



**1. General.** These North American Terms and Conditions of Purchase (“**POTCs**”) are incorporated into and form a part of the purchase order and/or scheduling agreement issued by GLE and/or its North American affiliate(s) as specified in the purchase order and/or scheduling agreement, or revision thereto (the “**Purchase Order**”). The Purchase Order shall also include any provisions incorporated by reference therein pursuant to Section 2.2 below. The terms “**Buyer**” and “**Seller**” refer to the entities designated as such on the attached purchase order and/or scheduling agreement. The term “**Supplies**” refers to the products, supplies and/or services to be provided to Buyer by Seller as specified on the Purchase Order.

**2. Terms of the Purchase Order; Offer/Acceptance.**

2.1 The Purchase Order is an offer by Buyer to purchase the Supplies from Seller on the terms of the Purchase Order. Buyer shall have the right to rescind the Purchase Order at any time prior to Seller’s acceptance. Seller shall be deemed to have accepted the Purchase Order and a binding contract formed upon the earliest of: (a) Seller commencing work or performance with respect to any part of the Purchase Order; (b) Seller delivering written acceptance of the Purchase Order to Buyer; (c) any conduct by Seller that fairly recognizes the existence of a contract for the purchase and sale of the Supplies; or (d) two (2) weeks following Buyer’s delivery of the Purchase Order to Seller. **The Purchase Order is limited to and conditional upon Seller’s acceptance of the terms of the Purchase Order.** The Purchase Order does not constitute an acceptance of any offer, quote or proposal made by Seller, and Seller acknowledges and agrees that: (i) a request for quotation or similar document issued by Buyer is not an offer by Buyer; and (ii) any response by Seller to a request for quotation or similar document issued by Buyer is not an offer by Seller. In the event Seller accepts Buyer’s Purchase Order other than by written acceptance pursuant to subsection (b) above, Buyer may cancel the Purchase Order in its sole and absolute discretion, without payment of any kind to Seller, if Seller refuses to provide written acceptance of the Purchase Order within two (2) business days following Buyer’s written or oral request for such confirmation. Any additional or different terms proposed by Seller, whether in Seller’s quotation, acknowledgement, invoice or otherwise, are unacceptable to and expressly rejected by Buyer, and are hereby waived by Seller and are not part of the Purchase Order. However, any proposed modification of the terms of the Purchase Order by Seller shall not operate as a rejection of the Purchase Order if Seller commences work or is otherwise deemed to have accepted Buyer’s offer as provided above, in which case the Purchase Order shall be deemed accepted by Seller without any such proposed modifications. Any reference in the Purchase Order to Seller’s quote or other prior communication shall not imply acceptance of any term, condition or instruction but is solely to incorporate the description or specifications of the Supplies, but only to the extent that such description or specifications are not in conflict with the description and specifications in the Purchase Order. If the Purchase Order is found to be an acceptance of any prior offer or proposal by Seller, such acceptance shall be limited to and conditional upon Seller’s acceptance of the terms of the Purchase Order.

2.2 The following documents are incorporated into and shall be part of the Purchase Order: (i) any executed supply or corporate agreement between Buyer and Seller; (ii) prints and specifications for the Supplies; (iii) Buyer’s policies that have been communicated to Seller, as revised by Buyer from time to time; and (iv) any written agreement between Buyer and Seller which provides therein that it shall be part of the Purchase Order. The purchasing terms and conditions of Buyer’s customer will also be incorporated into and shall be part of the Purchase Order if identified by Buyer.

**3. Quantity.**

3.1 From time to time, Buyer may provide Seller with volume and/or quantity forecasts or projections for Buyer’s Supplies needs. Seller acknowledges that the projections, unlike a Purchase Order, are for planning purposes only and are not binding on Buyer. Seller acknowledges and agrees that: (i) Buyer makes no representation, warranty or guaranty of any kind or nature whatsoever as to the accuracy of the projections; (ii) Buyer shall not have any obligation to correct or update any projection; (iii) the actual volumes of Buyer’s Supplies needs could be materially more or less than what was projected; and (iv) Seller’s reliance upon a projection is at its own risk.

3.2 Buyer may require Seller, at Seller’s expense, to participate in electronic data interchange or similar inventory management program for notification of Purchase Orders, shipping confirmation and/or other information relating to the Purchase Order. In the event Seller is a “user” pursuant to any Buyer’s third party software license, Seller shall use such applications for its intended purpose and in accordance with the terms and conditions of such license.

**4. Delivery; Purchase Orders.**

4.1 Seller shall manufacture and ship Buyer’s requirements for the Supplies in such quantities and at such time as identified by Buyer as firm orders in the Purchase Order, or if a blanket Purchase Order, in scheduling agreements, manifests or other similar releases that are transmitted to Seller from time to time during the term of the Purchase Order, and after consideration by Buyer of agreed upon lead times. Material releases, scheduling agreements, manifests or other similar releases are incorporated into, and are an integral part of, the Purchase Order and are not independent contracts. All the Supplies received in excess of the quantities in a Purchase Order shall be subject to return for credit at Seller’s expense.

4.2 Time and quantities are of the essence under the Purchase Order. Seller agrees to 100% on-time delivery of the quantities and at the times specified by Buyer as set forth in the Purchase Orders. Buyer is not obligated to accept early deliveries, late deliveries, partial deliveries, excess deliveries or any other delivery that is not a 100% on-time delivery (“**Non-conforming Deliveries**”). If Buyer elects its sole and absolute discretion to accept one or more Non-conforming Deliveries, such acceptance shall not constitute a waiver of Buyer’s right to reject any other shipment which does not conform to the Purchase Order.

4.3 If Seller fails to achieve a fill rate of at least 95% per Purchase Order by the due date specified on the Purchase Order, Buyer may chargeback an amount equal to 5% of the Purchase Order cost with a minimum of \$100 and a maximum of \$1000.

4.4 Buyer may change the timing of delivery of previously scheduled shipments or direct temporary suspension of scheduled shipments from time to time in its sole and absolute discretion, neither of which actions shall entitle Seller to modify Seller’s compensation, price or other terms or conditions set forth in the Purchase Order. If, as the result of any of Seller’s acts or omissions, Seller shall fail to timely meet Buyer’s delivery requirements and more expeditious methods of transportation for the Supplies are available, Seller shall ship the Supplies by a transportation method that will meet Buyer’s requirement or, if that is not possible, by the most expeditious transportation method possible. In either such case, Seller shall be solely responsible for any incremental costs due to the more expeditious transportation method.

4.5 Unless otherwise agreed upon, all pricing and shipments are to be made FCA Seller’s Location (as defined in *Inco terms 2010* published by the International Chamber of Commerce) to

Buyer's designated destination for the Supplies transported internationally.

4.6 Seller warrants full and unrestricted title to Buyer for the Supplies delivered by Seller, free and clear of any and all liens, restrictions, reservations, security interests or encumbrances.

4.7 If Seller is responsible for set-up or installation under the Purchase Order, Seller shall bear all of the necessary and incidental costs, including, without limitation, travel and living expenses and provision of tools and the like to accomplish Seller's obligations under the Purchase Order.

4.8 Seller shall: (i) properly pack, mark, and ship the Supplies according to the requirements of Buyer, the involved carriers and the country of destination; (ii) route all shipments according to Buyer's instructions; (iii) label or tag each package according to Buyer's instructions; (iv) provide papers with each shipment showing the Purchase Order number, amendment or release number, Buyer's part number, Seller's part number (where applicable), number of pieces in the shipment, number of containers in the shipment, Seller's name and number, and the bill of lading number; and (v) promptly forward the original bill of lading or other shipment receipts for each shipment according to Buyer's instructions and carrier requirements. Buyer's count shall be accepted as final and conclusive on shipments not accompanied by Seller's itemized packing list. Partial shipments, if authorized by Buyer, shall not be construed as making the obligations of Seller severable.

4.9 Seller shall comply with GLE, as it may be changed or updated from time to time by GLE in its sole discretion. Seller shall promptly provide Buyer with the following information in the form requested by Buyer: (i) a list of all substances or materials in the Supplies; (ii) the amount of all substances or materials; and (iii) information concerning any changes in or additions to the substances or materials. Before the Supplies are shipped, Seller shall give Buyer sufficient warning in writing (including appropriate labels on all the Supplies, containers, and packing, including, without limitation, disposal and recycling instructions, material safety data sheets and certificates of analysis) of any hazardous or restricted material that is a substance or material or is otherwise part of the Supplies, together with any special handling instructions that are needed to advise carriers, Buyer, and their respective employees or others handling the Supplies how to take appropriate measures while handling, transporting, processing, using or disposing of the Supplies, containers, and packing to best prevent bodily injury or property damage. Seller shall comply with all applicable national, state, provincial, and local laws and regulations pertaining to product content and warning labels, including, but not limited to, the U.S. Toxic Substances Control Act and European Union Directive 2000/53/EC or any successor law.

## **5. Price; Payment Terms.**

5.1 The purchase price for the Supplies is set forth in the Purchase Order and is in U.S. Dollars unless otherwise stated. Unless otherwise stated in the Purchase Order, the purchase price: (i) is a firm fixed price for the duration of the Purchase Order and not subject to increase for any reason, including, but not limited to, increased raw material costs, increased labor or other manufacturing costs, increased development costs, currency fluctuations or changes in volumes or program length from those estimated or expected; (ii) is inclusive of all federal, state, provincial, value added and local taxes and any duties applicable to provision of the Supplies; and (iii) is inclusive of all storage, handling, packaging and all other expenses and charges of Seller. Seller shall separately invoice Buyer for any sales, value added, or similar turnover taxes or charges that Seller is required by law to pay or collect from Buyer.

5.2 Invoices shall be issued by Seller to Buyer no earlier than delivery of the Supplies to Buyer. Seller shall, at its sole expense, comply with Buyer's instructions and then current policies with respect to the form, content and method for submission of invoices. Seller shall promptly submit correct and complete invoices or other agreed upon billing communications with appropriate supporting

documentation and other information reasonably required by Buyer after delivery of the Supplies.

5.3 Unless otherwise stated in the Purchase Order, Buyer shall pay invoices for the Supplies which are properly presented and not subject to dispute according to the terms stated in the Purchase Order. If no terms are stated in the Purchase Order, Buyer shall pay net ninety (90) days after the later of: (i) the Supplies being received and accepted at Buyer's facility, or (ii) Buyer's receipt of Seller's invoice.

5.4 Seller acknowledges and agrees that Seller's financial condition, insolvency and/or failure to timely pay its suppliers or other creditors may create a disruption in the supply chain. In the event Buyer elects in its sole and absolute discretion to pay any of Seller's obligations in order to avoid or cure a disruption in the flow of the Supplies to Buyer, Buyer shall have the right to withhold from and set off against any funds due to Seller from Buyer the aggregate amount paid in respect of Seller's obligations and, if such right of setoff is insufficient for Buyer to immediately recover all such amounts, Seller shall pay to Buyer the remaining balance within ten (10) days of Buyer's payment. If Seller becomes a debtor in bankruptcy or surrenders its assets to a lender or state court receiver and, Buyer, to obtain and/or continue the continuous flow of the Supplies, participates in a post-petition (or post surrender) loan to Seller, Seller acknowledges and agrees that the funds advanced to participate in the loan (including attorney's fees) shall be deemed "cover" damages within the meaning of section 2-712 of the Uniform Commercial Code.

## **6. Quality and Rejection.**

6.1 Seller shall conform to all quality control and other standards and inspection systems as established or directed by Buyer and its customer.

6.2 Seller is responsible for the performance and quality of all of its suppliers from which Seller obtains supplies or services it uses to produce Supplies. Seller shall maintain adequate development, validation, testing, launch and on-going supervision to assure that all Supplies sold to Buyer conform to all specifications, standards, prints, samples and descriptions set forth in the Purchase Order, including as to performance, fit, form, function, materials, and appearance. Seller shall monitor all external providers applicable requirement including customer requirements and flow down to external providers applicable requirements including customer requirements; provide test specimens for design approval, inspection/verification, investigation, or auditing. In the event that Seller ships any Supplies which are non-conforming or breach the warranties of Section 7 below. Third party calibration technicians must have a documented eye exam that meets Snellen 14/18, (20/30) or Jaeger 2. If not already in place seller must implement a quality management system, Seller must prevent the use of counterfeit parts in Buyer's product. Buyer may require Seller, at Seller's sole cost and expense, to inspect the Supplies in such a manner (including the use of a third-party inspector or sorter) (Third Party Calibration technicians must have documented eye exam that meets Snellen 14/18, (20/30), or Jaeger 2) as Buyer determines will insure that all future Supplies will conform to the Purchase Order. Any inspection or testing, the lack thereof, or lack of response shall in no way release Seller from any quality or warranty obligations under the Purchase Order.

6.3 If defective or non-conforming Supplies are rejected by Buyer, the quantities under the Purchase Order shall be correspondingly reduced unless Buyer otherwise notifies Seller, and Seller shall not replace reduced quantities without a new Purchase Order from Buyer directing it to do so. Following rejection of the non-conforming Supplies, Seller shall in Buyer's sole and absolute discretion, without prejudice to any other right or remedy of Buyer: (i) accept the return, at Seller's sole expense, of the Supplies and refund to Buyer the full invoice price plus all transportation and other charges associated with the non-conforming Supplies; (ii) replace the non-conforming Supplies with conforming Supplies, with all associated costs and expenses, other than the original invoice and shipping prices, being borne by Seller; or (iii) at Seller's sole expense, correct at any time prior to shipment

from Buyer's plant the Supplies that fail to meet the requirements of the Purchase Order.

6.4 Promptly upon learning of defective or non-conforming Supplies, Seller shall develop, document and implement corrective actions designed to ensure that all Supplies are produced in accordance with all applicable quality control policies and standards of Buyer and Buyer's customer. Supplier will make no substitutions/changes to design without the explicit permission of the Buyer. Seller shall immediately within 24hrs notify Buyer in writing when it becomes aware of any raw material, component, design or defect in the Supplies that is non-conforming or may be or become harmful to persons or property and obtain approval for disposition of supplies from Buyer.

## 7. Warranty.

7.1 Seller warrants to Buyer, Buyer's customer and their respective customers, successors and assigns that the Supplies shall: (i) be new and conform in all respects to the Purchase Order and to all specifications, drawings, samples and other descriptions furnished by Buyer or otherwise obtained by Seller; (ii) be free from all defects in design, workmanship and/or materials and be of highest quality and workmanship; (iii) be selected, designed, manufactured, assembled and packaged by Seller based upon Buyer's stated use and be fit and sufficient for the purposes intended by Buyer; (iv) conform to all applicable laws in countries where the Supplies (or Buyer's products into which the Supplies are incorporated) are to be sold; (v) for all Supplies which consist of services, Seller further warrants that its work shall be performed in a professional and workmanlike manner, consistent with all standards and specifications agreed to with Buyer and otherwise consistent with the highest industry standards.

7.2 All warranties of Seller extend to future performance of the Supplies and are not modified, waived or discharged by delivery, inspection, tests, acceptance and/or payment. Buyer's approval of any design, drawing, material, process or specifications shall not relieve Seller of these warranties. The warranties in this Section 7 are intended to and shall provide Buyer with protection from any and all warranty claims brought against Buyer by Buyer's customer and their respective customers, successors and assigns, relating in any manner to the Supplies.

7.3 The warranty period shall run to the latest of the following: (i) four (4) years from the date Buyer accepts the Supplies; (ii) the warranty period provided by applicable law; (iii) the warranty period offered by Buyer to Buyer's customer; or (iv) the warranty period Buyer's customer offers to end-users of the products or for the products into which the Supplies are incorporated.

7.4 If any of the Supplies are found to be defective or otherwise not in conformity with the warranties in this Section during the warranty period, then, Buyer, in addition to any other rights, remedies and choices it may have by law, contract or at equity, and in addition to seeking recovery of any and all damages and costs emanating therefrom, at its option and sole discretion and at Seller's expense, may: (a) require Seller to inspect, remove, reinstall, ship and repair or replace/re-perform nonconforming Supplies with Supplies that conform to all requirements of the Purchase Order, or (b) take such actions as may be required to cure all defects and/or bring the Supplies into conformity with all requirements of the Purchase Order, in which event all related costs and expenses (including, but without limitation, material, labor and handling costs) and other reasonable charges shall be for Seller's account.

7.5 At Buyer's request, Seller shall fully participate in any root cause investigation or analyses conducted by Buyer and/or Buyer's customer relating in any manner to the failure of the Supplies and provide all information requested by Buyer concerning the Supplies. In the event that the root cause analysis of a warranty failure is inconclusive but implicates the Supplies, the extent of Seller's liability shall be based upon a good faith allocation by Buyer of the responsibility for the warranty failure.

7.6 In the event that Buyer or Buyer's customer voluntarily or pursuant to a government mandate, makes an offer to end-users

to provide remedial action to address a defect or non-conforming condition of the Supplies or any of Buyer's products incorporating the Supplies, in connection with a recall campaign, service action or other corrective action ("**Remedial Action**"), the warranty shall continue for such time period as may be dictated by Buyer's customer or the government unit. If the Supplies or products sold by Buyer which incorporate the Supplies are subject to a Remedial Action, the extent of Seller's liability shall be based upon a good faith allocation by Buyer of responsibility for the Remedial Action. Buyer shall notify Seller as soon as practicable after Buyer learns in writing that a Remedial Action being considered implicates the Supplies, and thereafter provide Seller with the data provided to it by Buyer's customer relating to the potential Remedial Action. In the event Buyer's customer sets-off the cost of a Remedial Action against sums due to Buyer and Buyer and/or Buyer's customer determines, in good faith, that the Remedial Action was caused by the failure of the Supplies to conform to the quality standards and/or warranties in the Purchase Order, in whole or in part, Buyer may set-off the costs to Buyer of the Remedial Action against sums due to Seller prior to the allocation of responsibility set forth above.

7.7 If requested by Buyer, Seller shall enter into a separate agreement for the administration or processing of warranty charge-backs for the non-conforming Supplies, and shall fully participate in and comply with warranty reduction or related programs of Buyer or Buyer's customer that relate to the Supplies.

## 8. Remedies; Indemnification Obligation.

8.1 The rights and remedies reserved to Buyer in each Purchase Order shall be cumulative with and in addition to all other or legal or equitable remedies available to Buyer. Seller is liable for all damages incurred by Buyer as a result of Seller's: (i) breach of any representation or warranty set forth in the Purchase Order; (ii) failure to timely deliver conforming or otherwise non-defective Supplies; and/or (iii) failure to comply with the Purchase Order, even if Seller has cured the breach. Such damages shall include but not be limited to costs, expenses and losses incurred directly or indirectly by Buyer: (a) in connection with inspecting, sorting, storing, reworking, repairing or replacing the non-conforming Supplies; (b) resulting from production interruptions; (c) conducting or participating in Remedial Action(s) or other corrective service actions; or (d) resulting from personal injury (including death) or property damage caused by the non-conforming Supplies. Buyer's damages include reasonable attorneys' fees and other professional fees, settlements and judgments incurred by Buyer and other costs associated with Buyer's administrative time, labor and materials.

8.2 In any action brought by Buyer to enforce Seller's obligations under the Purchase Order, Seller acknowledges and agrees that monetary damages may not be a sufficient remedy for any actual, anticipated or threatened breach of the Purchase Order and that, in addition to all other rights and remedies that Buyer may have, Buyer shall be entitled to specific performance including injunctive or other equitable relief as a remedy for any such breach, in addition to recovery of Buyer's reasonable attorneys' fees and expenses.

8.3 To the fullest extent permitted by law, (i) Seller hereby assumes the entire, sole responsibility for any injury to person, including death, or damage to property of any kind or nature caused by, resulting from or in connection with the furnishing of the Supplies by Seller or anyone acting on its behalf; (ii) Buyer shall not be responsible for any injury to person (including death) or damage to any property resulting from Seller's possession, use, misuse or failure of any equipment, tooling or other property of Buyer furnished to Seller, and the use of any such property by Seller shall constitute acceptance by Seller of all responsibility for any claims for such injury or damage; and (iii) Seller shall defend, indemnify and hold harmless Buyer, Buyer's customer and the end-users of the products sold by Buyer or the end users of the products which incorporate the Supplies and all of their respective agents, customers, invitees, subsidiaries, affiliates, successors and assigns, against all damages, losses, claims, liabilities and expenses (including reasonable attorneys' and other professional

fees, settlements and judgments) arising out of or resulting from any defective Supplies, or from any negligent or wrongful act or omission of Seller or Seller's agents, employees or subcontractors, or any breach or failure by Seller to comply with any of Seller's representations or other terms and conditions of the Purchase Order (including any part of these POTCs) including the cost of Remedial Actions.

8.4 If Seller performs any work on Buyer's premises or utilizes the property of Buyer, whether on or off Buyer's premises: (i) Seller shall examine the premises to determine whether they are safe for the requested work and shall advise Buyer promptly of any situation it believes to be unsafe; (ii) Seller's employees, contractors, and agents shall comply with all laws and regulations that apply to the premises and if so requested, must leave Buyer's premises at Buyer's sole and absolute discretion; (iii) Seller's employees, contractors, and agents shall not possess, use, sell, transfer or be under the influence of alcohol or unauthorized, illegal, or controlled drugs or substances on the premises; and (iv) to the fullest extent permitted by law, Seller shall indemnify and hold Buyer and its agents, successors and assigns, harmless from and against any liability, claims, demands or expenses (including reasonable attorneys' and other professional fees, settlements and judgments) for damages to the property of or personal injuries (including death) to Buyer, its employees or agents, or any other person or entity to the extent arising from or in connection with Seller's work on Buyer's premises or Seller's use of Buyer's property.

8.5 Seller's obligations under this Section 8 to defend and indemnify shall apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise and, to the maximum extent permitted by applicable law, Seller's indemnification obligations shall apply even as to losses caused in whole or in part by an indemnified party's negligence, except to the extent that losses resulted solely and directly from the gross negligence or willful misconduct of such indemnified party. Buyer has the right to be represented by and actively participate through its own counsel in the defense and resolution of any indemnification matters, at Seller's expense. The indemnification obligations of Seller are independent of and in addition to any insurance and warranty obligations of Seller. The indemnification obligation of Seller shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the benefit of Seller under Workers' Compensation Acts, or laws governing occupational diseases, disability benefits or other employee benefits.

8.6 Seller warrants that it will use customer-designated or approved external providers, including process and sourcing (i.e., special processes): Seller will retain documented information, including specified retention periods and disposition requirements.

## **9. Changes.**

9.1 Buyer reserves the right at any time, by written notice to Seller, to make changes, or to require Seller to make changes, to drawings, specifications, sub-suppliers, samples or descriptions of the Supplies. Buyer also reserves the right to otherwise change the scope of the work covered by the Purchase Order, including work with respect to such matters as inspection, testing or quality control. Buyer may also require Seller to source the supply of raw materials either from itself or from specified third parties. Seller shall promptly make any such requested change.

9.2 In order for Seller to request a reasonable difference in price or time for performance as a result of a change described in Section 9.1, Seller must notify Buyer of its request in writing within ten (10) days after receiving notice of the change. Buyer can request additional documentation from Seller relating to any change in specifications, price or time for performance. After receiving all requested documentation, Buyer, in consultation with Seller, may equitably adjust the price or time for performance. If Seller does not provide timely notice to Buyer that a requested change may result in a difference in price or time for performance,

Buyer's requested change shall not affect the price or time for performance.

9.3 Seller shall not make any change relating to the Supplies, including without limitation, in the Supplies' contents, design, specifications, processing, packing, marking, shipping, price or date or place of delivery, except at Buyer's written instruction or with Buyer's prior written approval. If Seller discontinues the manufacture or supply of any Supplies, it shall inform Buyer at least six (6) months before such discontinuation in order to give Buyer the opportunity to place a final order.

## **10. Service Parts.**

10.1 Seller shall supply and maintain a reasonable inventory of spare and replacement parts ("**Service Parts**") for the duration of the reasonable life of the Supplies needed to fulfill Buyer and Buyer's customer's service and replacement requirements at reasonable prices. If Seller discontinues the manufacture or supply of any Service Parts, it shall inform Buyer at least six (6) months before such discontinuation in order to give Buyer the opportunity to place a final order.

10.2 At Buyer's request, Seller shall make service literature and other materials available at no additional charge to support Buyer's sales activities. Unless otherwise expressly agreed in writing by an authorized representative of Buyer, Seller's obligations under this Section shall survive termination or expiration of the Purchase Order for any reason.

11. **Directed Sellers.** If Seller is a supplier that Buyer's customer ("**Directing Customer**") has directed, recommended, requested, suggested or otherwise identified to Buyer as a source of the Supplies ("**Directed Seller**"): (i) Buyer shall pay Seller for the Supplies only following and to the extent of Buyer's actual receipt of payment from the Directing Customer for Buyer's products in which the Supplies are incorporated; (ii) any lengthening of any payment terms by the Directing Customer shall automatically lengthen the payment terms to Seller by like amount; and (iii) within three (3) business days of any change in price, specifications or other terms negotiated or proposed between Seller and the Directing Customer, Seller shall notify Buyer in writing and shall immediately adjust its invoices to reflect any price reduction; provided, however, that no increase in price shall be binding on Buyer without Buyer's written consent and a commitment by the Directing Customer to pay Buyer an proportionately increased price for Buyer's products sold to the Directing Customer which incorporate the Supplies.

## **12. Customs Regulations.**

12.1 For the Supplies imported into the United States and Mexico, Seller shall comply with all applicable recommendations or requirements of the United States Customs and Border Protection ("**U.S. Customs**"). If the Supplies are transported via ocean carrier into the United States, Seller must also comply with U.S. Customs' Importer Security Filing ("**ISF**") and provide the necessary data to Buyer's Compliance Department, who is charged with actual filing of the ISF. Seller shall cause all data required for the ISF to be in Buyer's possession no later than seventy-two (72) hours before the Supplies are loaded onto the ocean carrier or such earlier time as the Buyer may require. Seller shall advise Buyer of any change to required data after the ship is loaded.

12.2 For Supplies imported into Canada, Seller shall comply with all applicable recommendations or requirements of the Canada Border Services Agency.

12.3 Seller shall obtain the export licenses or authorizations necessary for the export of Supplies, unless otherwise set forth in the Purchase Order, in which case Seller shall promptly provide to Buyer all information necessary to enable Buyer to obtain the licenses or authorizations. Seller shall promptly notify Buyer in writing of any material or components incorporated in the Supplies that Seller purchases in a country other than the country in which the Supplies are delivered. Seller shall furnish any and all documentation and information necessary to establish the country of origin or to comply with the applicable country's rules of origin

requirements. Seller shall promptly advise Buyer of any material or components imported into the country of origin and any duty included in the Supplies' purchase price. If the Supplies are manufactured in a country other than the country in which Supplies are delivered, Seller shall mark the Supplies "Made in the [country of origin]." Seller shall provide to Buyer and the appropriate governmental agency the documentation necessary to determine the admissibility and the effect of entry of the Supplies into the country in which the Supplies are delivered. Seller warrants that any information that is supplied to Buyer about the import or export of the Supplies is true and that all sales covered by the Purchase Order shall be made at not less than fair value under the anti-dumping laws of the countries to which the Supplies are exported.

12.4 The Supplies and the containers into which they are placed for shipment shall be marked in accordance with all U.S. laws including but not limited to 19 CFR §134 (as amended from time to time). Seller shall also be responsible for compliance with additional regulations and guidelines regarding supply chain security published by US Customs, the Canada Customs and Revenue Agency, and any other government or agency, including the Security and Accountability for Every Port Act of 2006 (as amended from time to time).

12.5 All credits or benefits resulting from the Purchase Order, including trade credits, export credits or the refund of duties, taxes or fees, belong solely to Buyer. Seller shall promptly provide all information and certificates (including NAFTA Certificates of Origin) necessary to permit Buyer to receive the full amount of such benefits or credits. Seller agrees to fulfill all customs- or NAFTA-related obligations, origin marking or labeling requirements, and local content origin requirements.

12.6 Seller shall be responsible for the full costs of any delay in delivery of the Supplies caused by its failure to comply with the requirements of this Section 12, including, but not limited to, missing, incomplete, untimely or inaccurate data being furnished to Buyer, Buyer's agents or any governmental authority.

### **13. Force Majeure.**

13.1 Any delay or failure of either party to perform its obligations shall be excused if and to the extent that the party is unable to perform due to events or occurrences beyond its reasonable control and without its fault or negligence, such as: acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority; embargoes; fires; explosions; natural disasters; riots; wars; sabotage; or court injunction or order (collectively "**Force Majeure**"). Seller, at its expense, shall use its best efforts to mitigate any adverse effects or costs to Buyer due to any actual or potential Force Majeure.

13.2 Seller shall immediately give written notice to Buyer of any event or occurrence that threatens to delay or actually delays Seller's performance under the Purchase Order. Such notice shall include all relevant information with respect to such threat, including the possible duration and impact of a delay. During any delay or failure to perform by Seller, Buyer may, at its option, purchase the Supplies from other sources and reduce its schedules to Seller by such quantities, without liability to Seller.

### **14. Termination.**

14.1 Seller acknowledges that Buyer is purchasing the Supplies under circumstances in which timely manufacture and delivery is required, and that Buyer is relying upon Seller's agreement to timely manufacture and deliver to Buyer the Supplies at the price, in the quantities and on the other terms and conditions stated in the Purchase Order. Accordingly, Seller may not terminate the Purchase Order before expiration.

14.2 Buyer may terminate the Purchase Order for Cause, without liability to Seller, which shall be effective upon delivery of written notice or upon such other date specified by Buyer in writing. "**Cause**" for termination includes the following actions: (i) Seller breaches any representation, warranty or other term of the Purchase Order; (ii) Seller fails to deliver, or threatens not to deliver, the Supplies in accordance with a Purchase Order; (iii)

Seller fails to meet applicable quality requirements so as to endanger timely and proper performance of the Purchase Order; (iv) Seller makes an assignment for the benefit of creditors; (v) proceedings in bankruptcy or insolvency are instituted by or against Seller; (vi) Seller requests accommodations from Buyer, financial or otherwise, in order for Seller to meet its obligations under the Purchase Order; (vii) Seller enters or offers to enter into a transaction or series of transactions that would cause a sale of a material portion of the assets used by Seller for the production and/or provision of the Supplies to Buyer; (viii) Seller enters or offers to enter into a merger, sale or exchange of stock or other equity interests that would result in a change in control of Seller within the meaning of Section 409A of the Internal Revenue Code and regulations issued there under, in which case Seller shall notify Buyer within ten (10) days after entering into any related negotiations (or the first period in which such negotiations can be made public consistent with applicable law) that could lead to such a transaction, provided that, upon Seller's request, Buyer shall enter into an appropriate nondisclosure agreement related to information disclosed to Buyer in relation to such transaction; or (ix) at any time in Buyer's sole judgment Seller's financial or other condition or progress on the Purchase Order shall be such as to endanger timely performance.

14.3 Buyer also may, at its option and in its sole discretion, immediately terminate all or any part of the Purchase Order at any time and for any reason upon seven (7) days written notice to Seller. Upon receipt of notice of termination, whether under Section 14.2 above or this Section 14.3, unless otherwise directed by Buyer, Seller shall: (i) promptly terminate all work under the Purchase Order on the effective date of termination; (ii) transfer title and deliver to Buyer or its designee the finished Supplies, the work in process, and the parts and materials that Seller reasonably produced or acquired according to quantities ordered by Buyer and that Seller cannot use in producing the Supplies for itself or for others; (iii) verify and settle any claims by subcontractors for actual costs incurred directly as a result of the termination; (iv) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest; and (v) upon Buyer's request, fully cooperate with Buyer in transferring the production of the Supplies to a different supplier.

### **15. Limitation on Buyer's Obligations to Seller for Termination.**

15.1 Buyer's obligations under Section 14.4 are conditioned upon Seller furnishing to Buyer within one (1) month after the date of termination (or such shorter period as may be required by Buyer's customer) a termination claim, which shall consist exclusively of the items of Buyer's obligation to Seller that are expressly permitted by this Section and Section 14. Buyer may audit Seller's records before or after payment to verify amounts requested in Seller's termination claim. Buyer shall not be obligated to make any payment for the Supplies, work-in-process, parts or raw materials inventory: (i) in excess of firm quantities identified in any Purchase Order; (ii) that are damaged or destroyed or that are not merchantable or useable; (iii) that are in Seller's standard stock or that are readily marketable; or (iv) that can be returned to Seller's suppliers or subcontractors for credit.

15.2 In the event of a termination of the Purchase Order by Buyer as a result of Buyer ceasing to be a supplier to Buyer's customer for Buyer's products which incorporate the Supplies, Buyer shall only be obligated to compensate Seller for any costs under Section 14.4 if, when, and to the extent that Buyer's customer reimburses Buyer for such costs.

### **16. Transition of Supply.**

16.1 In connection with the expiration, cancellation or termination of the Purchase Order by Buyer, in whole or in part, for any or no Cause or Buyer's election to change to an alternate supplier of the Supplies (including a Buyer-owned or operated facility) whether in response to Seller's request or otherwise, Seller shall give Buyer its full and prompt cooperation as set forth herein in transitioning from Seller to Buyer's new supplier the

responsibility for providing and delivering the Supplies to Buyer. Seller shall: (i) continue production and delivery of all the Supplies as ordered by Buyer, at the prices and in compliance with the terms of the Purchase Order, without premium or other condition, during the entire period reasonably needed by Buyer to complete the transition to the alternate supplier(s) ("**Transition Support**"); (ii) at no additional cost to Buyer, promptly provide all requested information and documentation regarding and access to Seller's manufacturing or service process, including on-site inspections, bill-of-material data, tooling and process detail and samples of Supplies and components and allow Buyer, the new supplier and/or their respective agents to inspect the then current production processes being utilized at Seller's facility, grant to the new supplier a non-exclusive, royalty-free license to use any technology reasonably necessary (in Buyer's sole determination) for the new supplier to manufacture and sell the Supplies to Buyer, and remove from Seller's facilities all Buyer-owned tooling (including manuals, logs and the like); (iii) reimburse Buyer for any (Product Part Approval Process "**PPAP**") costs that it may incur as a result of the resourcing, if applicable; (iv) Seller shall promptly provide all notices deemed by Buyer in its sole and absolute discretion to be necessary or desirable for Buyer to resource the Purchase Order to an alternative supplier; and (v) if and when requested by Buyer, Seller shall return to Buyer all Buyer's Property in as good condition as when received by Seller (reasonable wear and tear excepted) and shall comply with Seller's obligations relating to Seller's Property in Section 21 and in relation to subcontracts.

16.2 If the resourcing of the Supplies occurs for reasons other than in connection with a termination for Cause or at the request of Seller, Buyer shall, at the end of the transition period, pay Seller's reasonable out of pocket cost of Transition Support as requested, provided that upon Buyer's request for Transition Support, Seller has advised Buyer prior to incurring such amounts of its good faith estimate of such costs. If the parties disagree on the cost of Transition Support, Buyer shall pay the undisputed portion to Seller and the remaining portion, if any, promptly following the binding determination by an arbitrator that such amount is due to Seller.

#### **17. Insurance.**

17.1 Seller shall maintain and require its subcontractors to maintain the following insurance coverage: (i) comprehensive general liability insurance; (ii) comprehensive automobile liability insurance; (iii) business interruption insurance; (iv) workers compensation and employer's liability insurance covering all employees engaged in the performance of this Purchase Order for claims arising under any applicable workers' compensation, occupation disease or health and safety laws and or regulations; and (v) such other insurance coverage as may be requested from time to time by Buyer in its sole discretion. In each case, Seller's insurance coverage will name Buyer and its affiliates (as applicable) as loss payee(s) and/or "additional insured(s)" and the coverage will be in such amounts sufficient to cover obligations set forth herein or in such amounts required by Buyer. Such insurance coverage shall provide full fire and extended coverage insurance for the full replacement value of all Seller's Property and all bailed Buyer's Property. Seller hereby waives all mechanics' liens and claims and agrees that none shall be filed or maintained against Buyer's premises on account of any Supplies and shall cause all its subcontractors, materialmen and suppliers (and subcontractors of such parties) to provide similar waivers and agreements in form satisfactory to Buyer.

17.2 Seller shall furnish to Buyer a certificate showing full compliance with the requirements set forth in this Section 17 or certified copies of all insurance policies within ten (10) days of Buyer's written request. Seller shall provide Buyer with at least thirty (30) days prior written notice of any termination or reduction in the amount or scope of coverage. The existence of insurance shall not release Seller of its obligations or liabilities under the Purchase Order.

**18. Audit: Plant Inspections.** Upon reasonable notice to Seller, either Buyer, Buyer's customers or their respective third-party designees may audit Seller's production facility, the Supplies

and any other Seller property (including all pertinent documents, data and other information within the supply chain) related to the Purchase Order for the purpose of verifying Seller's costs and its compliance with or its ability to perform its obligations under the Purchase Order. Seller shall provide, without additional charge, all reasonable facilities and assistance.

**19. Buyer's Property.** This Section 19 shall only apply if there is no current bailment agreement between the parties.

19.1 "**Buyer's Property**" shall mean and include: all information and materials, including tooling which has been furnished by Buyer to Seller or for which Seller has been reimbursed by Buyer (such as fixtures, gauges, jigs, patterns, castings, cavity dies, molds, with all related appurtenances, accessions, and accessories, collectively herein referred to as "**Tooling**"), packaging, documents, standards, specifications, samples, trade secrets, manufacturing processes, marketing and pricing data, proprietary information and other materials and items (including whether or not such materials are in any way modified, altered or processed) furnished by Buyer either directly or indirectly to Seller to perform the Purchase Order, along with any and all supplies, Tooling, deliverables, data, and Intellectual Property Rights (as defined in Section 22.1) which are property of Buyer under the terms of the Purchase Order. Buyer's Property shall be and remain the sole and exclusive property of Buyer.

19.2 With respect to Buyer's Property in the custody or control of Seller or Seller's suppliers, contractors or agents: (i) Seller shall use it or permit its use only for the production of Supplies for Buyer; (ii) Seller, at its own expense, shall keep Buyer's Property in good working condition and house, maintain, repair and replace it as necessary so that such Buyer's Property shall remain in the same condition as it was when it was received by Seller, except for normal wear and tear; (iii) Seller shall keep such Buyer's Property fully insured for the benefit of Buyer at all times while in Seller's possession and any replacement of Buyer's Property will become Buyer's property; and (iv) Seller shall keep Buyer's Property, and cause any of its suppliers, contractors or agents in possession of such Buyer's Property to keep such Buyer's Property, segregated from all other assets and labeled as being the property of Buyer. Seller shall not release, relocate or dispose of Buyer's Property to any third party without the prior, express, written permission of Buyer. Seller shall promptly notify Buyer of the location of Buyer's Property if located at any place other than Seller's facility.

19.3 Seller shall have only temporary possession of Buyer's Property as a bailee at will. Seller shall execute, deliver and perform any other bailment agreement as Buyer may from time to time reasonably request.

19.4 Buyer shall have the right to enter Seller's premises, or the premises of any of Seller's suppliers, contractors or agents in possession of Buyer's Property, to inspect Buyer's Property and Seller's records regarding Buyer's Property. Seller agrees neither to create nor permit any liens on Buyer's Property and Seller agrees to immediately sign any UCC-1 forms or other documents reasonably required by Buyer to perfect Buyer's rights granted herein. Seller grants to Buyer a limited and irrevocable power of attorney, coupled with an interest, to execute and record on Seller's behalf any notice financing statements with respect to Buyer's Property that Buyer determines are reasonably necessary to reflect and protect Buyer's interest in Buyer's Property.

**19.5 BUYER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO SUCH BUYER'S PROPERTY, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND SELLER WAIVES, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, ALL CLAIMS OF NEGLIGENCE AND STRICT LIABILITY.**

19.6 Immediately upon Buyer's request, and without payment of any kind, Seller shall return Buyer's Property, and shall comply with Buyer's instructions relating to its return, including the method and location for its return. Seller shall be responsible for labor and other costs incidental to such Buyer's Property's return. Seller shall cooperate with Buyer and shall provide Buyer with access to all

facilities at which Buyer's Property is located. Seller expressly waives any right to additional notice or process relating to Buyer's exercise of its rights under this Section. Seller waives, to the extent permitted by law: (i) any lien or other rights that Seller might otherwise have on any of Buyer's Property, including molder's and builder's liens; and (ii) any objection to Buyer's repossession and removal of Buyer's Property for any or no reason, including bankruptcy or insolvency proceedings.

## **20. Tooling.**

20.1 Seller shall not purchase any Tooling for the account of Buyer or charge Buyer for any tooling except as authorized in the Purchase Order. Seller represents that the price in the Purchase Order for the Tooling is no greater than Seller's actual cost of such Tooling and that there is no mark-up for profit (unless as authorized in this Section 20).

20.2 If Seller subcontracts all or part of the fabrication, modification, repair or refurbishment of Tooling to a third-party toolmaker, Seller shall: (i) provide advance written notice to Buyer of the identity of the toolmaker and the location of the Tooling; (ii) inform the toolmaker in writing that it is a bailee-at-will, through Seller, of Tooling owned by Buyer; and (iii) be solely responsible for payments to the toolmaker. Buyer has no obligation to Seller or subcontractor other than payment to Seller of the Purchase Order price. If a subcontractor brings an action against Seller for payment of the Tooling, Seller shall not join Buyer in the action.

20.3 If Seller's primary business is to fabricate Tooling, Seller shall be permitted a reasonable profit percentage as specified in the Purchase Order. In the absence of a mutually-accepted profit percentage, Buyer shall determine a reasonable profit percentage following the completion of its audit. Seller shall invoice Buyer for (and Buyer shall only be obligated to pay) the lower of Seller's actual cost plus such profit percentage or the amount set forth in the Purchase Order.

20.4 Seller shall provide to Buyer, as requested, access to Seller's premises and all documentation relating to the Tooling, prior and subsequent to payment, to inspect work performed and to verify charges submitted by Seller against the Purchase Order. For any Tooling or parts thereof that Seller obtains from any third party, Seller shall provide Buyer with access to the ultimate production source of the Tooling and documentation in accordance with the preceding sentence at any level of the supply chain.

20.5 To the extent permitted by applicable law, any payments made by Buyer for Tooling that is manufactured by a third party are expressly intended by Buyer to be held in trust for the benefit of any subcontractor(s) used by Seller to produce such Tooling and Seller agrees to hold such payments as trustee in trust for such subcontractor(s) until Seller has paid the subcontractor(s) in full for such Tooling. Seller acknowledges and agrees that such subcontractor is an intended third-party beneficiary of the terms of this Section 20.5 relating to the trust and as such, such Tooling subcontractor shall have the right to enforce the terms of this Section 20.5 directly against Seller in subcontractor's own name. Seller agrees that Buyer has no obligation to Seller or Seller's Tooling subcontractor under this Section other than making the payment to Seller in accordance with the Purchase Order. In the event Seller's Tooling subcontractor brings an action against Seller under this section, Seller agrees that it shall not join Buyer in any such action.

## **21. Seller's Property.**

21.1 "**Seller's Property**" shall mean all capital equipment, buildings, materials, machinery, equipment, tools, jigs, dies, gauges, fixtures, molds, patterns, blueprints, designs, specifications, drawings, photographic negatives and positives, art work copy layout and all other records or items that are not Buyer's Property and that are necessary for the production of Supplies under the Purchase Order.

21.2 Seller, at its expense, shall furnish, keep in good working condition capable of producing Supplies meeting all applicable specifications, and replace when necessary, all Seller's Property.

Seller shall insure Seller's Property with full fire and extended coverage insurance for its replacement value, and otherwise as required under Section 17 hereof. If Seller uses Seller's Property to produce products or services similar to the Supplies for other customers, including aftermarket customers, such products or services shall not incorporate any of Buyer's logos, trademarks, trade names or part numbers. Under no circumstances shall Seller disclose or imply in its marketing efforts that the products it produces for others are equivalent to or better than those purchased by Buyer.

21.3 Seller hereby grants to Buyer an irrevocable option to purchase and/or temporarily take possession of Seller's Property that is special for production of the Supplies under the Purchase Order (including, by way of example, Seller's Property specially designed or configured for the manufacture or assembly or other processing of the Supplies), upon payment to Seller of its net book value less any amounts that Buyer has previously paid to Seller for the cost of such items or, if applicable, any such other amount as may be required by applicable law. Such option shall not apply if Seller's Property is used to produce products that are the standard stock of Seller or if substantial quantities of products substantially similar to the Supplies are being sold by Seller to others. Buyer's option rights under this Section with respect to Seller's Property are intended to be subject to Buyer's rights and elections under 11 USC Section 365(n) (as amended from time to time) as and to the extent that such Seller's Property represents embodiments of Intellectual Property, including Intellectual Property licensed by Seller to Buyer under Section 22 below.

## **22. Intellectual Property.**

22.1 "**Intellectual Property**" shall mean and include patents, copyrights, trademarks, trade names, trade dress, trade secrets, copyrights, know-how, concepts, ideas, discoveries, inventions (whether or not patentable), processes, developments, designs, suggestions, materials, improvements, works of authorship, artwork, software, documentation, intellectual property/proprietary rights, rights in other tangible and intangible assets of a proprietary nature, domain names, company names, and the like. "**Intellectual Property Rights**" means all forms of Intellectual Property protection or proprietary rights available throughout the world, including, without limitation, utility patents, design patents, patent applications, design registrations, utility models, industrial designs, copyrights, trademarks, trade dress, trade secrets, and rights in domain names.

22.2 Seller warrants that the Supplies and the sale and/or use thereof (before or after incorporation into products during manufacture) are original to Seller and do not and shall not infringe any third-party's Intellectual Property Rights.

22.3 Seller agrees: (i) to defend, hold harmless and indemnify Buyer and its owners, shareholders, affiliates, officers, directors, members, managers, partners, employees, attorneys and agents and any of their respective successors and assigns (each a "**Buyer Indemnified Party**") against any suit, claim or action for actual or alleged direct or contributory infringement of or inducement to infringe or violate any third party's Intellectual Property or Intellectual Property Rights and against any resulting damages or expenses (including attorney's and other professional fees and expenses, settlements and judgments) arising out of or relating to the manufacture, sale or use of the Supplies; (ii) to waive any claim against any Buyer Indemnified Party, including any hold-harmless or similar claim, in any way related to a third-party claim asserted against such Buyer Indemnified Party for infringement of any Intellectual Property Right, including any claim against Buyer that the infringement arose out of compliance with Buyer's specifications; and (iii) that if the sale or use of the Supplies is enjoined or, in Buyer's sole and absolute judgment, is likely to be enjoined, Seller shall, at Buyer's election in its sole discretion and at Seller's sole expense, procure for Buyer the right to continue using the Supplies, replace the same with equivalent non-infringing products or modify such Supplies so they become non-infringing.

22.4 All Supplies, Tooling and all other deliverables which include Intellectual Property, for which Buyer has agreed to reimburse Seller, along with all Intellectual Property relating thereto and needed to manufacture, sell or use the Supplies are the sole and exclusive property of Buyer. Seller shall promptly disclose in an acceptable form and assign to Buyer all such Intellectual Property. Seller shall cause its employees to promptly sign any papers necessary to enable Buyer to file applications for patents throughout the world and to record rights in and to such Intellectual Property. To the extent that the Intellectual Property includes any works of authorship created by or on behalf of Seller, such works shall be considered "works made for hire", and to the extent that such works do not qualify as "works made for hire," Seller hereby assigns to Buyer all right, title, and interest in all copyrights and moral rights therein.

22.5 Any license required by Buyer, its subsidiaries and affiliates, and their respective successors and assigns, to: (i) make, have made, repair, reconstruct, rebuild, relocate, sell and import the Supplies; or (ii) to reproduce, distribute and display any works of authorship fixed in any tangible medium of expression (including drawings, prints, manuals and specifications) furnished by Seller in the course of Seller's activity under the Purchase Order, and to prepare derivative works based thereon, shall be the subject of a separately negotiated license agreement between the parties.

22.6 Seller shall ensure that the terms of its contracts with its subcontractors and employees are consistent with the terms of this Section.

### **23. Proprietary Information; Record Retention.**

23.1 Any information or knowledge which Buyer may have disclosed or may hereafter disclose to Seller in connection with the Purchase Order and any and all services to be rendered and/or work to be performed pursuant to the Purchase Order is and shall be deemed confidential and proprietary information of Buyer. Seller shall not, without authorization in writing from Buyer, use (except as necessary to the performance of the Purchase Order), communicate or disclose such confidential and proprietary information of Buyer or use such information for any purpose other than to perform its obligations under the Purchase Order. Seller agrees to safeguard the confidential and proprietary information of Buyer by using reasonable efforts, consistent with those used in the protection of its own proprietary information of a similar nature, to prevent its disclosure to third parties. Seller agrees to cause its employees, contractors, officers, directors, agents and representatives to be bound by and comply with the foregoing restrictions regarding the use or disclosure of such confidential and proprietary information.

23.2 The restrictions and obligations of Section 23.1 shall not apply to information that: (i) is already publicly known at the time of its disclosure by Buyer; (ii) after disclosure by Buyer becomes publicly known through no fault of Seller; (iii) Seller can establish by written documentation was properly in its possession prior to disclosure by Buyer or was independently developed by Seller without use of or reference to any of Buyer's information; or (iv) is required to be disclosed pursuant to law, regulation or lawful order or process, however, in such event, Seller shall promptly notify Buyer of the disclosure requirement to permit Buyer to oppose or limit such disclosure. Notwithstanding anything to the contrary in these POTCs, any confidentiality or non-disclosure agreement between the parties that predates the Purchase Order shall remain in effect except as expressly modified by the Purchase Order, and to the extent of a conflict between the express terms of such an agreement and this Section, the terms of providing the most protection to Buyer shall control.

23.3 Seller agrees not to assert any claim against Buyer or its suppliers with respect to any technical information that Seller has disclosed or may disclose to Buyer in connection with the Supplies covered by the Purchase Order, except to the extent expressly covered by a separate written confidentiality and/or license agreement signed by Buyer or by a valid patent expressly disclosed to Buyer prior to or at the time of the Purchase Order.

23.4 Seller shall, within five (5) business days of Buyer's request or the expiration or termination of the Purchase Order, return all confidential and proprietary information (including all copies, notes and/or extracts thereof). This Section 23 shall survive termination of the Purchase Order.

23.5 Seller shall keep all relevant documents, data and other written information relating in any manner to the Supplies for at least three (3) years following: (i) in the case of the Supplies, the later of the last delivery of the Supplies or the date of the final payment to Seller under the Purchase Order; and (ii) in the case of Tooling, the later of the date of completion of any applicable PPAP, the date of submission of any applicable part submission warrant, or the date of final payment. Buyer may make copies of these materials at any time prior to their destruction.

**24. Setoff.** In addition to any right of setoff or recoupment permitted by law, all amounts due Seller shall be considered net of indebtedness or obligations of Seller to Buyer. Buyer may set off against or recoup from any amounts due or to become due to Seller, any amounts due to Buyer however and whenever arising. If an obligation of Seller to Buyer is disputed, contingent or unliquidated, Buyer may defer payment of all or a portion of the amount due to Seller until such obligation is resolved in accordance with Section 32. Further, in the event Buyer reasonably feels itself at risk, Buyer may in its sole and absolute discretion withhold and recoup a corresponding amount due Seller to protect against such risk. For purposes of this Section only, the terms "Buyer" and "Seller" shall include their parent companies, subsidiaries, brother/sister companies and affiliates.

### **25. Social Responsibility and Protection of the Environment.**

25.1 Seller shall comply with all laws and regulations regarding environmental protection. In the event Buyer's customer requires Buyer and its suppliers to participate in any energy saving (or green initiative) or other environmental protection program, Seller shall fully comply and assist Buyer with its participation in such program as Buyer directs, at Seller's expense.

25.2 Seller warrants that neither it nor any of its subcontractors shall utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in abusive employment or corrupt business practices, in the supply of the Supplies or provision of services under the Purchase Order. At Buyer's request, Seller shall certify in writing its compliance with the foregoing.

25.3 Seller shall comply with the principles of the U.N. Global Compact Initiative relating to the protection of international human rights, the right to collective bargaining, the abolition of forced labor and child labor, the elimination of discrimination when personnel is engaged and employed, the responsibility for the environment and the prevention of corruption.

### **26. Compliance with Laws; Ethics.**

26.1 Seller warrants that Seller, and all Supplies furnished by Seller under the Purchase Order shall comply with all applicable local, state, Federal and all other applicable laws, ordinances and regulations, including those concerned with labor, environment and safety, as those laws, ordinances and regulations are amended from time to time. Seller shall provide all permits, certificates, licenses, insurance approvals and inspections which may be required for the performance of the Purchase Order. Seller shall promptly notify Buyer in the event that any environmental factors associated with Seller's products, services and/or processes may adversely impact Buyer or its employees, either directly or indirectly. Supplier will ensure that Suppliers employees are made aware of all applicable ethical guidelines, their contribution to product or service, conformity, product safety and ethical behavior.

26.2 If Buyer provides notice to Seller that the Supplies are to be provided to the United States government, Seller shall comply with the federal laws, regulations, and rules applicable to subcontractors of government contractors, including those relating to equal employment opportunity and affirmative action in the employment of minorities, women, the handicapped, and certain veterans, and contracting with women-owned or small and



disadvantaged business concerns. Seller shall comply with applicable laws, executive orders, and regulations concerning equal opportunities clauses of Sec 202, Executive Order 11246, September 25, 1965. Where applicable, Seller certifies that it maintains no segregated employee facilities in compliance with applicable law, and that it is not debarred from being awarded federal or federally assisted contracts.

26.3 The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a) (7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. §60-300.5(a) and 41 C.F.R. § 60-741.5(a), if applicable. **The parties shall abide by the requirements of 41 C.F.R. §§ 60-1.4, 60-300.5(a) and 41 C.F.R. § 60-741.5(a). These regulations prohibit discrimination against qualified minorities, women, protected veterans and qualified individuals on the basis of disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified minorities and women, protected veterans and qualified individuals with disabilities.**

26.4 Seller and/or any agent or representative of Seller, may not offer or give any gratuities, in the form of entertainment, gifts, or otherwise to any officer or employee of Buyer with a view toward securing any Purchase Order or securing favorable treatment with respect to the awarding, amending or making of any determinations with respect to the performance of the Purchase Order or future Purchase Orders.

26.5 Seller shall notify Buyer of any change in laws applicable to the Supplies and must identify the impact of such changes on Seller's performance and Buyer's receipt of such Supplies. Seller shall be responsible for any fines or penalties imposed on Seller or Buyer resulting from any failure by Seller or its agents, subcontractors or third part suppliers to comply with applicable laws or respond in a timely manner to changes in such laws.

27. **Buyer's Limited Liability to Seller.** Buyer's sole liability under the Purchase Order (including its termination, expiration or cancellation) is to pay for the Supplies in accordance with Section 5 and to pay the specific termination related amounts described in Section 14.4. **IN NO EVENT SHALL BUYER BE LIABLE TO SELLER OR ANYONE CLAIMING BY OR THROUGH SELLER FOR ANY DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO COMPENSATORY, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR OTHER DAMAGES DIRECTLY OR INDIRECTLY RELATED TO PROFITS, OR LIABILITIES OF ANY KIND IN CONNECTION WITH THE PURCHASE ORDER, WHETHER FOR BREACH OF CONTRACT, TORT LIABILITY, LATE PAYMENT, PROPERTY DAMAGE, PERSONAL INJURY, ILLNESS, OR DEATH OR OTHERWISE.**

28. **Assignment.**

28.1 Seller may not, without Buyer's prior written consent: (i) assign or delegate (including, without limitation, by subcontract) its obligations under the Purchase Order, or (ii) enter into a transaction that includes a sale of a substantial portion of its assets used for the production of the Supplies for Buyer or a merger, sale or exchange of stock or other equity interests that would result in a change of control of Seller. In the event of any approved assignment (including without limitation subcontract), sale or delegation authorized by Buyer, Seller shall retain all responsibility for Supplies, including all related warranties and claims, unless otherwise expressly agreed in writing by Buyer.

28.2 With Buyer's prior written consent, Seller may make an assignment of receivables due or to become due to a single financial institution; provided, however, that any such assignment shall be subject to set-off (see Section 24 above) or other method of enforcing any claims that Buyer may have under the Purchase Order.

28.3 Buyer shall have the right to assign any benefit or duty under the Purchase Order to any third party upon notice to Seller with or without Seller's consent.

29. **No Publicity.** Seller shall not advertise, publish or disclose to any third party (other than to Seller's professional advisors on a confidential and need-to-know basis) in any manner the fact that Seller has contracted to furnish Buyer the Supplies covered by the Purchase Order or any terms of the Purchase Order (including prices), or use any trademarks or trade names of Buyer in any press release, advertising or promotional materials, without first obtaining Buyer's written consent.

30. **Relationship of the Parties.** Seller and Buyer are independent contracting parties and nothing in the Purchase Order shall make either party the employee, agent or legal representative of the other for any purpose. The Purchase Order shall not grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Seller shall be solely responsible for all employment and income taxes, insurance premiums, charges and other expenses it incurs in connection with its performance of the Purchase Order, except as expressly provided in a written agreement signed by Buyer. All employees and agents of Seller or its respective contractors are employees or agents solely of Seller or such contractors, and not of Buyer, and are not entitled to employee benefits or other rights accorded to Buyer's employees. Buyer is not responsible for any obligation with respect to employees or agents of Seller or its contractors.

31. **Conflict of Interest.** Seller represents and warrants that its performance of the Purchase Order shall not in any way conflict with any continuing interests or obligations of Seller or its employees or contractors. Except with respect to the Directing Customer in the event Seller is a Directed Seller, Seller may not directly solicit Buyer's customer for sales of the Supplies, products substantially similar to the Supplies or any products substantially similar to the products sold by Buyer to Buyer's customer.

32. **Governing Law; Dispute Resolution.**

32.1 Buyer and Seller shall first endeavor to resolve through good faith negotiations any dispute arising under the Purchase Order. If a dispute cannot be resolved through good faith negotiations within a reasonable time, either party may request 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, all disputes arising out of or relating to the Purchase Order shall be resolved through binding arbitration, except that any request for injunctive or emergency relief may be filed in Michigan Circuit Court for the County of Oakland or the United States Court for the Eastern District of Michigan. Seller acknowledges that it is subject to the jurisdiction in the above listed courts and agrees to submit to the jurisdiction of the above listed courts. The arbitration proceedings shall be conducted before a panel of three arbitrators (one appointed by each party and the neutral appointed by the other two arbitrators) in accordance with the Commercial Rules of the American Arbitration Association including application of the Optional Rules for Emergency Measures of Protection and shall be governed by the *United States Arbitration Act* and this Section 32. The arbitration shall be conducted in the County of Oakland, Michigan, and the language of the arbitration shall be English. The arbitrators shall issue a written opinion setting forth the basis for the arbitrator's decision, which may include an award of legal fees and costs. While arbitration proceedings are pending, the parties shall continue to perform their obligations under the Purchase Order without setoff for any matters being contested in the arbitration proceedings. Unless otherwise agreed by Buyer and Seller in writing, the arbitration hearing shall be conducted within 180 days of the filing of the claim. The arbitration hearing shall be conducted on consecutive days until completed.

32.2 Venue for confirmation of or any challenge to the Arbitration Award shall be, at Buyer's option, in either the Michigan Circuit Court for the County of Oakland or the United States Court for the Eastern District of Michigan.

32.3 The Purchase Order shall be construed and governed in accordance with the internal laws of the State of Michigan and the United States of America. The provisions of the United Nations Convention on Contracts for the International Sale of Products, and any conflict-of-laws provisions that would require application of another choice of law, are excluded.

32.4 Neither course of performance, course of dealing or usage of trade may be used to vary the terms of the Purchase Order.

32.5 If either party brings an arbitration or other proceeding against the other as a result of any alleged breach or failure by the other party to fulfill or perform any covenants or obligations under the Purchase Order, the prevailing party obtaining final judgment in such proceeding shall be entitled to receive from the non-prevailing party the prevailing party's reasonable attorneys' fees incurred by reason of such action or proceeding and all costs associated with such action or proceeding incurred by the prevailing party, including the costs of preparation and investigation.

**33. No Waiver.** Buyer's failure to insist on the performance by Seller of any term or failure to exercise any right or remedy reserved in the Purchase Order, or Buyer's waiver of any breach or default hereunder by Seller shall not, thereafter, waive any other terms, conditions, rights, remedies, breaches or defaults, whether of the same or a similar type or not.

**34. Severability.** If any provision of the Purchase Order, or portion of any provision, is declared or found to be unenforceable, the balance of the Purchase Order or such provision shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof.

**35. Survival.** The obligations of Seller to Buyer survive termination of the Purchase Order, except as otherwise provided in the Purchase Order.

**36. Notices.**

36.1 A written notice is used by the parties to provide a required notice or instructions to each other, or to authorize an exception, deviation or waiver of a pre-existing obligation or requirement under the Purchase Order. A written notice is also used by either party to provide any notice to the other party that is required to be in writing. In the case of Buyer, any written notice is valid only if signed by a representative of Buyer's purchasing activity. A written notice may be signed manually or electronically.

36.2 A written notice may be provided by: (i) first class mail; (ii) courier service; (iii) fax; or (iv) standard e-mail. A written notice using method (i) or (ii) is effective as of the date of delivery, and using method (iii) or (iv) is effective as of the date of transmission.

**37. Interpretation.** No provision may be construed against Buyer as the drafting party. Section headings are for convenience or reference only, and do not affect the meaning of the Purchase Order.

**38. Entire Agreement; Modifications; Buyer's Website.**

38.1 The Purchase Order is the entire agreement between the parties respecting the Supplies and supersedes any prior agreements, negotiations or understandings of the parties respecting the Supplies, whether written or oral, except that a signed prior agreement (such as an award letter, statement of work, or non-disclosure agreement) will continue to apply to the extent not directly in conflict with the Purchase Order. This Purchase Order may only be modified by (i) a written amendment executed by authorized representatives of each party or (ii) by Buyer (a) for changes within the scope of Section 9, by an amendment to the Purchase Order issued by Buyer or (b) from time to time by posting revised POTCs to Buyer's website at <http://gle-precision.com>, or its successor website. Such revised POTCs shall apply to all purchase order revisions/amendments and new Purchase Orders issued on or after the effective date thereof. Seller shall be responsible to review Buyer's website periodically.

38.2 Buyer's website may also contain specific additional requirements for certain items covered by the Purchase Order,

including labeling, packaging, shipping, delivery and quality specifications, procedures, directions and/or instructions. Any such requirements shall be deemed to form part of the terms and the Purchase Order. Buyer may periodically update such requirements by posting revisions thereto on Buyer's website. In the event of any inconsistency between the Purchase Order and Buyer's website, the terms of the Purchase Order shall prevail, unless the requirements specified on Buyer's website expressly provide otherwise.

38.3 Seller represents and warrants that there is no outstanding litigation, arbitrated matter or other dispute to which Seller is a party which, if decided unfavorably to Seller, would reasonably be expected to have a material adverse effect on Buyer's or Seller's ability to fulfill its respective obligations under the Purchase Order.

38.4 Seller covenants that each express representation and warranty of Seller in the Purchase Order shall remain true and correct during the term and any extension thereof. To the extent that Seller becomes aware that any such representation or warranty becomes untrue in any material respect, Seller shall notify Buyer of the facts and circumstances surrounding such situation.