

GENERAL TERMS AND CONDITIONS

1 The Products and Parties Covered by the Order.

- 1.1 Products. These General Terms and Conditions apply to the purchase of the goods and/or services ("Products") identified in a purchase order issued by Buyer to Seller which references these Terms.
- 1.2 Parties. The Buyer and Seller are identified on the face of the purchase order. If no Buyer is identified, the Buyer is THYSSENKRUPP SYSTEM ENGINEERING, INC.

2 The Terms of the Order

- 2.1 Terms of the Order. The Order consists of the following, which are sometimes referred to collectively as the Terms of the Order: (i) the purchase order; (ii) material releases issued by Buyer to Seller under the purchase order (iii) these General Terms and Conditions; (iii) all other documents specifically incorporated into or otherwise made a part of this Order by Buyer; and (iv) Buyer's Policies, as revised by Buyer from time to time. Buyer's Policies include Supplier Manual, Shipping & Invoice Documentation, Spare Parts Supplier Agreement, Supplier Service Agreement, Customer Parts Supplier Agreement. Buyer's Policies may be found at <http://www.jakrauseinc.com> or by contacting Buyer's assigned purchasing representative. Seller is responsible for keeping current regarding the terms of Buyer's Seller Policies.
- 2.2 Seller Acceptance. The Order is an offer by Buyer to purchase the Products from the Seller on the Terms of the Order. The contract is formed when the Seller accepts the offer of the Buyer. This occurs upon the earlier of: (a) the Seller beginning work or performance; or (b) the Seller notifying the Buyer of its acceptance of the offer. **The Order is limited to and conditional upon Seller's acceptance of these Terms exclusively.**
- 2.3 Seller's Terms Rejected. The Order does not constitute an acceptance of any offer or proposal made by Seller, and Seller acknowledges that: (i) a request for quotation or similar document issued by Buyer is not an offer by Buyer; and (ii) any response by Seller to a request for quotation or similar document issued by Buyer is not an offer by Seller. Any additional or different terms proposed by Seller, whether in Seller's quotation, acknowledgement, invoice or otherwise, are unacceptable to Buyer, are expressly rejected by Buyer, and are not part of the Order.
- 2.4 Entire Agreement. The Order is the entire agreement between the parties respecting the Products and when accepted, supersedes any prior agreements, negotiations or understandings of the parties respecting the Products, whether written or oral. No modification shall be effective unless in writing and signed by Buyer's authorized representative. The Order may be modified only by a writing signed by Buyer.

3 Quantity; Blanket Orders; Material Releases.

- 3.1 Releases. Unless specified differently in the Order, Seller shall deliver Products in strict conformance with the dates, times, quantities and delivery locations determined by Buyer and identified as firm orders in material authorization releases, manifests, broadcasts or similar releases ("Material Releases"). Time and quantities are of the essence under the Order and Seller agrees to 100% on-time delivery of the quantities and at the times specified by Buyer. Seller shall not fabricate any of the Products or procure any of the materials required in their fabrication, and Buyer shall have no obligation as to the same, except to the extent expressly authorized in Material Releases.
- 3.2 Progress Reports. Seller shall provide progress reports on Buyer's request. Seller will promptly notify Buyer in writing if it believes that the Products might not be completed by the completion date specified on the Order, the Seller will notify the Buyer by Written Notice as soon as practicable. Sending this notice will not relieve the Seller of either its obligation to complete the Product on the completion date or its liability for any additional costs incurred by the Seller or the Buyer as a result of any delay.

- 3.3 Blanket Orders. If the Order does not specify a quantity, states zero, "blanket," "per release" or similar term, the Order is a Blanket Order. If the Order is a Blanket Order, then for consideration of \$10.00 to be paid by Buyer following expiration or termination of the Order, Seller grants to Buyer an irrevocable option during the term of the Order to purchase Products in such quantities specified in Material Releases that are transmitted to Seller during the term of the Order, provided that the Buyer may purchase no less than a minimum quantity of at least one piece or unit of each of the Products and no more than 100% of Buyer's requirements for the Products.
- 3.4 Exclusivity. Buyer is not required to purchase Products exclusively from Seller unless the Order expressly states that it is exclusive, 100% requirements, or similar term.
- 3.5 EDI. Buyer may require Seller to participate in electronic data interchange or similar inventory management program, at Seller's expense, for notification of Material Releases, shipping confirmation and other information.

4 Shipping and Delivery

- 4.1 Buyer Requirements. Seller will properly pack, mark (with Buyer's Purchase Order number), and ship Products (and provide related documentation which must include the Buyer's purchase order number, Buyer's part number, and quantity) according to the requirements of Buyer, the involved carriers and the country of destination. Seller will promptly provide Buyer with, in the form requested by Buyer, the identity and amount of all ingredients (and any changes in the ingredients) of the Products.
- 4.2 Hazardous Materials. Before and at the time Products are shipped, Seller will give Buyer sufficient warning in writing (including appropriate labels on all Products, containers, and packing, including without limitation disposal and recycling instructions, material safety data sheets and certificates of analysis) of any hazardous or restricted material that is an ingredient or part of the Products, together with any special handling instructions that are needed to advise carriers, Buyer, and their employees how to take appropriate measures while handling, transporting, processing, using or disposing of the Products, containers, and packing. Seller agrees to comply with all Laws, as defined below, relating to such materials.
- 4.3 Country of Origin. Seller agrees to fulfill any customs- or NAFTA-related obligations, origin marking or labeling requirements, and local content origin requirements. Export licenses or authorizations necessary for the export of Products are Seller's responsibility unless otherwise stated in the Order, in which case Seller will provide the information necessary to enable Buyer to obtain the licenses or authorizations. Seller will promptly notify Buyer in writing of any material or components used by Seller in filling the Order that Seller purchases in a country other than the country in which the Products are delivered. Seller will furnish any documentation and information necessary to establish the country of origin or to comply with the applicable country's rules of origin requirements. Seller will promptly advise Buyer of any material or components imported into the country of origin and any duty included in the Products' purchase price. If Products are manufactured in a country other than the country in which Products are delivered, Seller will mark Products "Made in [country of origin]." Seller will provide to Buyer and the appropriate governmental agency the documentation necessary to determine the admissibility and the effect of entry of Products into the country in which Products are delivered. Seller warrants that any information that is supplied to Buyer about the import or export of Products is true and that all sales covered by the Order will be made at not less than fair value under the anti-dumping laws of the countries to which the Products are exported.
- 4.4 Title and Risk of Loss. Title to and risk of loss of all Products subject to this Order shall remain with Seller until delivery and acceptance of the Products at Buyer's Plant. Equipment or make to drawing parts will become property of Buyer or its customer (including passage of title) as it is fabricated or acquired, regardless of payment. However, risk of loss of all Equipment or make to drawing parts subject to this Order shall remain with Seller until delivery and acceptance of the Equipment at Buyer's Plant.
- 4.5 Delay in Delivery. If Seller, for any reason, does not comply with Buyer's delivery schedule, or any other requirement of a Material Release, Buyer may (a) approve a revised delivery schedule; (b) require shipment of any of the Products by a more expeditious method of transportation; or (c) cover, and adjust any quantity requirement

under the Order accordingly. Buyer's rights under this section are at Seller's sole expense, at Buyer's sole discretion and in addition to and without prejudice to any other right or remedy available to Buyer.

5 **Price and Payment**

- 5.1 **Price.** The purchase price of the Products is set forth on the face of the purchase order. Unless otherwise stated in the Order, the purchase price: (i) is a firm fixed price for the duration of the Order and not subject to increase for any reason, including increased raw material costs, increased labor or other manufacturing costs, increased development costs, or changes in volumes from the volumes estimated or expected; (ii) Is inclusive of all federal, state, provincial, and local taxes and any duties applicable to provision of the Products; (iii) Is inclusive of all storage, handling, packaging and all other expenses and charges of Seller.
- 5.2 **Invoices.** Unless otherwise stated in the Order, invoices shall be issued on or after delivery of the Products to Buyer and payment shall be deemed to occur upon mailing of a check to Seller. All payment shall be made in U.S. dollars unless otherwise agreed. Seller shall, at its expense, comply with Buyer's instructions and policies with respect to the form, content and method for submission of invoices.
- 5.3 **Payment Terms.** Unless otherwise stated in the Order, payment Seller shall pay invoices for Products which are properly presented and not subject to dispute Net 45 days
- 5.4 **Set Off.** In addition to any right of setoff or recoupment provided by law, Buyer or Buyer's affiliated companies shall be entitled at any time to set off or recoup against sums payable by Buyer or its affiliates to Seller any amounts for which the Buyer or its affiliates determine in good faith the Seller is liable to it under any Order or other agreements with the Seller. The Buyer may do so without notice to the Seller.
- 5.5 **Payment Not Acceptance.** Payment for Products shall not constitute acceptance of non-conforming Products, nor will it limit or affect any rights or remedies of Buyer.
- 5.6 **Credits.** Credits or benefits resulting from the Order, including trade credits, export credits or the refund of duties, taxes, or fees, belong to Buyer. Seller will provide all information and certificates (including NAFTA Certificates of Origin) necessary to permit Buyer (or Buyer's customers) to receive these benefits or credits.

6 **Non-Conforming Products;**

- 6.1 **Rejection.** If defective or non-conforming Products are shipped to and rejected by Buyer, the quantities under the Order will be reduced unless Buyer otherwise notifies Seller, and Seller will not replace reduced quantities without a new Material Release from Buyer. Following rejection, Seller shall, without prejudice to any other right or remedy of Buyer, at Buyer's sole discretion and at Seller's sole expense:
- 6.1.1 accept return the Products to Seller at full invoice price, plus transportation charges; or
 - 6.1.2 replace the Products with conforming Products (provided that ; and
 - 6.1.3 correct at any time prior to shipment from Buyer's plant Products that fail to meet the requirements of the Order.
- 6.2 **Buyer Losses.** The Seller is liable for all direct, incidental and consequential damages, losses, costs, and expenses incurred by the Buyer resulting from Seller's failure to deliver conforming and non-defective Products or to comply with the shipping and delivery or other requirements of the Buyer, even if the Seller has cured the failure. This includes but is not limited to compensating Buyer for:
- 6.2.1 any amounts charged by Buyer's customer(s) to Buyer;
 - 6.2.2 all costs of containment, sorting, repair, replacement, cure, cover, or any other costs incurred by Buyer, determined in such manner and in such amount as reasonably determined by Buyer;

6.2.3 all costs of any recall campaign, corrective service action, or other voluntary or involuntary action in which Buyer or any customer participates in connection with inclusion of Products in goods sold by Buyer;

6.3 Corrective Action. Promptly upon learning of defective or non-conforming Products, Seller will develop, document and implement corrective actions in accordance with all applicable quality control policies and standards of Buyer and its customers.

7 Buyer and Industry Standards and Policies.

7.1 Seller will conform to all quality control and other standards and inspection systems as established or directed by Buyer and Buyer's customer for goods and services similar to the Products. These include without limitation quality control policies, ISO 9001:2000 or ISO/TS 16949:2002 quality certification, OHSAS 18001 health and safety certification and ISO 14001 environmental certification including registration. Seller will also participate in Buyer's supplier quality and development programs as directed by Buyer. These programs and standards may be found at <http://www.jakruaseinc.com> or by contacting Buyer's assigned purchasing representative. If there is conflict between any part of the above programs or standards and an express provision of these Terms, these Terms will control.

7.2 To the extent any of the standards, policies or systems cited above are amended, supplemented or replaced, Seller's obligations under this Order shall be automatically be amended.

8 Changes.

8.1 Specifications. All Equipment and made to drawing material is to be made to Buyer's specifications (or, where directed by Buyer, those of Buyer's customer). Any exception to such specifications must be stated in writing on the Order or otherwise in a signed writing by Buyer. All

8.2 Buyer Changes. Buyer reserves the right to change to the Products, including the design, specifications, engineering level, materials, packaging, shipping date, or time or place of delivery. Seller will promptly make any such change.

8.3 Seller Changes. Seller will not make any change to the Products except at Buyer's written instruction or with Buyer's written approval. If Seller learns of a possible change to the Products that may reduce costs, improve quality, or otherwise be beneficial to Buyer, Seller shall inform Buyer of the possible change.

8.4 Impact on Cost The Seller will promptly notify the Buyer in writing if a change directed or approved by Buyer will affect cost or timing and provide substantiation of its claim. If the Buyer determines that an adjustment is appropriate, the Buyer and the Seller will negotiate in good faith on an equitable price adjustment (up or down), a change in shipping or delivery terms, or other appropriate adjustment. If the Buyer determines that no adjustment is appropriate, it will so advise the Seller.

9 Warranties.

9.1 In addition to any other express and implied warranties provided by law or otherwise, Seller warrants to Buyer, Buyer's customer(s) and their respective successors and assigns that each Product shall:

9.1.1 be new and conform to this Order in all respects;

9.1.2 conform to all specifications, drawings, samples and other descriptions furnished by Buyer or otherwise part of the Order;

9.1.3 be free from all defects in design (to the extent designed by Seller), workmanship and materials and be of highest quality and workmanship;

9.1.4 be selected, designed (to the extent designed by Seller), manufactured and assembled by Seller based upon Buyer's stated use and be fit and sufficient for the purposes intended by Buyer.

- 9.1.5 conform to all applicable Laws (as defined in Section __) in countries where the Products (or goods into which the Products are incorporated) are to be sold, including without limitation, in the case of Products used in connection with the manufacture of motor vehicles, the National Traffic and Motor Vehicle Safety Act, United States motor vehicle safety standards and European Union Directive 2000/53/EC;
- 9.2 For all services, Seller further warrants that its work will be performed in a professional and workmanlike manner, consistent with all standards and specifications agreed on with Buyer and otherwise consistent with industry standards.
- 9.3 Seller also warrants that title to all of the Products shall be vested in Buyer free and clear of any and all liens and encumbrances of whatsoever nature and kind.
- 9.4 All warranties of Seller extend to future performance of the Products and are not modified, waived or discharged by delivery, inspection, tests, acceptance and payment or by Buyer's approval of any design, drawing, material, process or specifications will not relieve Seller of these warranties.. Seller waives any right to notice of breach.
- 9.5 The warranty period is the longest of: four years from the date Buyer accepts the Products; the warranty period provided by applicable law; or the warranty period offered by Buyer or Buyer's customer to end-users for the products into which the Products are incorporated.
- 9.6 Seller will immediately notify Buyer in writing when it becomes aware of any ingredient, component, design or defect in the Products that is or may become harmful to persons or property.

10 Indemnification.

- 10.1 Seller agrees to indemnify, defend and hold harmless the Buyer, its affiliates, customers (both direct and indirect, including manufacturers of vehicles in which Products are incorporated), dealers and users of the products sold by Buyer (or the products in which they are incorporated) and all of their respective agents, successors and assigns, and each of their shareholders, directors, officers, employers and agents, on demand, (collectively "Indemnified Parties") from and against any and all costs, fees, penalties, damages (consequential and otherwise), attorneys' fees and all other liabilities and obligations whatsoever ("Losses"), arising out of any third party claim which, in whole or in part, arises from or relates to any actual or alleged:
 - 10.1.1 defect or non-conformity in the Products;
 - 10.1.2 noncompliance by Seller with any of its representations, warranties or obligations under the Order;
 - 10.1.3 negligence or fault of the Seller in connection with the design or manufacture of the Products.
 - 10.1.4 any spill, discharge or emission of hazardous wastes or substances which relates to, in whole or in part to the Products;
 - 10.1.5 any recall campaign, corrective service action, or other voluntary or involuntary action in which Buyer or any customer participates in connection with inclusion of Products in goods sold by Buyer; and/or
 - 10.1.6 infringement (including claims of direct or contributory infringement or inducement to infringe) of any Intellectual Property Right relating to Products provided by Seller, even if they are made to Buyer's specifications;
 - 10.1.7 damages to the property of or personal injuries to Buyer, its customer, their respective agents, or any other person or entity to the extent arising from or in connection with Seller's work on the premises or Seller's use of Buyer's or Buyer's customer's property.
 - 10.1.8 challenge to the Buyer's sole right, title and interest in the Tooling (as defined below), or right to possession of the Tooling, brought by any third party, including toolmakers, subcontractors, and lending institutions.
- 10.2 If Seller is obligated to indemnify under this section, then Buyer may at its option participate in the defense of any Third Party claim with its own counsel, at Seller's expense.

10.3 To the maximum extent permitted by applicable law, Seller's obligation under this Section will apply even as to Losses caused in whole or in part by an Indemnified Party's negligence, but Seller's indemnification shall not apply to the extent that Losses resulted solely and directly from the negligence or willful misconduct of such Indemnified Party. Seller's obligation to defend and indemnify under this Section will also apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise. The indemnification obligation under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the benefit of Seller under Workers' Compensation Acts, occupational disease acts, disability benefits acts or other employee benefits acts.

11 **Inspection and Audit.**

- 11.1 **Inspection.** Buyer may enter Seller's facility at any time to inspect the facility, Products, materials, and any of Buyer's property related to the Order. Buyer's inspection does not constitute acceptance of any work-in-process or finished goods, does not relieve Seller of any of its responsibilities or warranties.
- 11.2 **Audit.** Upon reasonable notice to Seller, either Buyer or its direct or indirect customers (or a third party designee) may audit Seller's production facility, Products and any other Buyer property (including all pertinent documents, data and other information) related to the Order at facility for the purpose of verifying Seller's costs and its compliance with its obligations under the Order.
- 11.3 **Financial Review.** Upon reasonable notice to Seller, Buyer or a third party designated by Buyer may review the financial condition of Seller and its affiliate. Seller will fully cooperate in such review and will promptly provide copies of or access to requested documents, including without limitation financial records and statements, forecasts, business plans, banking contacts and loan documents, and will make its financial managers available for discussions during reasonable business hours. Buyer and any designated third party will keep confidential any nonpublic information about Seller obtained in a financial review and use such information only for purposes of the review, except as needed to enforce the Order.
- 11.4 **Subcontractors.** Seller will ensure that the terms of its contracts with its subcontractors provide Buyer and its customers with all of the rights specified in this Section.

12 **Customer Requirements.**

- 12.1 As directed by Buyer in writing, Seller agrees to comply with the applicable terms of any agreements between Buyer and its customer(s) to which Buyer provides the Products (as incorporated into products supplied to such customer(s)). Seller will meet all disclosed customer terms or requirements applicable to the extent within Seller's control. By written notice to Seller, Buyer may elect to have the provisions of this Section prevail over any conflicting term of the Order.
- 12.2 In the event that Buyer's customer files or has filed against it a petition in bankruptcy or insolvency and, in the course of such proceeding, Buyer permits a reduction in the price(s) paid to Buyer for products incorporating the Products, the price paid to Seller for the Products from and after the date of such reduction will be automatically adjusted proportionally by the same percentage as the price paid to Buyer by its customer, and the Order will otherwise remain in effect without modification.
- 12.3 If Buyer's customer directed, recommended, requested, suggested or otherwise identified Seller as the source from whom Buyer is to obtain the Products: (a) Buyer will pay Seller for the Products only following and to the extent of Buyer's actual receipt of payment from that customer for those goods in which the specific Products are incorporated, and any lengthening of that customer's payment terms to Buyer will automatically lengthen the payment terms as between Buyer and Seller by an identical amount of time; (b) within three business days of any change in price, specifications or other terms negotiated or proposed between Seller and the 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.

13 Subcontractors

If the Seller intends to subcontract all or part of the manufacture of the Products to a third-party subcontractor and to locate Tooling (as defined below) on the subcontractor's premises, the Seller will: (a) inform the Buyer in advance in a Written Notice of the identity of the subcontractor and the location of the Tooling; (b) obtain the written permission of the Buyer in advance of the Seller's doing so; (c) inform the subcontractor in writing that it is a bailee-at-will, through the Seller, of Tooling owned by the Buyer; and (d) be solely responsible for payments to the subcontractor.

14 Duration and Termination of the Order

14.1 Duration. The Order shall be effective on the date specified in the Order, or if no date is specified, when issued to Buyer. Unless terminated earlier in accordance with the Terms of the Order:

14.1.1 the Order shall terminate on the date specified in the Order; or, if no date is specified, one year from the effective date. The termination date is not extended by an amendment or revision to an Order which does not expressly modify the termination date.

14.1.2 the Order will automatically renew for successive one-year periods after the initial term unless Seller provides written notice at least 180 days prior to the end of the current term of its desire that the Order not be renewed.

14.2 Termination by Buyer. In addition to any other rights of Buyer to cancel or terminate the Order, and subject to Section 14, the Buyer may terminate the Order in whole or in part by written notice (a "Termination Notice):

14.2.1 For convenience at any time by not less than three (3) days advance written notice to Seller;

14.2.2 For default, effective upon delivery of the Termination Notice or upon such other date specified by the Buyer in writing. Seller shall be in default if it (i) breaches any warranty or other Term of the Order; (ii) repudiates, breaches or threatens to breach any of the terms of the Order; (iii) fails to deliver, or threatens not to deliver, Products in connection with the Order; (iv) fails to make progress or to meet reasonable quality requirements so as to endanger timely and proper performance of the Order; (v) Seller makes an assignment for the benefit of creditors, or proceedings in bankruptcy or insolvency are instituted by or against Seller; (vi) Seller needs accommodations from Buyer, financial or otherwise, in order to meet its obligations under the Order; or (vii) at any time in the Buyer's sole judgment Seller's financial or other condition or progress on this Order shall be such as to endanger timely performance.

Termination by Buyer shall not relieve Seller of any liability under the Order.

14.3 Termination by Seller. The Seller may terminate this agreement only for non-payment of the purchase price for Products which are thirty or more days past due and material in amount., and then only if: (i) Seller first provides Buyer written notice specifying the amounts past due and (ii) Buyer, within 60 days of such notice, does not either: (x) pay the past due amounts; or (y) notify Seller that the amount claimed to be unpaid are disputed by Buyer. Seller shall terminate under this Section by delivering a written termination notice to Buyer. Seller may not terminate or cancel the Order for any reason except as permitted under this Section.

14.4 Seller's Obligations Following Termination

Following delivery of a Notice of Termination, Seller shall, unless otherwise directed by Buyer and subject to its obligation to provide Transition Support as provided in §14.7:

14.4.1 terminate promptly all work under this Order and transfer title and deliver to Buyer all finished work completed prior to receipt of the Notice of Termination;

14.4.2 transfer title and deliver to Buyer all work in process, and the parts and materials which Seller produced or acquired in accordance with a Order and which Seller cannot use in producing goods for itself or for others;

- 14.4.3 verify/settle all claims by subcontractors for actual costs that are rendered unrecoverable by such termination and provided the recovery of materials in Seller's possession is ensured; and
 - 14.4.4 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.
- 14.5 Buyer's Obligations Following Termination. Buyer shall pay to Seller in connection with Termination only the following amounts, without duplication, in complete and final satisfaction of any liabilities relating to this Order:
- 14.5.1 The purchase price for all conforming Products received by Buyer prior to Notice of Termination or delivered following Notice of Termination under §14.4.1; and §14.7 or at the direction of Buyer;
 - 14.5.2 if terminated for any reason other than Default by Seller, Seller's reasonable actual cost of: (i) merchantable and useable work- in-process and the parts and materials transferred to Buyer under §14.4.2 above (but not to exceed the Order price of the Products had the work been completed); (ii) settling claims under §14.4.3; and (iii) carrying out its obligation under §14.4.4.
- 14.6 Limitations on Buyer's Obligations Following Termination
- 14.6.1 Buyer's obligations under §14.5 are conditioned upon Seller's furnishing to Buyer, within one month after the date of termination (or such shorter period as may be required by Buyer's customer), a termination claim, which will consist exclusively of the items of Buyer's obligation to Seller that are expressly permitted by this Section. Buyer may audit Seller's records before or after payment to verify amounts requested in Seller's termination claim.
 - 14.6.2 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 profit, unabsorbed overhead, interest on claims, product development and engineering costs, tooling, facilities and equipment rearrangement costs or rental, unamortized capital or depreciation costs, finished goods, work-in-process or raw materials that Seller fabricates or procures in amounts exceeding those authorized in the Material Releases, or general administrative burden charges from termination of the Order, except as otherwise expressly agreed in a separate Order issued by Buyer.
- 14.7 Transition of Supply Following Termination or Expiration. Following expiration or is termination of the Order by either party for any reason (including termination by Seller) and notwithstanding any claimed or actual breach of any obligation by Buyer, Seller will cooperate in the transition of supply to a successor supplier (collectively, "Transition Support"), including the following:
- 14.7.1 Seller will continue production and delivery of all Products as ordered by Buyer, at the prices and other terms stated in the Order, without premium or other condition, during the entire period reasonably needed by Buyer to complete the transition to the alternate supplier(s), such that Seller's action or inaction causes no interruption in Buyer's ability to obtain Products as needed;
 - 14.7.2 at no cost to Buyer, Seller will promptly provide all requested information and documentation regarding and access to Seller's manufacturing process, including on-site inspections, bill-of-material data, tooling and process detail and samples of Products and components; and
 - 14.7.3 subject to Seller's actual capacity constraints, Seller will provide special overtime production, storage and/or management of extra inventory of Products, extraordinary packaging and transportation and other special services as expressly requested by Buyer in writing. If the transition occurs for reasons other than Seller's termination for default, Buyer will, at the end of the transition period, pay the reasonable, actual cost of the assistance under this §14.7.3, provided that Seller has advised Buyer prior to incurring such amounts of its estimate of such costs. If the parties disagree on the cost of Transition Support, Buyer will pay the agreed portion to Seller without prejudice to Seller's right to seek to recover any disputed amounts.

15 **Buyer's Property.**

- 15.1 Property which is furnished by Buyer, either directly or indirectly to Seller to perform the Order or for which Buyer has agreed in an Order to reimburse or otherwise pay Seller (collectively "Buyer's Property") will become property of Buyer or its customer (including passage of title) as it is fabricated or acquired, regardless of payment.
- 15.2 Buyer's Property includes: (i) Tooling (including fixtures, gauges, jigs, patterns, castings, cavity dies and molds, with all related software, appurtenances, accessions, and accessories); (ii) packaging; (iii) equipment, materials or other items owned by the Buyer that are placed in the possession or control of the Seller for its use in connection with the Products and (iv) all documents, designs, drawings, standards or specifications, trade secrets, proprietary information and other materials and items relating to the Products. Buyer's Property also includes any modifications, repairs, refurbishments, and replacements of Buyer's Property.
- 15.3 Seller shall use Buyer's Property only for the production of Products for Buyer.
- 15.4 Seller shall not purchase any Tooling for the account of Buyer or charge Buyer for any tooling except as authorized in an Order.
- 15.5 Seller at its own expense shall : (i) keep all Buyer's Property in good working condition and fully insured for the benefit of Buyer at all times while in Seller's possession; (ii) keep it segregated from all other assets and labeled as being the property of Buyer, and immediately sign and file any UCC-1 forms required by Buyer in respect thereof; (iii) inspect, test and approve it prior to any use; and (iv) house, maintain, repair and replace it, except for normal wear and tear.
- 15.6 Seller shall have only temporary possession of Buyer's Property as a bailee at will. Seller may not release or dispose Buyer's Property to any third party without the express written permission of Buyer. Seller may not relocate Buyer's Property without Buyer's express written permission. Buyer will have the right to enter Seller's premises to inspect Buyer's Property and Seller's records regarding Buyer's Property. Only Buyer (or Buyer's affiliates) has any right, title or interest in Buyer's Property, except for Seller's limited right, subject to Buyer's sole discretion, to use Buyer's Property in the manufacture of Products. Seller agrees neither to create nor allow to exist any liens on Buyer's Property and Seller agrees to sign any documents reasonably required by Buyer to perfect all rights granted herein. Seller grants to Buyer a limited and irrevocable power of attorney, coupled with an interest, to execute and record on Seller's behalf any notice financing statements with respect to Buyer's Property that Buyer determines are reasonably necessary to reflect Buyer's interest in Buyer's Property.
- 15.7 Immediately upon Buyer's request or upon any bankruptcy or insolvency filing, and without payment of any kind, the Seller will return Buyer's Property, and will comply with Buyer's instructions relating to its return, including but not limited to the method and location for its return. Seller is responsible for labor and other costs incidental to its return. The Seller will cooperate with the Buyer and will provide Buyer with access to all facilities at which Buyer's Property is located. Seller expressly waives any right to additional notice or process relating to Buyer's exercise of its rights under this Section. Seller waives, to the extent permitted by law: (i) any lien or other rights that Seller might otherwise have on any of Buyer's Property, including but not limited to molder's and builder's liens; and (ii) any objection to the Buyer's repossession and removal of Buyer's Property for any or no reason, including bankruptcy or insolvency proceedings.

16 **Seller's Property**

- 16.1 All Tooling and other items that are not Buyer's Property and that are necessary for the production of Products are Seller's Property.
- 16.2 Seller, at its expense, will furnish, keep in good working condition capable of producing Products meeting all applicable specifications, and replace when necessary, all Seller's Property. Seller will insure Seller's Property with full fire and extended coverage insurance for its replacement value. If Seller uses Seller's Property to produce goods or services similar to Products for other customers, including aftermarket customers, such goods or

services will not incorporate any of Buyer's logos, trademarks, tradenames or part numbers. Seller will not disclose or imply in its marketing efforts that such goods or services are equivalent to those purchased by Buyer. Seller grants to Buyer an irrevocable option to take possession of and title to Seller's Property that is special for the production of Products under the Order upon payment to Seller of its net book value less any amounts that Buyer has previously paid to Seller for the cost of such items. This option does not apply if Seller's Property is used to produce goods that are the standard stock of Seller or if a substantial quantity of like goods is being sold by Seller to others.

17 Infringement; Use of Products.

- 17.1 Intellectual Property Right means any right arising under U.S. or foreign law relating to patent, trademark, copyright, moral, industrial design right or misuse or misappropriation of trade secrets.
- 17.2 Seller warrants that the Products and the sale and/or use thereof (before or after incorporation into products during manufacture) do not and will not infringe any Intellectual Property Rights, United States or foreign.
- 17.3 Seller warrants that all Products or other deliverables provided under the Order will be original to Seller and will not incorporate any Intellectual Property Rights of any third party.
- 17.4 In addition to its indemnification obligations under §10, Seller waives any claim against Buyer, including any hold-harmless or similar claim, in any way related to a third- party claim asserted against Seller or Buyer for infringement of any Intellectual Property Right;
- 17.5 Seller warrants that it is aware of the uses to which the Products are to be put, and grants to Buyer and each party or entity to which the Products are provided, a royalty-free, unrestricted, irrevocable and perpetual license, with a right to sublicense to others (and warrants that Seller has full right to grant said license) to:
- 17.5.1 use, repair and reconstruct the Products in any manner;
 - 17.5.2 to use any additional or background intellectual property owned or acquired by Seller that is necessary or incident to the reasonably intended use or application of the Products.
- 17.6 Seller will ensure that the terms of its contracts with its subcontractors and employees are consistent with the terms of this Section.

18 Inventions.

If Seller, or any person employed by or working under the direction of Seller, in the performance of the Order conceives or first reduces to practice: (i) any invention or any experimental, development or research activities, including engineering related thereto, whether or not patentable, (ii) any reduction to practice of any subject matter, application or discovery which could be patented or copyrighted, or (iii) any improvement in the design of the Products or any alternative or improved method of accomplishing the objectives of this Order (collectively, Inventions), such Inventions shall be owned by Buyer and be deemed confidential and proprietary property of Buyer, whether such Inventions or any portions thereof can be copyrighted or patented or not. Seller shall immediately disclose all Inventions to Buyer and shall cooperate (and cause its employees to cooperate) in executing any documents and taking any other actions necessary or convenient to patent, copyright, assign to the Buyer or otherwise perfect or protect such Inventions for the benefit of Buyer.

19 Proprietary Information.

- 19.1 Any information or knowledge which Buyer may have disclosed or may hereafter disclose to Seller in connection with this Order (including but not limited to the Terms of the Order) and any and all services to be rendered and/or work to be performed pursuant to this Order is and shall be deemed confidential and proprietary information of Buyer. However, Seller shall not, without authorization in writing from Buyer, use, communicate or disclose the

confidential and proprietary information of Buyer. Seller agrees to safeguard the confidential and proprietary information of Buyer by using reasonable efforts, consistent with those used in the protection of its own proprietary information of a similar nature, to prevent its disclosure to third parties. Seller agrees to cause its employees, "contractors", officers, directors, agents and representatives to be bound by and comply with the foregoing restrictions regarding the use or disclosure of such confidential and proprietary information. Seller further agrees not to assert any claims with respect to any technical information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the Products.

- 19.2 The restrictions and obligations of §19.1 will not apply to information that: (a) is already publicly known at the time of its disclosure by Buyer; (b) after disclosure by Buyer becomes publicly known through no fault of Seller; or (c) Seller can establish by written documentation was properly in its possession prior to disclosure by Buyer or was independently developed by Seller without use of or reference to Buyer's information. Notwithstanding anything to the contrary in these Terms, any confidentiality or non-disclosure agreement between the parties that predates the Order will remain in effect except as expressly modified by the Order, and to the extent of a conflict between the express terms of such an agreement and this Section, the terms of that agreement will control.
- 19.3 All documents containing proprietary information relating to the Products produced or acquired by Seller under an Order will belong to Buyer. All drawings, know-how, and confidential information supplied to Seller by Buyer and all rights therein will remain the property of Buyer and will be kept confidential by Seller in accordance with §19.1 above.
- 19.4 Seller shall, within five (5) business days of Buyer's request or the expiration or termination of this Order, return all confidential and proprietary information (including all copies, notes and/or extracts thereof).
- 19.5 Seller will ensure that any Third Party to whom Seller subcontracts any of the work hereunder is bound by all of the terms and conditions relating to such work to which Seller is bound under an Order.

20 Insurance; Waiver of Liens.

Seller agrees to furnish to Buyer promptly upon request a certificate from its insurance brokers or agent showing that it carries adequate Workers' Compensation, and Comprehensive General Liability insurance coverage, including Contractual Liability insurance applicable to this Order. The certificate must show the amount of coverage, policy number, and date of expiration and must require the broker or agent to give Buyer thirty (30) days prior written notice of any lapse or cancellation of any policy. Buyer shall also be shown as an Additional Insured on the Comprehensive General Liability policy reflected on the certificate of insurance if services are to be performed on Buyer's premises. If Seller is self-insured for Workers Compensation coverage, it will, if requested by Buyer, provide the applicable state certificate establishing such status to Buyer. Seller hereby waives all mechanics' liens and claims and agrees that none shall be filed or maintained against Buyer's premises on account of any Products and shall cause all its subcontractors, materialmen and suppliers (and subcontractors of such parties) to provide similar waivers and agreements in form satisfactory to Buyer.

21 Force Majeure.

Any delay or failure of either party to perform its obligations will be excused if and to the extent that the party is unable to perform specifically due to an event or occurrence beyond its reasonable control and without its fault or negligence, such as: acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority; embargoes; fires; explosions; natural disasters; riots; wars; sabotage; inability to obtain power; or court injunction or order. The change in cost or availability of materials, components or services based on market conditions, supplier actions, labor disruptions or contract disputes will not excuse Seller's performance, and Seller assumes these risks. As soon as possible (but no more than one full business day) after the occurrence, Seller will provide written notice describing such delay and assuring Buyer of the anticipated duration of the delay and the time that the delay will be cured. During the delay or failure to perform by Seller, Buyer may at its option and at

Seller's expense: (a) purchase Products from other sources and reduce its schedules to Seller by such quantities, without liability to Seller; (b) require Seller to deliver to Buyer at Buyer's expense all finished goods, work in process and parts and materials produced or acquired for work under the Order; or (c) have Seller provide Products from other sources in quantities and at a time requested by Buyer and at the price set forth in the Order. In addition, Seller at its expense will take all necessary actions to ensure the supply of Products to Buyer for a period of at least 30 days during any anticipated labor disruption or resulting from the expiration of Seller's labor contracts.

22 Buyer's Liability.

- 22.1 Buyer's sole liability under the Order (including its termination, expiration or cancellation is to pay for the Products in accordance with §5 and to pay the specific termination related amounts described in §§14.5 and 14.7.
- 22.2 In no event shall Buyer be liable for anticipated profits, interest, or penalties or incidental, consequential, punitive, multiple, or exemplary damages or liabilities in connection with this Order, whether for breach of contract, late payment, property damage, personal injury, illness, or death or otherwise.

23 Limitation on Assignment.

- 23.1 This Order is issued to the Seller, in reliance upon its personal performance of the duties imposed and by accepting same the Seller agrees not to assign this Order or delegate the performance of its duties hereunder, except for the procurement of raw materials, without prior written consent of the Buyer. Failure to comply with the provisions in this paragraph shall effect, at the option of the Buyer, a cancellation of the Buyer's obligations hereunder without liability.
- 23.2 In the event of any approved assignment or delegation authorized by Buyer, Seller retains all responsibility for Products, including all related warranties and claims, unless otherwise expressly agreed in writing by Buyer.

24 Compliance with Laws.

- 24.1 Seller agrees to comply with all applicable federal, state, provincial, and local laws, rules, regulations and ordinances (collectively "Laws") in connection with the manufacture, sale, delivery and use of the Products, including without limitation obtaining or making all approvals and filings, complying with country of origin requirements under the North American Free Trade Agreement and any other duty preference programs, and, upon request, Seller will submit to Buyer evidence of such compliance.
- 24.1.1 all invoices must carry the following certificate, and Seller agrees to comply therewith as to all Products: "We hereby certify that these Products were produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof."
- 24.1.2 During the performance of this Order, Seller agrees to comply with all provisions of the Equal Opportunity clause (41 CFR 60-1.4(a)); the Affirmative Action Obligations (41 CFR 60-250); the Listing of Employment Openings clause (41 CFR 60-250.4(b) - (h)); the Employment of the Disabled clause (41 CFR 60.741.5); and any applicable laws pertaining to small/small disadvantaged business concerns. Further, Seller agrees to conform to Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973 (29 USC Section 793) and Section 402 of the Vietnam Era Veteran Readjustment Assistance Act (38 USC Section 4012), not to discriminate against any employee or applicant for employment because of race, religion, sex, creed, color, national origin, or disabled or veteran's status, and Seller certifies that it does not maintain any unlawful segregated facilities. This Order shall be deemed to incorporate by reference all the clauses required by the provisions of said regulations and laws and wherever the term "Contractor" is used in said clauses it will be deemed to refer to Seller.
- 24.1.3 To the extent that any of the Products are to be used by Buyer in connection with its manufacturing or assembly operations, including any activities incidental thereto, Seller hereby certifies and represents

that said Products comply with all applicable rules and regulations issued under the Occupational Safety and Health Act (Public Law 91-596).

24.1.4 WHMIS, hazard communication labeling and material safety data sheets must precede all shipments of controlled substances.

24.1.5 To the extent any of the statutory or regulatory provisions cited above are amended, supplemented or replaced, or additional statutory or regulatory provisions are enacted, Seller's obligations under this Order shall be automatically amended to take the same into account and the Seller Documents shall contain all legends and other disclosures required by the same.

25 Special Situations

25.1 In addition to its indemnity obligations under §10.1.7, if Seller performs any work on Buyer's or Buyer's customer's premises or utilizes the property of Buyer or Buyer's customer, whether on or off Buyer's or Buyer's customer's premises, (i) Seller will examine the premises to determine whether they are safe for the requested services and will advise Buyer promptly of any situation it deems to be unsafe; (ii) Seller's employees, contractors, and agents will comply with all regulations that apply to the premises and may be removed from Buyer's premises at Buyer's discretion; and (iii) Seller's employees, contractors, and agents will not possess, use, sell, transfer or be under the influence of alcohol or unauthorized, illegal, or controlled drugs or substances on the premises.

25.2 If the Order includes the removal, moving or installation of production equipment, the following clauses apply:

25.2.1 Seller agrees that it has inspected the equipment and the site from which it is to be removed or where it will be installed, and that the price includes everything necessary to complete the work, including without limitation the cost of providing access and egress, relocating other equipment, power lines and other utilities, preparing a proper foundation to receive the machinery, and all special permits and equipment required to accomplish the move. If any of the foregoing is to be furnished by Buyer, such items shall have been clearly and specifically identified on the face of the Order. With respect to items or services furnished by Buyer, including without limitation foundations or lifting or moving equipment, Seller agrees to inspect same before use thereof and to be fully and completely responsible for the adequacy thereof.

25.2.2 Seller or its mover shall provide insurance against any harm to Buyer or its employees, Sellers or the mover's employees, or the public arising out of its activities hereunder. The minimum combined single limit of such insurance is to be \$5,000,000, written by an insurer reasonably acceptable to Buyer. In addition, Seller shall maintain Broad Form Property Damage Liability insurance covering the activities described in this paragraph. All policies shall name Buyer as an additional insured.

26 Remedies

26.1 The rights and remedies reserved to Buyer in the Order will be cumulative with and in addition to all other legal or equitable remedies.

26.2 In any action brought by Buyer to enforce Seller's obligations in connection with the production or delivery of Products or transition support, or for possession of property, the parties agree that Buyer does not have an adequate remedy at law and Buyer is entitled to an immediate order for specific performance of Seller's obligations.

26.3 Buyer shall recover actual and reasonable attorney's fees (including the cost of in-house counsel) in any action arising out of this Order, unless Seller is the prevailing party.

27 Miscellaneous

27.1 Jurisdiction and Applicable Law.

27.1.1 If the location of Buyer from which this Order issued is in the United States of America: (i) this Order shall be interpreted and enforced in accordance with the local, domestic laws of the State of Michigan and of

the United States of America, exclusive of the choice of law rules thereof; and (ii) the state courts presiding in Oakland County, Michigan or the federal courts in the Eastern District of Michigan shall have exclusive jurisdiction and venue over any lawsuit arising out of or related to this Order.

- 27.1.2 If the location of Buyer from which this Order issued is in Canada: (i) this Order shall be interpreted and enforced in accordance with the local, domestic laws of the Province of Ontario and of Canada, exclusive of the choice of law rules thereof; and (ii) the federal or provincial courts presiding in the location from which the Order is issued shall have exclusive jurisdiction and venue over any lawsuit arising out of or related to this Order..
- 27.1.3 Seller irrevocably waives and agrees not to raise any objection it might now or hereafter have to any such claim or proceeding in any court having jurisdiction under this Section, including any objection that the place where such court is located in an inconvenient forum or that there is any other claim or proceeding in any other place relating in whole or in part to the same subject matter.
- 27.1.4 The United Nations Convention on Contracts for the International Sale of Products shall not apply to this Order.
- 27.2 Waiver. Either party's failure to insist on the performance by the other party of any term or failure to exercise any right or remedy reserved in this Order, or either party's waiver of any breach or default hereunder by the other party shall not, thereafter, waive any other terms, conditions, rights, remedies, breaches or defaults, whether of the same or a similar type or not.
- 27.3 Severability. If any provision of this Order, or portion of any provision, is declared or found to be unenforceable, the balance of this Order or such provision shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof. In particular, if any interest rate provided for herein is higher than that permitted by applicable law it shall automatically be amended to the highest legal rate.
- 27.4 Survival. The obligations of Seller to Buyer survive termination of the Order, except as otherwise provided in the Order.
- 27.5 Interpretation. No provision may be construed against the Buyer as the drafting party. Section headings are for convenience or reference only, and do not affect the meaning of the Order.
- 27.6 No Publicity. Seller will not advertise, publish or disclose to any third party (other than to Seller's professional advisors on a confidential and need-to-know basis) in any manner the fact that Seller has contracted to furnish Buyer the Products covered by the Order or any terms of the Order (including prices), or use any trademarks or trade names of Buyer in any press release, advertising or promotional materials, without first obtaining Buyer's written consent.
- 27.7 Relationship of Parties. Seller and Buyer are independent contracting parties and nothing in the Order will make either party the employee, agent or legal representative of the other for any purpose. The Order does not grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Seller will be solely responsible for all employment and income taxes, insurance premiums, charges and other expenses it incurs in connection with its performance of the Order, except as expressly provided in a written agreement signed by Buyer. All employees and agents of Seller or its respective contractors are employees or agents solely of Seller or such contractors, and not of Buyer, and are not entitled to employee benefits or other rights accorded to Buyer's employees. Buyer is not responsible for any obligation with respect to employees or agents of Seller or its contractors.
- 27.8 Conflict of Interest. Seller represents and warrants that its performance of the Order will not in any way conflict with any continuing interests or obligations of Seller or its employees or contractors. Seller further warrants that while the Order is in effect, Seller and those of its employees and contractors participating in the performance of the Order will refrain from any activities which could reasonably be expected to present a conflict of interest with respect to Seller's relationship with Buyer or its performance of the Order.