases and receipts cover all materials and labor incorporated in the work for which a lien might be filed. Seller may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to Purchaser, to indemnify Purchaser against any claim by lien or otherwise. If any lien or claim remains unsatisfied after all payments are made, Seller shall refund to Purchaser all moneys that Purchaser may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees.

**25. Remedies.** The rights and remedies reserved to Purchaser in the Order shall be cumulative, and in addition to all other or further remedies provided in law or equity. Without limiting the foregoing, should any Tooling fail to conform to the warranties set forth above or if the materials contained within the Tooling used by Purchaser, reimburse Purchaser for any incidental, special and consequential damages caused by such nonconforming Tooling, including, but not limited to, costs (including all attorney's or other professional fees), expenses and losses incurred by Purchaser in (i) inspecting, sorting, containing, repairing or replacing such nonconforming Tooling, (ii) resulting from production interruptions, (iii) conducting recall campaigns or other corrective service actions, and (iv) claims or litigation arising from personal injury (including death) or property damage caused by such nonconforming Tooling. If requested by Purchaser, Seller will enter into a separate agreement for the administration or processing of charge backs for nonconforming Tooling. In addition, Seller shall reimburse Purchaser for all liability, claims, demands or expenses (including attorney's or other professional fees) arising from or relating to Seller's breach or anticipatory repudiation of the Order or any other contract between Seller and Purchaser, a request or demand by Seller to modify or change the terms of the Order, or legal proceedings involving Seller that in the reasonable judgment of Purchaser, may impact upon Seller's continued or future performance under the Order, or if Seller is a party to a court case or proceedings in which Purchaser appears, participates, monitors or becomes a party. In the event the Order is issued or renewed after Seller becomes a debtor in bankruptcy, Purchaser shall be entitled to all of its attorney's or other professional fees arising from or relating to the bankruptcy case, including for monitoring the case.

**26. Insurance.** Seller will maintain insurance coverage with carriers acceptable to Purchaser and in the following amounts: 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. Seller will furnish to Purchaser certificates of insurance and Additional Insured endorsements showing compliance with these insurance requirements, if requested. All such certificates of insurance and endorsements must not be subject to cancellation or material alteration except after thirty (30) days prior written notice by Certified Mail to the Additional Insured. The limits of liability coverage set forth above are established as minimum coverage required of Seller and will in no way be construed as a limitation of the liability of Seller under any hold-harmless or indemnification provision contained in the Order. The Seller's policies will contain a provision by the respective insurers waiving the right of such insurers to subrogation. Prior to commencing any type of work on Purchaser's property, if applicable and required for the Tooling, Seller will maintain and upon request furnish to Purchaser a certificate evidencing (i) general liability insurance with coverage limits reasonably acceptable to Purchaser and naming Purchaser as an additional insured, (ii) all risk property perils insurance covering the full replacement value of Purchaser's property while in Seller's care, custody, or control and naming Purchaser as loss payee, and (iii) worker's compensation insurance as required by applicable law.

**27. No Limitation.** Any right or remedy expressly conferred on Purchaser herein shall not limit or modify any right or remedy which Purchaser would otherwise have.

**28. Limitation of Damages.** In no event will Purchaser be liable to Seller or Seller's subcontractors for anticipated profits or for special, incidental or consequential damages.

**29. Setoff.** In addition to any right of setoff or recoupment provided by applicable law, (i) all amounts due Seller shall be considered net of indebtedness of Seller and/or its affiliates/subsidiaries to Purchaser and/or its affiliates/subsidiaries and (ii) Purchaser may deduct any amounts due or to become due from Seller and/or its affiliates/subsidiaries to Purchaser and/or its affiliates/subsidiaries from any sums due or to become due from Purchaser and/or its affiliates/subsidiaries. If an obligation of Seller is disputed, contingent or unliquidated, 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 of the orders (including the Order) between Purchaser

and Seller have not been assumed (under applicable bankruptcy law), then Purchaser may withhold payment to Seller for Tooling until the risk of potential rejection and other damages is eliminated.

**30. Non-Solicitation.** Purchaser will not solicit, and Seller will not provide, any gifts or gratuities (including but not limited to money, fees, commission, credits, gifts, things of value or compensation), of any kind which is provided directly or indirectly to any employee of Purchaser for the purpose of improperly obtaining or rewarding favorable treatment in connection with award of a purchase order or subcontract. Seller will report in writing any solicitation or suspected solicitation of gifts or gratuities by Purchaser's employees to the Purchaser's Chief Financial Officer.

**31. Debarment.** For the full term of the Order, Seller represents and warrants that: (i) Seller shall not be debarred, suspended, excluded or disqualified from doing business with the United States Government; and (ii) Seller shall not be listed on the Excluded Parties List System maintained by the General Services Administration of the United States Government (found at [www.epls.gov](http://www.epls.gov)). Seller agrees to immediately notify Purchaser in writing in the event Seller breaches any of the preceding representations and warranties or has reason to believe that it will become in breach of any of the preceding representations and warranties. Such breach of any representation or warranty under this section shall be deemed a default under the Order for which Purchaser may immediately terminate the Order without being required to provide notice or permit Seller to cure such default.

**32. Notices.** Unless otherwise stated, notifications required or permitted hereunder shall be sent to Purchaser or Seller at the addresses set forth in the purchase order issued by Purchaser (as part of the Order). Any notice is to be given in writing and is deemed effectively given: (i) upon personal delivery to the party notified; (ii) upon confirmation of receipt of a facsimile by the party to be notified; or, (iii) upon receipt of verification of delivery when using an overnight courier, prepaid for overnight delivery.

**33. Equal Opportunity.** Purchaser requires all hiring decisions be made fairly, ethically, and in accordance with all relevant laws and regulations. Seller agrees not to discriminate against qualified individuals based on status as a protected class, veterans or individuals with disabilities, and will prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin.

**34. Right to Audit.** Purchaser and its authorized representatives shall have the right from time to time to access Seller's premises and verify: (i) Seller's compliance with the terms of the Order; and (ii) Seller's performance or ability to perform under the Order. Seller will maintain records as necessary to demonstrate Seller's compliance with the terms of the Order, including showing that amounts charged to Purchaser are true and correct. Purchaser and its representatives may audit Seller's records made within five (5) years prior to the audit date (including of transactions completed), to the extent needed to verify compliance with the Order, including the prices charged, match the Order's prices. Any audit will be conducted at Purchaser's expense (but will be reimbursed by Seller if the audit uncovers errors in the amounts charged in excess of 5% or other Seller breaches that expose Purchaser to potential liability).

**35. Third-Party Beneficiary.** Seller agrees that Purchaser is an intended third-party beneficiary of any contracts between Seller and its suppliers relating to the production or assembly or use of the Tooling covered by the Order with the right to enforce such contracts.

**36. Supplier Conduct Requirements.** Purchaser is committed to ensure that working conditions in Purchaser's supply chain are safe and humane, that workers are treated with respect and dignity, and that manufacturing processes are environmentally responsible. Accordingly, Seller agrees to comply with all supplier conduct requirements that Purchaser may provide and amend from time to time, and further agrees that Seller shall: (i) not request or encourage, directly or indirectly, any Seller personnel to furnish false or incomplete information in connection with any audit and inspection; (ii) take retaliatory action against any Seller personnel interviewed; and (iii) immediately implement corrective action to remedy any non-conformance with supplier conduct requirements. Purchaser reserves the right to disclose or have an authorized third-party disclose on an aggregated basis, the results of any audit and inspection regarding Seller's treatment of its workers, including any non-conformance with supplier conduct requirements. Seller's failure to remedy any non-conformance with supplier conduct requirements after a reasonable amount of time will be deemed to be a default.

37. **Limitation.** Purchaser's obligations under the Order are expressly limited to procurement of the Tooling pursuant to the terms of the Order.

38. **No Implied Waiver.** The failure of either party at any time to require performance by the other party of any provision of the Order will not affect the right to require such performance at any time thereafter. The waiver of either party of a breach of any provision of the Order shall not constitute a waiver of any succeeding breach of the same or any other provision. To be effective, any waiver by Purchaser of any provision of the Order must be in writing signed by Purchaser. No failure or delay in exercising any right or remedy will operate as a waiver thereof nor will any single or partial exercise thereof preclude other or further exercise thereof. No course of dealing or course of performance may be used to evidence a waiver or limitation of Seller's obligations under the Order.

39. **Non-Assignment.** Purchaser may assign its rights and obligations under the Order without any consent of Seller. Seller may not assign or delegate its rights or obligations under the Order without the prior written consent of Purchaser.

40. **Relationship of Parties.** Seller and Purchaser are independent contracting parties. Nothing in the Order will make either party the agent or legal representative of the other for any purpose whatsoever. Nothing in the Order will grant either party any authority to assume or to create any obligation on behalf of or in the name of the other party.

41. **Governing Law.** The Order is to be construed according to the laws of the State of Michigan, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any conflict of law provisions that would require application of another choice of law. In addition, Seller agrees to comply with all applicable laws, rules, regulations, ordinances or other requirements of any national, state, local, multi-national or international body (collectively "**Laws**") relating to the manufacture, sale, delivery and use of the Tooling. Upon request, Seller will submit to Purchaser evidence of such compliance.

42. **Survival.** The expiration or termination of the Order shall not affect Seller's obligations or representations and warranties and Purchaser's rights under the Order.

43. **Severability.** If any term of the Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order of rule, and the remaining provisions of this Order shall remain in full force and effect.

44. **No Advertising.** Without the prior written consent of Purchaser, Seller shall not in any manner either (i) advertise or publish the fact that Seller has contracted to furnish Purchaser the Tooling covered by the Order or (ii) use any trademarks or trade names of Purchaser in Seller's advertising or promotional materials.

45. **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 with counsel of its choice, knowingly voluntarily and intentionally waives any right to trial by jury in any action or other legal proceeding arising out of or relating to any Order or any other document pertaining to any Order.

46. **Entire Order.** The entire agreement, together with the releases and any other attachments, exhibits, or supplements, specifically referenced in the Order, including the Purchaser's "Supplier Handbook" and Purchaser's "Packaging/Labeling Standards", 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. The Order may only be modified by an Order amendment/revision issued by Purchaser.