



## **AIRBOSS TERMS AND CONDITIONS OF PURCHASE**

### **1. Scope and Acceptance**

(a) These Terms and Conditions of Purchase (these “Terms”) apply to each purchase order (as revised or otherwise amended, each an “Order”) issued by AirBoss Flexible Products, LLC (“Buyer”) to the seller identified on such Order and/or its applicable affiliates (collectively, “Seller”) for the purchase of the goods and services (whether or not ancillary to a sale of goods) described on such Order (the “Goods”).

(b) Each Order is an offer by Buyer, and Seller will be deemed to have accepted such Order, subject to these Terms, as issued: (i) if Seller acknowledges, whether orally, in writing or electronically (including, without limitation, by email), its acceptance of the Order; (ii) if Seller begins performance of the Order; (iii) if Seller ships any Goods described in the Order; or (iv) through any other conduct that recognizes the existence of a contract with respect to the subject matter of the Order. For the avoidance of doubt, Seller’s signed acceptance of the Order is not a condition to Seller’s acceptance.

(c) Upon acceptance, the Order, together with these Terms, Buyer’s Supplier Requirements Manual (the “Supplier Requirements Manual”) and each other written or communicated policy of Buyer (or Buyer’s direct or indirect customers (“Customers”) or other business partners) provided or otherwise made available to Seller including, without limitation, those made available on Buyer’s website at <https://airboss.com/> (or any successor website thereto), as each such policy is modified by Buyer from time to time (collectively, the “Buyer Policies”), and any other document expressly incorporated in such Order or issued by or separately agreed to in writing by Buyer (including, without limitation, any specifications, drawings, quality requirements or any other requirements of Buyer or Buyer’s Customers, collectively, the “Contract Documents”), will become a binding contract between Buyer and Seller (collectively, the “Contract”).

(d) The Order does not constitute an acceptance of any offer or proposal made by Seller. Any reference in the Order to any offer or proposal made by Seller is solely to incorporate the description or specifications of Goods, but only to the extent that the description or specifications do not conflict with the description and specifications in the Order. The Order is limited to and conditional upon Seller’s acceptance of these Terms exclusively, and any terms proposed, stated or supplied by Seller by any means, whether in Seller’s proposal, quotation, acknowledgement, invoice or otherwise, that are additional to or different from those contained in the Contract (including, without limitation, these Terms) are unacceptable to Buyer, are hereby expressly rejected by Buyer and will not become a part of the Contract unless specifically accepted in writing by Buyer. The proposal, statement or supply of such terms by Seller shall not operate as a rejection of the Order, and any purported objections by Seller to the Contract, including, without limitation, these Terms, are deemed waived by Seller upon the occurrence of any one (1) or more of the conditions described in Section 1(b) above absent Buyer’s express written agreement to amend or otherwise modify the Contract. In the event the Order is determined by a court of last resort to comprise any acceptance of a prior offer by Seller, such acceptance is strictly limited to the terms and conditions set forth in the Contract. To the extent there is any inconsistency or conflict between any Contract Documents, the order of priority shall be as follows: any document separately agreed to in writing by an officer or director of Buyer after the issuance of the Order, followed by the terms on the face of the Order, followed by any document expressly incorporated in to such Order, followed by these



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Terms, followed by the Supplier Quality Manual, followed by any other document issued by Buyer. Any modification of these Terms must be expressly stated on the face of the Order.

## **2. Prices**

All prices for Goods shall be set forth in each Order and shall be DDP Buyer's designated delivery facility (Incoterms 2020) unless otherwise stated on the face of the Order. The prices contained in an Order are complete and include all customs expenses, duties, tariffs, and taxes (other than U.S. sales and use tax chargeable to Buyer), storage, detention, handling, labeling, preparation, packaging, boxing, crating, cartage, shipping, transportation, insurance, setup, and all other known or unknown direct and indirect Seller costs, and no additional charges of any type shall be added without Buyer's express prior written consent, and Seller shall not invoice Buyer at prices higher than those stated in such Order. No surcharges, premiums or other additional charges of any type may be added to such stated prices without Buyer's express written consent. Unless otherwise stated on the face of the Order or separately agreed in writing by the parties, the price is a firm fixed price for the duration of the Contract and not subject to increase, and Seller expressly assumes the risk of the occurrence or non-occurrence of any events (foreseeable or otherwise) that may affect prices or Seller's direct or indirect costs, including, without limitation, volume or program length fluctuations, foreign exchange rates, raw material cost increases, inflation, labor, utility and other development, production, and supply costs, governmental acts (including, without limitation, tariffs), and any other event which may impact the price or availability of materials, supplies, services or labor. Seller warrants that the prices for Goods set forth in the Order are no less favorable than Seller currently offers to any other customer for the same or similar goods or services. If Seller reduces its prices to any other customer for the same or similar goods or services, Seller will immediately reduce the prices for the Goods correspondingly. Seller warrants and guarantees that it will, at all times, remain competitive in price, quality, technology, service performance and fulfillment of its obligations. If Seller is determined by Buyer, in its sole discretion, not to be competitive in any of the foregoing areas, then within fifteen (15) days of Buyer's demand, Seller shall meet or exceed such competitive offer. Should Seller fail to timely issue its revised offer, Buyer (a) is authorized to revise the Order, as applicable, and Seller shall be automatically deemed to have accepted such revised Order or (b) shall be entitled to terminate all or part of the applicable Order pursuant to Section 23 hereof and re-source any or all Goods to a more competitive source.

## **3. Quantities; Releases**

Unless otherwise expressly stated in the Order, if no other quantity is stated on the face of the Order or if the quantity is blank or states the quantity as zero, "blanket", "as released", "each", "EA", "blanket", "as scheduled", "as directed", "subject to releases" or similar terms, then the Order is a requirements contract, and Seller shall supply, and Buyer shall purchase from Seller, Buyer's requirements for Goods in such quantities as identified by Buyer as firm orders or as otherwise authorized for fabrication by Seller as specified in material releases, scheduling orders, or similar written instruction ("Releases"). Releases may be modified or changed at Buyer's discretion. Seller shall not begin performance, fabricate or assemble any Goods, procure any materials or components or ship Goods except to the extent authorized by such Releases. Releases are part of the Order, are governed by these Terms and are not independent contracts. Seller accepts the risk associated with lead



times of various raw materials and/or components if such lead times are beyond those provided for in Releases and the risk that Buyer's contractual obligations to its Customer may be terminated by its Customer, thereby reducing Buyer's actual requirements to none. Any estimates, forecasts or other projections of future requirements of Goods or of production volumes or program durations, whether from Buyer or any Customer, are subject to change from time to time, with or without notice to Seller, and shall not be binding upon Buyer. Seller acknowledges that any such forecasts are provided for informational purposes only and, like any other forward-looking projections, are based on a number of economic and business factors, variables and assumptions, some or all of which may change over time. Buyer makes no representation, warranty, guaranty or commitment of any kind or nature, whether expressor implied, to Seller in respect of Buyer's quantitative requirements for the Goods or the term of the supply of the Goods, including, without limitation, with respect to the accuracy or completeness of such information.

#### **4. Term**

The Order is for a definite term. Subject to Buyer's termination rights, for Goods used by Buyer in or for the production of automotive parts, systems or modules, the Contract is binding on the parties for the length of the applicable vehicle program production life (including model refreshes as determined by the applicable original equipment manufacturer ("OEM")), of which Seller acknowledges and agrees it is aware, and both Buyer and Seller acknowledge the risk of the vehicle program production life being cancelled or extended by the OEM. To the extent that the Order lists Goods with distinct part numbers that are used in or for different vehicle production programs, the Contract is binding on the parties for the length of the applicable vehicle program production life (including model refreshes as determined by the applicable OEM) to which each distinct part number relates. For example, if the Order lists Goods with distinct part numbers A and B, and the vehicle program to which the Goods with part number A ends in 0001 and the vehicle program to which the Goods with part number B ends in 0003, then the Contract will automatically terminate with respect to part number A in 0001 and, with respect to part number B, in 0003. If the Goods are not utilized by Buyer for the production of automotive parts, systems or modules, the Contract will be binding for one (1) year from the date the Order is transmitted to Seller. In such case, subject to Buyer's termination rights, the Contract will automatically renew for successive one-year periods after the initial term unless Seller provides written notice at least one hundred and eighty (180) days prior to the end of the current term of its desire that the Contract not be renewed. Notwithstanding the foregoing, if an expiration date is stated in the Order, the term of the Contract will continue until that date. Unless specifically waived in writing by an authorized representative of Buyer, Seller's obligations with respect to service and replacement parts and Transition Support (as defined in Section 24) will survive the termination or expiration of the Contract as set forth below.

#### **5. Changes**

Buyer may, at any time or from time to time, make or direct changes, or cause Seller to make changes, to the Goods under any Order or Order amendment, including, without limitation, changes in required quantities, design, drawings, specifications, applicable testing, inspection or quality control, methods of manufacturing, processing, packing and shipment, the date or place of delivery or otherwise change the scope of work covered



of such Order. Any such change shall be binding only if made in writing and signed by Buyer. Seller will promptly make any such required change. In order for Seller to request a reasonable adjustment to the price or time for performance as a result of such change, Seller must notify Buyer of its request in writing within ten (10) days after receiving notice of the change and supply with its request all relevant information and documents necessary for Buyer to assess such request. Seller will, as requested by Buyer, promptly provide additional information to Buyer relating to any requested change in price or time for performance, including, without limitation, documentation of changes in Seller's cost of production and the time to implement such change. After receiving all requested information and documentation, Buyer may, in its sole discretion, determine an equitable adjustment in price or time for performance resulting from such changes. 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 will not affect the price or time for performance. No adjustments to price or time for performance shall take effect for any change without an Order amendment issued by Buyer. Nothing in this Section 5, including a pending notice of a request for adjustment issued by Seller, shall excuse Seller from proceeding with the Order as changed.

Seller will not make any change relating to Goods, including, without limitation, in the Goods' contents, design, specifications, processing, packing, marking, shipping, price, date or place of delivery, except at Buyer's written instruction or with Buyer's written approval upon at least one hundred twenty (120) days prior written notice to the proposed date of implementation together with all necessary information and documentation so as to permit Buyer to fully assess the proposed change. In connection with and prior to implementation of any such change request approved by Buyer in writing, Buyer may condition its approval on and otherwise require, among any other requirements demanded of Seller, that (a) adjustments be made to the price or time for delivery of the Goods and/or (b) Seller, at Seller's sole cost, prepare a safety stock of Goods satisfactory to Buyer. Seller shall provide, at Seller's sole cost, any samples and additional information, testing or other data requested by Buyer at the times and in the form requested by Buyer. Such prohibited changes include, without limitation, changing (i) any third party supplier to Seller of the services, raw materials or goods used by Seller in connection with its performance under the Order, (ii) any facility from which Seller and/or such third-party supplier operates and that relates in any way to the Goods, or to services, raw materials or goods used by Seller in connection with performance under the Order, (iii) the price of any Goods covered by the Order, (iv) the nature, type or quality of any services, raw materials or goods used by Seller in connection with the Order, (v) the fit, form, function, appearance or performance of any Goods covered by the Order, or (vi) the production method, or any process or software, or any production equipment used in the production or provision of, or as a part of, any Goods under the Order. Any changes by Seller to any Order or to the Goods covered by the order without the prior written approval of an authorized representative of Buyer shall constitute a breach.

## **6. Delivery; Labeling; Packaging**

- (a) Except as otherwise stated in the Order, Goods will be delivered by Seller DDP Buyer's designated delivery facility (Incoterms 2020).
- (b) Time and quantities are of the essence in Seller's performance of the Contract. Delivery of Goods shall be on the date indicated in the Order or Release, as applicable, or as otherwise as requested by Buyer. Seller



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agrees to 100% on-time delivery of the quantities and at the times specified by Buyer in an Order or in Releases. If Seller has any reason to believe that it may not be able to meet the specified delivery date in an Order or Release for any reason, it shall immediately notify Buyer and, unless otherwise directed by Buyer, shall at its own expense take all steps required to eliminate or minimize any delay in delivery. Such notice, however, will not excuse Seller's obligation to meet the required delivery time. Seller will pay any costs incurred by Buyer, including costs charged by any Customer to Buyer, because of Seller's failure to comply with shipping or delivery requirements. Buyer is not obligated to accept early, late, partial, or excess deliveries. Goods which are delivered in advance of the specified date may, at the option of Buyer, either (i) be returned at Seller's expense for improper delivery, or (ii) be placed in storage for Seller's account, at Seller's cost, until the delivery date specified in the applicable Order or Release with payment withheld by Buyer until the date that the Goods are actually scheduled for delivery. Buyer may, from time to time, change delivery schedules or direct temporary suspension of scheduled shipments.

(c) All Goods shall be suitably packed, marked and shipped in accordance the requirements of Buyer and/or Customer, or in the absence of specific requirements of Buyer and/or Customer, then at minimum the requirements of the involved carriers and the countries of destination, and otherwise in accordance with sound commercial practices, in compliance with applicable Law, and in such a manner to ensure that the Goods are not damaged during transit. Packing slips identifying the Order number, Release number, Buyer's part number, number of pieces in the shipment, number of containers in the shipment, Seller's name and number and the bill of lading number must accompany each shipment.

## **7. Over Shipments; Under Shipments**

Buyer will have no liability for payment of Seller claims arising from Goods delivered to Buyer that exceed the quantities specified in the Order. At the sole option of Buyer, Buyer may keep any over shipments of Goods and elect to have the quantities of Goods under the Order increased by the same number of Goods as the quantity of over shipments; provided, however, Buyer shall not be invoiced for such Goods prior to the date Buyer scheduled delivery and, notwithstanding anything contained herein to the contrary, risk of loss relating to such excess Goods shall not pass to Buyer until at least such date. Alternatively, over shipments of any Goods shall, if so, requested by Buyer, be returned to Seller at Seller's expense. In case of under shipments of any Goods, Seller shall, if so, requested by Buyer, immediately at its cost, deliver on an expedited basis the additional Goods needed to fully complete the applicable Buyer's requirements to the destination and by the time designated by Buyer. Alternatively, Buyer may elect to have the quantities of Goods under the Order reduced by the same number of Goods as the quantity of any under shipments.

## **8. Notification of Delay; Seller Performance**

If at any time Seller has reason to believe that the delivery of any Goods may not be made in strict conformity with applicable delivery schedules, Seller shall immediately notify Buyer setting forth the cause for the anticipated delay. Any oral communication shall be immediately confirmed in writing. During the period of any delay, Seller shall use its best efforts to provide, on an expedited basis as necessary, substitute goods for the



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Goods called for in the Order from other sources, as approved by Buyer in its sole discretion, and reduce its deliveries of Goods to Buyer by such quantities of substituted Goods, all without cost or liability to Buyer.

## **9. Payment; Invoices**

(a) Payment terms are set forth in the Order. If the payment terms or payment date is not specified in the Order, the payment term is Net 60 from Buyer's receipt of a completed and valid invoice (in a form and containing such information as Buyer may require). Payment may be made electronically or by check on or before the due date unless otherwise specified by Buyer in writing. Notwithstanding the foregoing, payments may be withheld pending Buyer's receipt of satisfactory evidence that the Goods were delivered absent any liens, claims or other encumbrances. If no currency is specified on the face of the Order, payment will be made in the local currency of Buyer's receiving facility. All amounts due Seller or its affiliates shall be considered net of indebtedness or obligations of Seller and its affiliates to Buyer and its affiliates, and Buyer and its affiliates may set off against any amounts due or to become due to Seller or its affiliates from Buyer or its affiliates however and whenever arising and without notice. If any obligations of Seller or its affiliates to Buyer or its affiliates are disputed, contingent or unliquidated, including, without limitation, any claims by Customers before final determination of cause, Buyer may defer payment of such amounts until such claims are finally resolved (as determined by Buyer in its sole discretion). In the event a Customer fails to pay Buyer for Goods or services incorporating or using the Goods, or debits, sets off or otherwise recaptures any amounts due or previously paid to Buyer for Goods or services incorporating or using the Goods, Buyer may, in its sole discretion, either: (i) assign to Seller the right to collect such amounts from such Customer, in whole or in part, and Seller agrees to accept such assignment as payment for any amounts due from Buyer to Seller on a dollar for dollar basis; or (ii) set off against any amounts due or to become due to Seller or its affiliates from Buyer or its affiliates, or debit any amount previously paid by Buyer to Seller for such Goods, in each case on a dollar for dollar basis as determined by Buyer in its sole discretion.

(b) All invoices for Goods must reference the Order and Release numbers, Buyer's part number, Seller's part number where applicable, quantity of pieces in the shipment, description of Goods, number of cartons or containers in the shipment, bill of lading number, currency and any other information required by Buyer. Invoice must be sent to Buyer in the manner designated by Buyer. No invoice may reference any term separate from or different than the Contract.

## **10. Risk of Loss and Title to Goods**

Notwithstanding anything contained in the Contract to the contrary, title to the Goods shall pass to Buyer at the delivery point but risk of loss or damage shall not pass to Buyer unless and until such Goods are delivered and finally accepted by Buyer.

## **11. Samples**



Seller, at its expense, shall fabricate from production Tooling and processes and furnish to Buyer the number of samples specified on the face of the Order, or if none is specified, a reasonable number of samples. Seller shall inspect such samples before delivery and shall certify inspection results in the manner requested by Buyer. As used herein, "Tooling" shall include equipment, tooling, dies, test and assembly fixtures, jigs, gauges, patterns, casting patterns, cavities, molds, together with any accessions, attachments, parts, accessories, substitutions, replacements, and appurtenances thereto.

## **12. Electronic Data Interchange**

Seller shall, at Buyer's request, comply with and connect to Buyer's electronic data interchange ("EDI") system and/or its web portal or any other methods of electronic communication specified by Buyer. Buyer shall have no liability whatsoever for any damages or loss alleged to have been suffered by Seller as a result of connection to or use of the EDI system or other methods of electronic communication, including, without limitation, in respect of loss of data or computer virus. Emails, even those containing a signature block of one of Buyer's representatives, do not constitute a signed writing by Buyer.

## **13. Quality and Inspection**

(a) All Goods are subject to right of inspection and rejection by Buyer and Customers. Buyer may, however, rely on Seller's obligations and is not obligated to inspect Goods at any time, including, without limitation, prior to assembly or use. Neither Buyer's payment for nor Buyer's inspection of Goods, whether during manufacture, prior to delivery, or within a reasonable time after delivery, constitutes acceptance of any work-in-process or finished goods. Buyer's acceptance, inspection, or failure to inspect does not relieve Seller of any of its responsibilities or warranties. Nothing in the Contract releases Seller from the obligation of testing, inspection and quality control. In addition to all of its other rights and remedies under the Contract or at law or in equity, Buyer may, in its sole discretion and at Seller's risk and expense, return non-conforming Goods to Seller or hold them for a reasonable period of time and await Seller's disposal instructions. Goods returned by Buyer to Seller as defective or non-conforming shall not be returned to Buyer, whether reworked or otherwise modified, without Buyer's written approval. Neither acceptance, inspection, assembly nor any other use of Goods shall release Seller from its responsibility for non-conforming or defective Goods.

(b) Seller shall provide adequate and safe facilities for inspections requested by Buyer and Customer at Seller's facilities. Seller shall provide and maintain an inspection and process control system covering the Goods that is acceptable to Buyer and Customer(s). Records of all inspection work by Seller shall be kept complete and available to Buyer and Customer(s) during the performance of an Order and for at least five (5) years after the end of serial production of the Goods.

(c) Seller will comply with Buyer's (and, as applicable, its Customer's) Production Part Approval Processes ("PPAP") and will obtain all PPAP approvals at its own cost prior to any delivery of or payment for Goods.

## **14. Non-Conforming Goods**



Any Goods determined by Buyer to be non-conforming or defective may be rejected by Buyer. If defective Goods are shipped to and rejected by Buyer, the quantities under the Order will be reduced and Buyer will have no obligation to pay Seller for such Goods unless Buyer otherwise notifies Seller. Rejected Goods will be held by Buyer in accordance with Seller's instructions, at Seller's risk, and Buyer shall be entitled to charge Seller for storage, handling, disposal and any other costs related to such rejected Goods without liability to Buyer. Seller will not replace reduced quantities without a new Order or Release from Buyer. In addition to other remedies available to Buyer: (a) Seller agrees to accept return of non-conforming or defective Goods, at Seller's risk and expense, at full invoice price, plus transportation charges, and to replace such defective Goods as Buyer deems necessary; (b), Buyer may have corrected at any time prior to shipment from Buyer's facility Goods that fail to meet the requirements of the Order; and/or (c) Seller will reimburse Buyer for all costs and damages that result from any rejection or correction of defective Goods, including, without limitation, those costs specified in Section 23(b) hereof. In addition, upon request of Buyer, Seller will provide a written description of corrective action taken to assure future compliance.

## **15. Services**

If the Goods include services, Seller shall furnish, at Seller's expense, all labor, materials, Tooling, transportation, facilities, and other items necessary to perform the services. Seller further represents and warrants such services shall be performed in accordance with the highest standards of professional and ethical competences and integrity in such service industry by individuals with the necessary knowledge, skill, expertise, and training in a diligent, workmanlike, prompt, and professional manner. Seller shall provide Buyer reasonable access to the Personnel performing Services and promptly replace any person(s) Buyer determines is unfit or unsatisfactory. Seller will promptly notify Buyer if any Intellectual Property Rights (as defined in Section 18), including, without limitation, discoveries, improvements, inventions, creations, writings, product designs, prototypes, specifications, drawings or other works that Seller or its Personnel or suppliers conceives, reduces to practice, makes or otherwise creates in connection with the performance of such services, and such intellectual property will constitute deliverables owned by Buyer.

## **16. Marking**

Markings shall be in English, bar code, and such other form as requested by Buyer. Seller shall mark each package as described in the Supplier Requirements Manual.

## **17. Buyer and Seller's Information**

(a) Seller shall keep in strict confidential all non-public, confidential or proprietary information of Buyer and Customers, and its and their affiliates, disclosed or otherwise made available by or on behalf of Buyer to Seller, including, without limitation, technical, process, financial, commercial or other information, pricing and other terms of the Contract, specifications, data, formulas, compositions, designs, sketches, photographs, samples, prototypes, test vehicles, business, manufacturing, packaging or shipping methods and processes, computer software and programs (including object code and source code), and any materials, representations,





compilations, analysis, and summaries of or based on the foregoing, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, or observed or otherwise learned, and whether or not marked, designated or otherwise identified as “confidential” in connection with the Contract (“Buyer’s Information”), and shall not disclose, directly or indirectly, Buyer’s Information to any third party or any Personnel (as defined in Section 18) of Seller who does not have a need to know such information in order for Seller to perform its obligations under the Contract except as specifically authorized in writing by Buyer. Seller shall not, directly or indirectly, use or permit Buyer’s Information to be used for any purpose other than solely for the purpose of doing business with Buyer pursuant to the Contract without obtaining Buyer’s prior written consent. Upon expiration or termination of the Contract or Order, as applicable, or otherwise upon Buyer’s request, Seller shall promptly return to Buyer all materials incorporating any such Buyer’s Information and any copies thereof automatically and without request by Buyer. Without limiting the foregoing, Seller shall not in any manner advertise or publish the fact that Seller has contracted to furnish Goods to Buyer or Customers, or otherwise use any trademarks or trade names of Buyer or its affiliates in any press release, advertising or promotional materials. The obligations of non-use and confidentiality set forth in this Section 17 do not apply to information that is: (i) in the public domain; (ii) known to Seller at the time of disclosure as evidenced by Seller’s written records; or (iii) rightfully obtained by Seller on a non-confidential basis from a third party as evidenced by Seller’s written records. Further, the obligations contained in this Section 17 shall not prevent Seller from disclosing Buyer’s Information to the extent required by applicable Law (as defined in Section 28(a)) or a valid order issued by a court or government agency of competent jurisdiction, determined on advice of competent counsel, provided that Seller provides Buyer prompt written notice of such requirement so as to permit Buyer to seek an appropriate protective order to prevent disclosure of all or part of such confidential information and Seller reasonably cooperates with Buyer in obtaining such protective order, and provided further that Seller will disclose only that portion of the confidential information that Seller is legally required to disclose and will make reasonable efforts to obtain reliable assurances that confidential treatment will be accorded such confidential information. For the avoidance of doubt, Seller’s obligations of non-use and confidentiality under this Section 17 shall survive any expiration or termination of the Contract.

(b) Seller will create, maintain, update, and provide to Buyer, in compliance with the drafting and math data standards of Buyer, all technical information about the Goods and their manufacture which is reasonably necessary or requested by Buyer or Customers in connection with the manufacture, installation, assembly and use of the Goods, including, without limitation, the engineering validation and qualification of the Goods for automotive production and other applications and compliance with any legal or regulatory requirements. Any information which Seller has disclosed or may disclose to Buyer that relates to the Goods is acquired by Buyer on a non-confidential basis and free from any restrictions or claims.

## **18. Intellectual Property Rights**

### **(a) Definitions**

“Intellectual Property Rights” means any patent, patented articles, patent applications, designs, industrial designs copy rights, software, object code, source code, database rights, moral rights, inventions whether or not capable of protection by patent or registration, techniques, technical data, trade secrets, know-how, and any



other proprietary right, whether registered or unregistered, including applications and registrations thereof, all related and continuing rights, and all similar or equivalent forms of protection anywhere in the world. Intellectual Property Rights excludes all brands, trademarks, tradenames, slogans and logos of Seller and Buyer (and each of their affiliates) unless specifically identified as a deliverable or work product of Seller pursuant to the Contract.

“Background Intellectual Property Rights” means any Intellectual Property Rights of either Buyer or Seller relating to the Goods (i) existing prior to the effective date of the Order relating to such Goods or prior to the date Buyer and Seller began any technical cooperation relating to the Goods contracted, whichever is earlier, as determined by Buyer in its sole discretion, or (ii) that each party acquires or develops after these dates but in a strictly independent manner and entirely outside of any work conducted under this Contract.

“Foreground Intellectual Property Rights” means any Intellectual Property Rights, except Background Intellectual Property Rights, (i) that are developed in whole or in part by Buyer alone, by Buyer and Seller jointly or by Seller alone, in connection with this Contract or (ii) relating to the Goods contracted.

(b) Foreground Intellectual Property Rights

Buyer and Seller will each retain ownership of any Foreground Intellectual Property Rights that are solely created or made by their respective officers, managers, employees, subcontractors, agents or other representatives (collectively, “Personnel”). Buyer and Seller will jointly own any Foreground Intellectual Property Rights that are jointly created or made by Personnel of both Buyer and Seller with the ability to grant licenses without consultation and no duty of accounting to each other for any use or purpose. For clarity, unless an express written period of exclusivity has been promised to Buyer, Foreground Intellectual Property Rights owned or controlled by Seller may be immediately exploited by Seller in connection with its business with its other customers and will not be exclusive to Seller’s performance of this Contract. Seller hereby grants to Buyer, and causes its affiliates, Personnel and suppliers to grant to Buyer, and Buyer’s affiliates, an irrevocable, worldwide, nonexclusive, perpetual to the maximum extent permitted by applicable Law, royalty free, fully paid-up license, with right to sublicense, including, without limitation, to Buyer’s affiliates, Customer(s) and subcontractors, to all Foreground Intellectual Property Rights to make, have made, use, reproduce, modify, improve, prepare derivative works of, distribute, display, perform, offer to sell, sell and import, without limitation.

(c) Background Intellectual Property Rights

Buyer and Seller will each retain ownership of their respective Background Intellectual Property Rights. Seller hereby grants to Buyer, and causes its affiliates, Personnel and suppliers to grant to Buyer, an irrevocable, worldwide, nonexclusive, perpetual to the maximum extent permitted by applicable Law, royalty free, fully paid-up license, with right to sublicense, including, without limitation, to Buyer’s affiliates, Customer(s) and subcontractors, to all Background Intellectual Property Rights to make, have made, use, reproduce, modify, improve, prepare derivative works of, distribute, display, perform, offer to sell, sell and import, without limitation, the Goods that are the subject of this Contract (the “Limited License”), provided that Buyer, its



affiliates, Customer(s) and subcontractors will only use the Limited License in the event that: (i) Seller breaches or repudiates its obligations by being unable or unwilling to deliver Goods under the Contract; (ii) in the event Seller is unable to supply Goods under this Contract as a result of a force majeure event, but in such event only for the duration of Seller's inability to supply; or (iii) the Contract is terminated for any reason.

(d) Copyrights

To the extent that this Contract is issued for the creation of copyrightable works, the works will be considered "works made for hire" for Buyer except to the extent that the works do not qualify as "works made for hire" for Buyer in which case Seller here by assigns, and causes its affiliates, Personnel and suppliers to assign, to Buyer all right, title and interest in all copyrights and if lawfully permitted waives all moral rights therein.

(e) Right to Repair

For the avoidance of doubt, Buyer, its affiliates, Customers and subcontractors have the right to repair, reconstruct, remanufacture, or rebuild the specific Goods delivered under this Contract without payment of any royalty to Seller or any third party.

(f) Miscellaneous

Without limiting Seller's obligations of non-use pursuant to Section 17, and for the avoidance of doubt, Goods manufactured based, in whole or in part, on Buyer's drawings, designs, and/or specifications or other Buyer-provided information as well as any software code or models provided by Buyer may not be used for Seller's own use or sold to third parties. The foregoing restriction shall not apply in respect of standard stock goods or services independently developed by Seller and routinely manufactured in each case prior Buyer's issuance of the Order relating to the applicable Goods.

Nothing in the Contract is an admission by Buyer of the validity of any Intellectual Property Rights claimed by Seller or its affiliates, including an admission that any license is required by Buyer or any third party to manufacture or otherwise exploit the Goods or continue the services contracted. Seller will claim and acquire all rights and waivers of Seller's Personnel required to enable Seller to grant Buyer the rights and licenses in this Contract. Seller assumes full and sole responsibility for compensating Seller's Personnel for such rights and waivers, including, without limitation, the remuneration of employees.

## 19. Service and Replacement Parts

Seller will sell to Buyer the Goods necessary to fulfill Buyer's service and replacement parts requirements for Customer(s) during the production phase at the then current production price(s) under the Order. Seller will also sell Goods to Buyer to fulfill Buyer's service and replacement parts requirements for Customer(s) during the fifteen (15) year period following the end of the production phase (the "Post-Production Period"), and notwithstanding anything to the contrary contained in the Contract, the Order will remain in effect during the entire Post- Production Period as to such service and replacement parts requirements. During each period, if the Goods are systems or modules, Seller will sell the components or parts that comprise the system or module at price(s) that will not, in the aggregate, exceed the price of the system or module less assembly costs. During the first five (5) years of the Post-Production Period, the price(s) for service and replacement Goods will be the



production price(s) which were in effect at the commencement of the Post-Production Period. The price(s) for service and replacement Goods for the remainder of the Post-Production Period shall be as agreed by the parties. If requested by Buyer, Seller will also make service literature and other materials available at no additional charge to support Buyer's service activities. Seller agrees to maintain in good condition all tools and equipment necessary to produce Goods and all corresponding drawings, designs and manufacturing processes until the end of the Post-Production Period. Notwithstanding anything contained herein to the contrary, in the event Goods are intended for use by Buyer in non-automotive program applications, Seller will sell to Buyer the Good necessary to fulfill Buyer's service and replacement parts requirements during the term and for five (5) years following the end of Buyer's production phase at the then current production price(s) under the Order. For the avoidance of doubt, Seller's obligations under this Section 19 shall survive any expiration or termination of the Contract.

## **20. Warranties**

(a) Seller warrants to Buyer and Customers, and the direct and indirect users of the goods and services sold by Buyer that contain or otherwise incorporate Goods, for the duration set forth in Section 20(c), that all Goods (including those that incorporate services) provided under the Contract shall: (i) be merchantable; (ii) be free from all defects in design (to the extent designed by Seller or its Personnel or suppliers, even if the design has been approved by Buyer), workmanship and materials; (iii) be selected, designed (to the extent designed by Seller or its Personnel or suppliers, even if the design has been approved by Buyer), manufactured and assembled by Seller based upon Buyer's and Customer's stated use and fit, sufficient and suitable for the particular purposes intended by Buyer and Customers, including, without limitation and as applicable, the specified performance in the part, module, system, subsystem or end-product location and the environment in which they are or may reasonably be expected to perform; (iv) conform strictly with specifications, samples, drawings, designs descriptions or other requirements (including performance specifications) approved or furnished to or by Buyer; (v) be manufactured entirely of new materials and free from all liens, claims and encumbrances whatsoever; (vi) be provided with due care; (vii) not and do not infringe, misappropriate, dilute or otherwise violate any patent, trademark, copyright or other intellectual property of any third party; and (viii) strictly comply with all applicable Laws of the jurisdictions in which the Goods, and the products and services containing or otherwise incorporating the Goods, originate or are to be consumed, used, sold, or performed. Any attempt by Seller to limit, disclaim, or restrict any such warranties or any remedies of Buyer, by acknowledgement or otherwise, in accepting or performing the Contract, shall be ineffective. For the avoidance of doubt, Buyer's approval of any design, drawing, material, process, specifications, documents or Goods will not relieve Seller of these warranties or Seller's obligations under the Contract. Seller acknowledges and agrees that it knows the particular purpose for which the Goods are intended. The foregoing warranties are in addition to those available to Buyer at law, and all such warranties shall survive inspection, testing, audit, review, acceptance, use or incorporation of the Goods by Buyer or Customers. Seller shall promptly repair, replace, substitute, refund or credit nonconforming Goods upon written notice, in Buyer's sole discretion and at Seller's sole cost, without limiting or affecting Buyer's other rights or remedies, and the warranties provided in this Section 20 shall likewise apply to such repaired, replaced or substituted Goods.



(b) Seller will conform to the quality control and other standards and inspection systems of Buyer and, as applicable, any Customer(s), including, without limitation, quality control policies, ISO-9001 and TS16949 quality certifications. Seller will also participate in supplier quality and development programs of Buyer and, as applicable, any Customer. Seller agrees to meet the full requirements of PPAP as specified by Buyer and Customer(s), as applicable, and agrees to present the required information to Buyer upon request at the PPAP level requested by Buyer.

(c) In the case of Goods supplied for use as, or incorporation into, parts, systems or modules for automotive vehicles or other finished products, the warranty period will commence upon receipt of the Goods by Buyer and, except as provided in Section 20(e), end forty-eight (48) months following the date the vehicle or other finished product on which such parts, systems or modules are installed is first sold and delivered or otherwise utilized for consumer or commercial purposes, provided, however, that if Buyer offers and provides a longer warranty to any Customer(s) with respect to any such parts, components or systems, then such longer warranty period will apply to the Goods; and provided further, however, notwithstanding the foregoing warranty periods, upon the occurrence of any serial defects in Goods, as determined by Buyer in its sole discretion, the warranty period shall continue indefinitely. In the case of Goods supplied for other uses, unless otherwise expressly agreed in writing by an authorized officer of Buyer, the warranty period will be the longer of (i) that provided by applicable Law, or (ii) the length of the warranty that Seller offers to any of its other customers for the same of similar goods.

(d) If any Goods are determined by Buyer to be non-conforming or defective, Seller shall reimburse Buyer for all losses, costs and damages (including reasonable attorney and professional fees) caused by such non-conforming Goods, including, without limitation, those costs specified in Section 23(b) hereof.

(e) Notwithstanding the expiration of the warranty period set forth in these Terms, if Buyer or the manufacturer of the vehicles (or other finished product) on which the Goods, or any parts, systems or modules incorporating the Goods, are installed, voluntarily or pursuant to a government mandate, makes an offer to owners of such vehicles to provide remedial action to address a defect that relates to motor vehicle safety or the failure of the vehicle to comply with any applicable Laws, safety standard or guideline or otherwise implements a field service action or customer service campaign (collectively, a "Recall"), the warranty shall automatically apply for such period of time as may be dictated by Buyer, Customer(s) or the federal, state, local or foreign government where the Goods are used or provided.

(f) Seller will use standard industry best practices to ensure that no malicious code is directly or indirectly provided, delivered or transmitted to Buyer through the Goods or any communications or other actions of Seller or its Personnel or suppliers, including, without limitation, through software, hardware or any other mode. As used herein, "malicious code" means any code which is designed to harm, or otherwise disrupt in any unauthorized manner, the operation of a person's network or computer programs or systems (whether owned, leased, rented or otherwise hosted), or destroy or damage a person's data in an unauthorized manner.

## **21. Insurance and Indemnity**



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(a) Seller shall maintain and carry adequate insurance, on a commercially reasonable basis, on Seller's facilities and Tooling for the full insurable value thereof, as well as comprehensive general liability insurance, including public liability, property damage liability, product liability, recall and contractual liability coverage, and workers' compensation and employees' liability insurance covering all employees engaged in the performance of any Order, and professional liability coverage (without cyber exclusions), all in amounts and with companies satisfactory to Buyer, acting reasonably. Liability coverage shall include completed products and operations coverage. Any coverage written on a claims made form must be maintained for at least three (3) years after expiration or termination of the Contract. No coverage required by this Section 21 shall in any way apply as a limit to Seller's liability or Buyer's entitlement to recovery.

Upon request from Buyer, Seller shall have Buyer named as an additional insured and loss payee on its insurance policies. Seller shall, on Buyer's request, furnish certificates or other acceptable forms of proof of insurance confirming the foregoing coverages. The receipt or review of such certificates or other forms of proof of coverage by Buyer shall not relieve Seller from its insurance obligations hereunder or reduce or modify such insurance obligations. Seller's failure to comply with these provisions shall not reduce or relieve Seller from its obligations or liabilities hereunder. The certificate must certify that the required insurance is not canceled or materially changed until thirty (30) days after written notice to Buyer. Any such cancellation or change shall not affect Seller's obligation to maintain the required insurance coverage.

(b) If Seller's work under an Order involves operations by Seller's Personnel or suppliers on the premises of Buyer or any Customer, Seller shall take all necessary precautions to prevent the occurrence of any injury to persons or damage to property during the progress of such work, shall at all times enforce strict discipline and maintain good order among all such Personnel and suppliers engaged in the activity on the premises and shall cause such Personnel and suppliers to comply with all policies in force at the premises.

(c) To the fullest extent permitted by applicable Law: (i) Seller assumes sole responsibility for any injury to any person (including, without limitation, death) or damage to any property of any kind or nature caused by, resulting from or in connection with furnished of the Goods to Buyer, by Seller's or its Personnel's or supplier's action or failure to act, or otherwise with respect to Seller's performance under the Contract; (ii) Buyer shall not be responsible for any injury to any person (including, without limitation, death) or damage to any property resulting from Seller's possession, use, misuse or failure of any Furnished Property (as defined in Section 25) or other property furnished to Seller by Buyer, 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 will defend, indemnify and hold harmless Buyer, Customers, and dealers and the direct and indirect users of the goods and services sold by Buyer that contain or otherwise incorporate Goods (or the vehicles or other end-use application in which they are incorporated), and all of their respective customers, invitees, subsidiaries, affiliates, successors and assigns, and each of their Personnel from and against all liability, claims, demands, losses, judgments, settlements, damages, charges, expenses or costs (including, without limitation, reasonable attorneys' and other professional fees, settlements and judgments) of any nature or kind (including, without limitation, special, incidental, consequential, indirect, personal injury, death, and property damages, anticipated or lost profits, any voluntary or involuntary Recall or other Customer field service action costs (including, without limitation, amounts paid to distributors, installers and/or dealers for labor, materials and replacement parts (including reasonable mark up to recover administrative costs or other capital expenses)), off lining of



vehicles or component systems, costs allocated under a Customer warranty allocation program, production delay, line stoppage or production interruption costs, inspection, sorting, storing, reworking, repairing, replacing and handling charges, and other costs associated with Buyer's administrative time, labor, and materials) (collectively, "Losses") arising out of, resulting from, or related to: (A) any actual or alleged non-conformance or defect in the Goods; (B) any actual or alleged breach or failure by Seller or its Personnel or suppliers to comply with (1) any of Seller's representations, warranties or obligations under the Contract or (2) applicable Laws; (C) any alleged or actual negligent or wrongful act or omission of any of Seller or its Personnel or suppliers; and (D) any claim of direct or contributory infringement or inducement to infringe the Intellectual Property Right of any third party under any legal theory related to the Goods, including, without limitation, relating to the manufacture, purchase, use and/or sale of the Goods, and including such claims where Seller has provided only part of the Goods, and Seller waives any claim against Buyer that any such infringement arose out of compliance with Buyer's or Customer's specifications or any other information provided by Buyer or Customer. Seller's obligation to defend, indemnify, and hold harmless under this Section 21 will apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise, except for claims that solely arise as a result of the gross negligence of Buyer. 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 warranty and insurance obligations of Seller.

## **22. Termination for Convenience**

Buyer may, at any time upon ten (10) days prior written notice to Seller, terminate all or any part of the Contract, an Order or a Release for Buyer's convenience, at any time and for any reason, by giving such written notice to Seller. Upon receipt of notice of termination, and unless otherwise directed by Buyer, Seller will: (a) promptly terminate all work under the Order on the effective date of termination; (b) transfer title and deliver to Buyer the finished Goods, the work in process, and the parts and materials that Seller reasonably produced or acquired according to quantities ordered by Buyer and that Seller is prohibited from or otherwise cannot use in producing goods for itself or for others; (c) verify and settle any claims by subcontractors for actual costs incurred directly as a result of the termination and ensure the recovery of materials in subcontractors' possession; (d) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest until disposal instruction from Buyer has been received; and (e) upon Buyer's request, cooperate with Buyer in transferring the production of Goods to a different supplier, including as described in Section 24 below. Upon such termination, Buyer shall pay to Seller, in full satisfaction of any claim, only the following amounts, without duplication: (i) the Order price for all finished Goods in the quantities ordered by Buyer that conform to and are delivered in accordance with the applicable Order or Release and that are finally accepted by Buyer, to the extent not previously paid; (ii) Seller's reasonable actual direct costs of merchantable and useable work in process and raw materials transferred to Buyer under subsection (b) above; (iii) Seller's reasonable actual costs of settling claims regarding its obligations to subcontractors required under the Order, to the extent directly caused by the termination, but limited to the amount of firm quantities of Goods and raw materials/components authorized in outstanding Orders or Releases issued by Buyer; (iv) Seller's reasonable actual and verifiable costs of carrying out its obligation under subsection (d) hereof; and (v) if applicable, the reasonable



actual and verifiable amounts due in connection with Transition Support under Section 24. Buyer shall not pay for finished Goods, work in process or raw materials fabricated or processed in excess of those in the terminated Order or Release (as applicable), for undelivered Goods which are Seller's standard stock, or which are readily marketable, or which are not promptly delivered to and finally accepted by Buyer after request. Notwithstanding any other provision, Buyer will have no obligation for and will not be required to pay Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profits, unabsorbed overhead, interest, development and engineering costs, Tooling, facilities, rearrangement cost or rental, unamortized capital or depreciation, general administrative burden, finished goods, work-in-process or raw materials that Seller fabricates or procures in amounts exceeding those authorized in the Orders or Releases, or any other consequential costs or losses. Buyer's obligation upon termination under this Section 22 will not exceed the obligation Buyer would have had to Seller in the absence of termination. Within sixty (60) days after termination (or such shorter period as maybe required by Buyer or Customer), Seller shall provide Buyer with Seller's termination claim and all relevant information and documents necessary for Buyer to assess such request. Seller shall promptly furnish such supplemental and supporting information as Buyer shall request. Seller's failure to timely submit such a termination claim will result in such claim being irrevocably waived and Seller hereby releases Buyer from such claim(s). Buyer or its agent shall have the right to audit and examine all books, records, facilities, work, material, inventories, and other items before or after payment to verify amounts requested in Seller's termination claim. In the event of a termination of the Order by Buyer as a result of Buyer ceasing to be a supplier to the Customer for the vehicle program in respect of which Buyer issued the Order, Buyer shall only be obligated to compensate Seller for any costs under this Section 24 if, when and to the extent that the Customer reimburses Buyer for such costs.

### **23. Termination for Cause, Default and Remedies**

(a) Buyer may terminate all or any part of the Contract, an Order or a Release, without any liability to Seller or obligation to purchase raw materials, work-in-process, finished Goods or any other items in any of the following events: (i) Seller repudiates, breaches, or threatens to breach any of the terms of the Contract, including Seller's warranties; (ii) Seller is declared insolvent or bankrupt or makes a voluntary assignment or other arrangement for the benefit of creditors, is the subject of a filing for involuntary petition into bankruptcy or a receiver or trustee is appointed for Seller; (iii) Buyer reasonably determines, in its sole discretion based on results of its rights to audit and review of Seller and its operations and records here under, that Seller is or maybe likely to become insolvent or experience financial difficulties that could impact its performance under a Contract; (iv) if Buyer receives notice from Customer that Seller is no longer an acceptable supplier or subcontractor for the Goods; (v) Seller fails to promptly (in no event later than three (3) business days) and adequately respond to a demand for adequate assurance; or (vi) there occurs a Change of Control in Seller. "Change of Control" means any sale or exchange of a sufficient number of securities, including as a result of a merger, amalgamation, consolidation, take-over bid or otherwise, of Seller or of any affiliate that controls Seller, to elect a majority of the board of directors or similar governing body of Seller or effect a change in management of Seller. Seller shall notify Buyer in writing within ten (10) days of any Change of Control of Seller. Seller may terminate an Order only for non-payment by Buyer and then only if: (A) the amounts are material in amount and more than sixty (60) days past due; (B) Seller first delivers to Buyer written notice





specifying (I) the amounts which are past due (together with the relevant order or release number(s) and invoices number(s)) and (II) Seller's intent to terminate such Order if the past due amount relating to such Order is not paid; and (C), within thirty (30) days of Buyer's actual receipt of such notice, Buyer does not either pay the past due amounts relating to such Order or notify Seller that the amounts claimed are disputed.

(b) The rights and remedies reserved to Buyer under the Contract are cumulative with and in addition to all other or legal or equitable remedies. Upon the occurrence of an event identified in Section 23(a), Buyer may, by written notice to Seller (without limiting any of the remedies available to Buyer): (i) terminate the all or any part of the Contract, an Order or a Release; and (ii) procure alternative Goods upon such terms as it shall deem appropriate. Seller shall continue performance of an Order or Release to the extent not terminated. Seller will reimburse Buyer on demand for any and all Losses incurred directly or indirectly by Buyer or Customer(s) resulting from or in connection with any of the events identified in Section 23(a), any non-conforming or defective Goods, or any other breach by Seller of its obligations under the Contract. If requested by Buyer, Seller will enter into a separate agreement for the administration or processing of warranty charge-backs for non-conforming or defective Goods and will participate in and comply with warranty reduction or related programs of Buyer or (to the extent directed by Customer(s)) that relate to the Goods. In any action brought by Buyer to enforce Seller's obligations in connection with the production or delivery of Goods or Transition Support, for possession of property, or otherwise under the Contract, Seller acknowledges and agrees that monetary damages are not a sufficient remedy for any actual, anticipatory or threatened breach of the Contract and that, in addition to all other rights and remedies that Buyer may have, Buyer shall be entitled to specific performance and injunctive equitable relief as a remedy for any such breach (without the necessity of posting bond), plus Buyer's reasonable attorneys' fees and professional fees. The rights and remedies of Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under an Order.

(c) In addition to any right of set off or recoupment provided by law or any right to reimbursement, refund or credit, Buyer may, without prior notice, set-off against or recoup (including, without limitation, by debit) from any amount due or to become due to Seller, in whole or in part, any amount due to Buyer or its subsidiaries or affiliates from Seller or its subsidiaries or affiliates. Buyer will provide Seller with a statement describing any offset or recoupment taken by Buyer.

## **24. Transition of Supply**

Upon the expiration or termination of the Contract or any Order, in whole or in part, by either party for any reason, or Buyer's decision to change to an alternate source of Goods (including, without limitation, a Buyer-owned or operated facility) ("Alternative Supplier"), Seller will cooperate in the transition of supply, including, without limitation, the following transition support ("Transition Support"): (a) following such expiration or termination, Seller will continue production and delivery of all Goods as ordered by Buyer at the prices and other terms of the Contract, without premium or other condition, during the entire period reasonably needed by Buyer to ensure an orderly and complete transition to the Alternative Supplier(s), including, without limitation, at Buyer's request, providing a sufficient bank of Goods such that Seller's action or inaction causes no interruption in Buyer's ability to obtain Goods as required by Buyer and/or Customer; (b) at no cost to Buyer,



Seller (i) will promptly provide all requested information and documentation regarding and access to Seller's manufacturing process, including, without limitation, on-site inspections, bill-of-material data, tooling and process detail, and samples of Goods and component parts, (ii) will provide all notices necessary or desirable for Buyer to resource production of the Goods to an Alternative Supplier, (iii) when requested by Buyer, will return to Buyer all Furnished Property in as good condition as when received by Seller (reasonable wear and tear excepted); and (c) subject to Seller's reasonable capacity constraints, Seller will provide special overtime production, storage, and/or management of extra inventory of Goods, extraordinary packaging and transportation and other special services as expressly requested by Buyer in writing.

If the transition occurs for reasons other than termination of Seller pursuant to Section 23, Buyer will, at the end of the transition period, pay the reasonable, actual, verifiable cost of Transition Support as requested and incurred, provided that Seller has advised Buyer prior of its estimate of such costs prior to incurring such amounts and has received Buyer approval for such costs. If the parties disagree on the cost of Transition Support, Buyer will pay the agreed portion to Seller and the parties shall seek to resolve any disputes expeditiously and in good faith, provided that Seller shall continue performing its obligations hereunder during any such dispute.

## **25. Property Furnished by Buyer and Its Customers**

Unless otherwise agreed in writing, all information, documents, Tooling and materials of every description furnished or made available to Seller by Buyer either directly or indirectly to perform the Contract or for which Buyer has agreed to reimburse Seller(s), and any replacement thereof, or any materials affixed or attached thereto ("Furnished Property"), shall be and remain the personal property of Buyer or Customer and shall be held by Seller or by a third party, to the extent that Seller has transferred possession of Furnished Property to a third party with Buyer's permission, on a bailment basis as a bailee-at-will. To the extent that Buyer has agreed to reimburse Seller for Furnished Property, Seller must provide all required information as specified in the Supplier Requirements Manual. Seller is solely responsible for inspecting, testing and approving all Furnished Property prior to any use, and Seller assumes all risk of injury to persons or property arising from Furnished Property. Furnished Property will, at all times, be housed, maintained, repaired and replaced by Seller at Seller's expense in good working condition capable of producing Goods meeting all applicable specifications. Furnished Property shall be plainly marked or otherwise adequately identified by Seller as the property of Buyer or Customer and shall be safely stored separate and apart from Seller's property. Buyer may enter Seller's premises and inspect Furnished Property and all related records during normal business hours. Seller shall not substitute any of its own property for Furnished Property and shall not use Furnished Property except in filling an Order. Such property while in Seller's custody or control shall be held at Seller's risk, shall be kept insured by Seller at Seller's expense in an amount equal to the replacement cost with loss payable to Buyer or Customer. Buyer and its affiliates have the right to take immediate possession of Furnished Property at any time without payment of any kind. Seller agrees to cooperate with Buyer if Buyer elects to take possession of Furnished Property. Effective immediately upon written notice to Seller, without further notice or legal action, Buyer has the right to enter the premises of Seller and take possession of all Furnished Property. Seller expressly waives any right to additional notice or process and agrees to provide Buyer or its nominee(s) with immediate access to Furnished Property. Seller grants to Buyer a limited and irrevocable power of attorney,



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coupled with an interest, to execute and record on Seller's behalf any notice financing statements with respect to Furnished Property that Buyer determines are reasonably necessary to reflect Buyer's interest in Furnished Property. At Buyer's request, Furnished Property will be immediately released to Buyer or delivered by Seller to Buyer or Customer in the same condition as originally received by Seller, reasonable wear and tear excepted, all at Seller's expense. Seller waives, to the extent permitted by applicable Law, any lien or other rights that Seller might otherwise have on any Furnished Property, including, without limitation, molder's and builder's liens, or any liens or other rights that Seller might otherwise have on Furnished Property for work performed on such property, for the price of Goods, or otherwise.

TO THE EXTENT PERMITTED BY LAW, BUYER SHALL HAVE NO LIABILITY TO SELLER OR ANYONE CLAIMING BY OR THROUGH SELLER FOR ANY INCIDENTAL OR CONSEQUENTIAL OR OTHER DAMAGES OF ANY KIND WHATSOEVER RELATING FURNISHED PROPERTY. BUYER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO SUCH FURNISHED 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.

## **26. Seller's Tooling**

Seller, at its own expense, shall furnish, keep in good condition, and replace when necessary all Tooling that is not Furnished Property ("Seller's Tooling") throughout the term of the Contract and for a period of fifteen (15) years after serial production. The actual verifiable cost of changes to Seller's Tooling necessary to make design changes and specification changes authorized by Buyer in writing shall be paid for by Buyer. Buyer may inspect Seller's Tooling and all related records during normal business hours upon reasonable notice to Seller. Seller shall insure Seller's Tooling with full fire and extended coverage insurance for the replacement thereof. Seller grants Buyer an irrevocable option to take possession of and title to Seller's Tooling that is special for the production of Goods upon payment to Seller of the book value thereof less any amounts Buyer has previously paid to Seller for the cost of Seller's Tooling; provided, however, that this option shall not apply if Seller's Tooling is used to produce products that are standard stock of Seller. Seller grants Buyer a security interest in Seller's Tooling to secure Buyer's rights in Seller's Tooling.

## **27. Audit Rights**

During the term of the Contract and for an additional six (6) years after the final payment thereunder, Buyer, at its expense, shall have the right to inspect, audit and review all relevant information, including books, records, income statements, balance sheets, cash flow statements, payroll data, receipts and other related supporting data, including Seller's administrative and accounting policies, guidelines, practices and procedures, as well as correspondence, test results, other documents in order to (i) substantiate any charges and other matters under the Contract (ii) assess Seller's ongoing ability to perform its obligations under the Contract, and (iii) assess Seller's compliance with the terms of the Contract. Seller will maintain and preserve all such information and documents for a period of six (6) years following final payment under the Contract. In addition, all Goods,



work, materials, inventories and other items provided for under or related to the Contract must at all times be accessible to Buyer and to Buyer's authorized agents and representatives, including parts, tools, fixtures, gauges and models. Seller will provide Buyer with reasonable access to its (and its suppliers') facilities and Personnel, and otherwise cooperate and facilitate any such inspections, audits and reviews by Buyer, including, without limitation, of manufacturing, testing, inspection, quality control, and reliability processes and procedures; provided, however, that no such inspection, audit, review (or lack thereof) by Buyer shall relieve Seller of any liability or obligations under the Contract or otherwise impair or waive any right or remedy of Buyer with respect to the Goods or Seller's performance under the Contract.

## **28. Compliance with Laws**

(a) Seller's performance of its obligations under the Contract shall be in compliance with all applicable federal, provincial, state, municipal and local laws, ordinances, rules, codes, ordinances, orders, standards and regulations in the country of receipt, the country of shipment and the customer-identified country of destination, including, without limitation, the United States Foreign Corrupt Practices Act, the Arms Export Control Act, the International Traffic in Arms Regulations ("ITAR"), the Export Administration Act, the Export Administration Regulations ("EAR") and Canadian Export Control List ("ECL") (collectively, "Laws"). Seller shall furnish Buyer with certificates of compliance, where required under such applicable Laws or when requested by Buyer. Each invoice rendered to Buyer under an Order shall constitute written assurance by Seller that Seller has fully complied with all applicable Laws. Without limiting the foregoing, Seller shall not transfer any export controlled item, technical data, technology, or service, including transfers to foreign persons employed by or associated with, or under contract to Seller or Seller's lower tier Sellers, unless authorized in advance by an export license, license exception or license exemption (collectively, "Export Authorization"), as required. Seller shall notify Buyer if any deliverable under the Contract is restricted by applicable export control Laws. Before providing Buyer any item or data controlled under any of the export control Laws, Seller shall provide in writing to Buyer the export classification of any such item or controlled data and shall notify Buyer in writing of any changes to the export classification information of the item or controlled data. Seller represents that an official authorized to bind the Seller has determined that the Seller or the designer, manufacturer, Seller or other source of the Goods has properly determined their export classification. Seller hereby represents that neither Seller nor any parent, subsidiary or affiliate of Seller is included on any of the restricted party lists maintained by the U.S. government, including the Specially Designated Nationals List administered by the U.S. Treasury Department's Office of Foreign Assets Control, Denied Parties List, Unverified List or Entity List maintained by the U.S. Commerce Department's Bureau of Industry and Security, or the List of Statutorily Debarred Parties maintained by the U.S. State Department's Directorate of Defense Export Controls (collectively, "Restricted Party Lists"). Seller shall immediately notify Buyer if Seller, or any parent, subsidiary or affiliate of Seller becomes listed on any Restricted Party List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. or non-U.S. government entity or agency. If Seller is engaged in the business of exporting manufacturing (whether exporting or not) or brokering defense articles or furnishing defense services, Seller represents that it is and will continue to be registered with the Directorate of Defense Export Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR. Where Seller is a party to or signatory under a Buyer Export Authorization, Seller



shall provide prompt notification to Buyer in the event of: (i) changed circumstances including, but not limited to, ineligibility, a violation or potential violation of the ITAR, EAR or ECL or other applicable governmental restrictions, and the initiation or existence of a U.S. and/or Canadian government investigation, that could affect Seller's performance under the Contract; or (ii) any change by Seller that might require Buyer to submit an amendment to an existing Export Authorization or request a new or replacement Export Authorization, including but not limited to any Change of Control of Seller. Seller shall provide to Buyer all information and documentation as may reasonably be required for Buyer to prepare and submit any required export license applications. Delays on Seller's part to submit the relevant information for export licenses shall not constitute an excusable delay under the Contract. Seller shall include the requirements contained in this Section or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or delivered as Goods to Buyer. Seller shall immediately notify Buyer upon learning that any lower tier subcontractor with which it engages has become listed on the Restricted Parties List.

(b) Seller shall package, label and transport the Goods and their containers, in particular those which constitute a health, poison, fire, explosion, environmental, transportation or other hazard, in compliance with all applicable Laws in effect in the place to which the Goods are shipped or as otherwise specified by Buyer. Upon request, Seller shall furnish Buyer with information regarding the ingredients of the Goods. Seller warrants that each chemical substance constituting or contained in the Goods sold is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act(15U.S.C.Sec.2601et.seq.) as amended, and that the Goods are not hazardous under any applicable Laws except as clearly stated on the shipping and storage containers. Seller shall provide Safety Data Sheets prior to shipment of Goods.

(c) Seller represents that: (i) neither it nor any of its Personnel or suppliers will either engage in or permit substandard working conditions in the supply of the Goods; (ii) child labor or underage labor, as defined by applicable Law, will not be utilized; (iii) it will not allow any form of forced or compulsory labor; (iv) workers, without fear of reprisal, intimidation or harassment, shall have the right to associate freely and join labor unions and workers' councils or to otherwise refrain from joining such organizations as they so choose, in accordance with applicable laws; (v) workers shall be protected against any form of harassment and discrimination in any form, including, without limitation, gender, age, religion, disability and political beliefs; and (vi) workers shall have a safe and healthy workplace that meets or exceeds all applicable standards for occupational health and safety.

(d) Upon request, Seller shall furnish Buyer with such written verification as Buyer deems necessary to certify the origin of any ingredients or materials in the Goods. Seller shall also promptly furnish to Buyer all documents and other information requested by Buyer so that Buyer may comply in a timely manner with all applicable Laws governing consumer protection, conflict minerals or similar materials or ingredients.

(e) Upon request, Seller shall furnish promptly certificates of local value added in accordance with applicable government regulations. Each January, Seller shall provide NAFTA certifications for Goods shipped the prior year, including Certificates of Origin.

## **29. Assignment and Non-Assignment**



Seller shall not assign or subcontract any right or obligation under the Contract without the prior written consent of Buyer. Buyer may assign its rights and obligations under the Contract without Seller's prior written consent and without prior notice. Any attempted assignment or delegation by Seller in contravention of this Section 29 shall be null and void. A Change of Control shall be deemed an assignment by Seller. The Contract shall inure to the benefit of the parties' permitted successors and assigns.

### **30. Customer Requirements.**

(a) Seller agrees to comply with the applicable terms and conditions of any agreements ("Customer Terms") received by Buyer from a third party, or otherwise directly or indirectly applicable to Buyer, pursuant to which Buyer agrees to supply to its Customer, or to incorporate into goods or services supplied to its Customer, Goods purchased by Buyer from Seller. The terms "Customer" and "Customer Terms" also include, where applicable, the final equipment manufacturer of the goods or services into which the Goods are or will be incorporated, as well as any intermediate entities in the supply chain between Buyer's direct Customer and such final equipment manufacturer, and related terms and conditions of such Customers. Buyer may, in its discretion, supply Seller with information regarding Customer Terms. Seller will be responsible for ascertaining how such disclosed Customer Terms affect Seller's obligations under the Contract, and Seller will meet all such disclosed Customer Terms. In the event of a conflict between the Order or these Terms and the Customer Terms, Buyer will determine, in its sole and absolute discretion, which terms will supersede and apply to Seller. Seller will take all steps necessary to enable Buyer to comply with the Customer Terms, including, without limitation, cost and productivity terms and price reductions. By written notice to Seller, notwithstanding Section 1(d) above, Buyer may elect to have the provisions of this Section 30 prevail over any conflicting term of any Contract Document.

(b) In the event that a Customer files or has filed against it a petition in bankruptcy or insolvency and, in the course of such proceeding and in connection with actual or threatened termination by the Customer of its contract(s) with Buyer (by rejection or otherwise), Buyer permits a reduction in the price(s) paid to Buyer for products incorporating the Goods, the price paid to Seller for the Goods from and after the date of such reduction will be automatically adjusted proportionally by the same percentage as the price paid to Buyer, and the Order will otherwise remain in effect without modification.

(c) If a Customer directed, required, recommended, requested, suggested or otherwise identified Seller as the source from which Buyer is to obtain the Goods, then notwithstanding anything to the contrary in the Contract Documents, including the particular payment term: (a) in no event will Seller have a right to receive payment from Buyer for the Goods except following, and in proportion to Buyer's actual receipt of payment for those goods in which the Goods supplied by Seller are incorporated; (b) any lengthening of applicable payment terms to Buyer will automatically lengthen the payment terms as between Buyer and Seller by an identical amount of time, and Buyer may, at its option and on notice to Seller, otherwise revise its payment terms for the Goods to take into account any other change in the payment terms of Buyer's Customer(s) for the Goods under the Contract; (c) within three (3) business days of any change in price, specifications or other terms negotiated or proposed between Seller and Customer, Seller will notify Buyer in writing and will immediately adjust its invoices to reflect any price reduction, provided that no change will be binding on Buyer without Buyer's specific written consent; (d) (without limiting any other rights and remedies of Buyer) Seller will defend,



indemnify and hold harmless Buyer from any Losses incurred by Buyer arising from or relating to the Goods supplied by Seller and including, without limitation, any charges or set-offs (including, without limitation, interim field service action cost recovery debits) taken by Customer against Buyer by reason of alleged defects in Goods, even if such set-offs by Customer are before final determination of (and subject to adjustment based upon) whether and to what extent defects in Goods were a cause of the related remedial action undertaken and related costs/damages incurred by Customer; (e) Seller will resolve all commercial issues (including pricing disputes), collection and/or insolvency risks of Customer and/or Seller, warranty charges, product liability claims, Recalls, intellectual property matters and production interruptions arising from or relating to the Goods (except in each case to the extent caused by Buyer) directly and exclusively with Customer and Seller will defend indemnify and hold harmless Buyer from any of the foregoing matters; and (f) any debits claimed by Customer arising from or relating to the Goods will be passed through Buyer to Seller.

(d) If any requirement imposed by the Contract on Seller is found to be unenforceable or a gap otherwise exists or is created in the terms applicable to any Order through operation of law conflict in terms or otherwise, the corresponding requirement(s) of Customer shall be applicable to and binding on Seller for the benefit of Buyer. Seller acknowledges that it is familiar with the automotive industry and the applicable terms of Customer(s) that would apply in such event.

### **31. Governing Law**

The Contract 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 choice of law provisions that require application of any other law. Each party agrees that the forum and venue for any legal or equitable action or proceeding arising out of or in connection with the Contract shall lie in the Federal District Court for the Eastern District of Michigan or, for state court, in Oakland or Wayne County Circuit Court in the State of Michigan, and each party irrevocably submits to, and specifically waives any and all objections to, such jurisdiction and venue. Seller shall pay Buyer's reasonable attorneys' fees and other professional fees, costs, and expenses incurred in enforcing any provision of the Contract.

### **32. Severability; Waiver; Survival**

If any provision of the Contract is held by a court of competent jurisdiction as invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such provision shall be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of the Contract shall remain in full force and effect. Buyer's waiver of any breach by Seller shall not be construed as a waiver of any other breach, and no waiver by Buyer shall be effective unless it is in writing. The failure of Buyer to require performance under any provision of the Contract shall in no way affect Buyer's right to require full performance at any subsequent time. These Terms shall survive and continue in full force and effect following the expiration or termination of the Contract

### **33. Entire Agreement**



2600 Auburn Ct.  
Auburn Hills, MI 48326-3201  
248.852.5500  
www.airbossfamerica.com

Each Contract is a complete and exclusive statement of the terms of the parties' agreement with respect to the manufacture and supply of Goods under an Order; provided, however, that notwithstanding the foregoing, the parties hereby acknowledge and agree that Buyer may modify these Terms from time to time by posting revisions to Buyer's website at <https://airboss.com/> (or any successor website thereto) prior to the date when any such modification shall become effective, and such revised Terms shall apply to all Order revisions, amendments or Releases issued on or after the effective date thereof, and Seller further acknowledges and agrees it is responsible to review such Buyer's website periodically. No course of prior dealings between the parties and no usage of the trade may be used by Seller to supplement or explain any term used in an Order, and any understandings or statements, written or oral, made prior to the Order that may be inconsistent with the provisions of the Contract are expressly rejected. Except as otherwise provided herein, no amendments, subsequent terms, conditions, understandings or agreements purporting to modify the terms of the Contract will be binding unless in writing and signed by the authorized representatives of both parties. Seller disclaims any reliance on any statement or representation made by Buyer except those contained in the Contract. Headings are solely for the purpose of reference, are not part of the agreement of the parties, and shall not in any way affect the meaning or interpretation of the Contract.

#### **34. Force Majeure**

If Seller is unable to produce, sell or deliver any Goods covered by the Contract, or Buyer is unable to accept delivery, buy or use any Goods covered by the Contract, as a result of an event or occurrence beyond the reasonable control of the affected party and without such party's fault or negligence, then any delay or failure to perform under the Contract that results solely and directly from such event or occurrence will be excused only for only so long as such event or occurrence continues, provided, however, that the affected party gives written notice (together with all information reasonably necessary to understand and verify the same) of each such delay (including the anticipated duration of the delay) to the other party as soon as possible after the event or occurrence (but in no event more than seventy-two (72) hours thereafter). Force majeure events and occurrences are strictly limited to fires, floods, natural disasters, acts of war, civil riots, or pandemics or epidemics officially declared by the World Health Organization. For the avoidance of doubt, any change in cost or availability of resources, materials or components based on market conditions, Seller or supplier actions (or inactions), or contract disputes or any labor strike or other labor disruption applicable to Seller or any of its subcontractors or suppliers will not excuse Seller's performance under the Contract (under theories of force majeure, commercial impracticability or otherwise), and Seller assumes these risks. During any delay or failure to perform by Seller, Buyer may (a) purchase substitute Goods from other available sources, in which case the quantities under the Contract will be reduced by the quantities of such substitute Goods, without liability to Seller, and Seller will reimburse Buyer for any additional costs to Buyer of obtaining the substitute Goods compared to the prices set forth in the Contract and/or (b) have Seller provide substitute Goods from other available sources in quantities and at times Buyer requests and at the prices set forth in the Contract. If Seller fails to provide adequate assurances that any delay will not exceed thirty (30) days within forty-eight (48) hours of Buyer's request for such assurances, or if any delay lasts more than thirty (30) days, Buyer may terminate the Contract without any liability to Seller whatsoever except for confirming Goods already delivered in accordance with an Order or Release. As soon as Seller anticipates or learns of any impending strike, labor dispute, work stoppage or other





disruption at its facilities that might affect the delivery of Goods, Seller will produce (and, subject to the consent of Buyer and, if applicable, Buyer's customer, locate in an area that will not be affected by any such disruption) a finished inventory of Goods in quantities sufficient to ensure the supply of Goods to Seller for at least thirty (30) days after such disruption commences.

### **35. Relationship of Parties**

The relationship between Buyer and Seller is that of independent contractors. Nothing contained in these Terms or otherwise in the Contract will be construed to create a principal-agent or employer-employee relationship between the parties. Neither party will represent to others that it is the agent of the other nor have the authority to bind the other. None of the persons engaged by Seller in the performance of its obligations under the Contract shall be considered employees of Buyer. Except as may be expressly set out herein in respect of a Customer, there are no third-party beneficiaries to an Order.

### **36. Buyer Policies and Ethical Standards**

Seller's performance of its obligations under the Contract shall be in compliance with the applicable provisions of each Buyer Policy, including, without limitation, Buyer's Anti-Corruption Policy and Code of Business Conduct and Ethics, and all ethical, social and environmental commitments that may be requested by a Customer. Without limiting the forgoing, Seller shall not give or offer to give any direct or indirect gift or benefit to Buyer's (or its affiliates') Personnel or enter into any outside business relationship with Buyer's (or its affiliates') Personnel.

### **37. TSO/TATF Requirement**

Seller and its subcontractors and suppliers must be registered to either ISO 9001-2015 or ISO/IATF16949-2016. Buyer encourages Seller to be committed to the protection of our environment through pollution prevention and to be ISO 14001 registered.

Revision Effective: June 10, 2022