



**Busche Performance Group's  
Terms and Conditions of Purchase**

**Date: April 12, 2019**

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These Terms and Conditions of Purchase (the “Terms”) are incorporated into every Purchase Order through which Busche Performance Group, Inc, Busche Workholding, Shipston Aluminum Technologies International, Inc. a/k/a Busche Aluminum Technologies, Shipston Aluminum Technologies (Michigan), Inc. a/k/a Busche Aluminum Technologies - Fruitport, Shipston Aluminum Technologies (Indiana), Inc. a/k/a Busche Aluminum Technologies - Franklin, Busche Southfield, Inc. a/k/a Busche CNC - Southfield, Busche Technologies, Inc. a/k/a Busche Tech Center, Corporacion Figamach, S.A. DE C.V., a/k/a Busche Ramos, and each of their subsidiaries and affiliated companies (“Buyer”) purchases Goods from any supplier (“Seller”). The particular Buyer is the entity designated as such on the Purchase Order. As used in these Terms, the parties’ “Contract” means the Purchase Order(s) issued by Buyer, the Terms, any Releases issued under a Purchase Order, any delivery schedules issued by Buyer, any scheduling agreements issued by Buyer, as well as any modifications to any of these documents and any documents incorporated by reference into any of these documents. As used in the Terms, the Goods are the products, parts, components, Tooling, matters, services, or materials (including related documentation and the source code and object code of any software) the delivery of which is the subject of the Contract.

## **1. Application**

- 1.1. The Contract governs Seller’s deliveries of the Goods to Buyer. Buyer objects to any other terms or conditions, including any terms of Seller or any additional, different or contradicting terms or conditions in any offer or acceptance of Seller, which are not part of the agreement between the parties. No action or inaction on the part of Buyer, including acceptance of or payment for any Goods, is an acceptance of any terms other than the Terms.
- 1.2. The Contract is the entire and final agreement between Buyer and Seller, and supersedes any prior or contemporaneous negotiations or agreements regarding the Goods.
- 1.3. The Contract may not be amended or modified, nor may any collateral agreements be formed, unless the amendment, modification, or agreement is in a writing signed by Buyer that expressly references the Purchase Order or these Terms.

## **2. Offer and Acceptance**

- 2.1. A Purchase Order is Buyer’s offer to Seller. Until it is accepted under Section 2.2, Buyer may revoke any Purchase Order at any time without incurring any liability to Seller. The Purchase Order does not constitute an acceptance of any offer or proposal made by Seller.
- 2.2. Seller accepts the Purchase Order, in its entirety and without modification, by agreeing to it in writing or taking any step in furtherance of performing its obligations under the Purchase Order,

including engineering, design, development, or manufacturing work, procuring raw materials or equipment, or beginning to manufacture the Goods.

- 2.3. Upon acceptance of a Purchase Order, the Purchase Order, Terms, any Releases, delivery schedules, scheduling agreements and any modifications to these documents or documents referenced within any of these documents become the Contract.
- 2.4. The Contract is limited to and conditional upon Seller's acceptance of the Terms exclusively.

### **3. Fixed-Quantity and Requirements Contracts**

- 3.1. Fixed-Quantity Contracts: If the Purchase Order states a specific quantity (other than "0," which indicates a 100% requirements contract under Section 3.1), the Contract is a fixed-quantity contract. Seller must supply Buyer with the specified quantity of Goods, and Buyer must purchase from Seller that quantity of Goods at the price indicated. Seller must deliver the Goods to the locations and at the times in the Purchase Order or in any Release issued by Buyer.
- 3.2. 100% Requirements Contracts: If the Purchase Order does not state a specific quantity, or if the Purchase Order states the quantity as "0," "REQ," "100% REQ," "100%," "AS REL," "as released," "blanket," or similar, the Contract is an exclusive 100% requirements contract. Subject to Buyer's termination rights and Buyer's rights as described in the Terms, Buyer must order exclusively from Seller all of the Goods that Buyer may need during the Term of the Contract (as defined below). Seller must deliver to Buyer all of the Goods so ordered, and Buyer must pay for those Goods as stated in the Purchase Order. Buyer will determine its needs for Goods, including quantities and delivery dates, and communicate those quantities and deliver dates to Seller through Releases. Seller must deliver the Goods in the quantities, at the times, and to the locations in any Release issued by Buyer. Buyer's needs for the Goods are determined primarily by the needs of Buyer's customer.
- 3.3. Less-Than-100% Requirements Contracts: If the Purchase Order states the quantity as a specific percentage of Buyer's requirements that is less than 100% (such as "70% REQ," "70%," or similar), the Contract is a requirements contract, and is exclusive to Seller as to the indicated percentage of Buyer's requirements. Subject to Buyer's termination rights as described herein, Buyer will order exclusively from Seller the indicated percentage of the Goods that Buyer may need during the Term of the Purchase Order (as defined below). Seller must deliver to Buyer all of the Goods so ordered, and Buyer must pay for those Goods as stated in the Purchase Order. Seller must deliver the Goods in the quantities, at the times, and to the locations in any Release issued by Buyer. Buyer's needs for the Goods are determined primarily by the needs of Buyer's customer. Buyer will determine its needs for Seller's Goods, including quantities and delivery dates, and communicate those quantities and delivery dates to Seller through Releases.

#### **4. Firm Delivery Dates and Quantities / Capacity**

- 4.1. Releases: Buyer will issues Releases against a Purchase Order to Seller. The Purchase Order or Release may specify a firm quantity of Goods or a firm quantity of raw materials or components, as well as a firm delivery date. All firm quantities and delivery dates are binding on both Buyer and Seller.
- 4.2. Unless the Purchase Order, Release, or a separate agreement between the parties states otherwise, the only quantities on a Release that are firm are those shown for the first two (2) weeks (for finished goods) and the following four (4) weeks (for raw materials only).
- 4.3. Unless expressly identified as firm, all quantities and delivery dates in a Purchase Order, Release, or any other document issued by Buyer to Seller are estimates, are to be used for planning purposes only, and Buyer has no obligation to Seller for them. Unless identified as firm, they are not binding on Buyer. Seller acknowledges and understands that estimates are for planning purposes only, are not binding on Buyer, and may change without notice to Seller. Buyer makes no commitment of any kind with respect to the quantity of Goods it will purchase from Seller during the Term.
- 4.4. Seller acknowledges that the automotive industry runs on “just in time” inventory, and therefore time is of the essence for all obligations of Seller under the Contract, including for the firm quantities and delivery dates identified in a Purchase Order or in any Release. If Seller is late in the delivery of Goods, cannot deliver the full quantities required by the Contract, or cannot meet the quality requirements of the Contract, Seller will be in Default. In addition to any other obligations to which Seller shall be subject under the Contract, Seller will promptly notify Buyer in writing and Buyer may, at its option (A) cancel all or any portion of Contract without liability to Seller, and/or (B) require Seller to deliver the Goods using priority freight at Seller’s expense. If neither option will be sufficient to meet Buyer’s requirements then, in addition to all of Buyer’s rights and remedies provided at law and by the Contract, the Buyer may purchase substitute Goods and hold Seller responsible for any difference in price as well as all costs associated with the substitute purchase.
- 4.5. Buyer is not obligated to accept early deliveries, partial deliveries, late deliveries or defective deliveries. If Seller delivers Goods in advance of Buyer’s firm delivery schedule, Buyer may either: (A) return the Goods at Seller’s expense for proper delivery; or (B) withhold payment for the Goods until the scheduled delivery date and place such Goods in storage, at Seller’s expense, until the scheduled delivery date. Seller bears the risk of loss of all Goods delivered in advance of the delivery date specified by Buyer. If Seller delivers Goods in excess of Buyer’s requirements as communicated to Seller, Buyer may return the Goods at Seller’s expense. Buyer

may handle partial, defective, and/or late deliveries of Goods in the manner specified in Section 4.4, in addition to all other rights available to it in law and equity and under the Contract.

- 4.6. Delivery must be made FCA (Seller's Dock) (Incoterms 2010) to Buyer and must include the return of the packaging in circulation to Seller.
- 4.7. If it becomes apparent that Seller will be permanently unable to meet the delivery dates, Seller must, immediately at Buyer's request, surrender all tools and other devices required for production of the Goods so that Buyer may produce or have a third party produce the Goods. Buyer's rights to claim damages are not affected by that request, and Buyer expressly reserves all of its repossession rights and remedies, including the right to claim further damages under any security interest, lien, lease, gratuitous bailment, or any other document that Buyer and Seller may enter into.
- 4.8. Seller must maintain sufficient capacity to satisfy any quantities, including estimated quantities, in a Purchase Order, any Release, or that are otherwise specified in the Contract.
- 4.9. Seller will notify Buyer in writing six (6) months in advance of any labor contract expiration date and as soon as Seller anticipates any impending work stoppage or other disruption at Seller's facilities that could impact the timely delivery of Goods. Upon notice of the labor contract expiration date, Buyer may direct Seller in writing to produce a finished inventory of Goods sufficient to ensure supply to Buyer for at least thirty (30) days after the stoppage or disruption commences.

## **5. Price and Payment**

- 5.1. Each price in a Purchase Order is a fixed price and represents the total price for the manufacturing and delivery of Goods under the Contract and is not subject to increase for any reason. Except as stated in Section 5.3, Seller may not adjust prices or invoice additional costs of any nature whatsoever. The prices do not include applicable sales tax, which will be added from time to time.
- 5.2. Invoicing:
  - (A) Seller will invoice Buyer upon delivery of the Goods. Invoices and packing lists must be sent to locations identified by Buyer. For shipments that will cross national borders (exports), the required documentation must be provided to parties identified by Buyer no later than the time of shipment.

- (B) Buyer may reject any invoice that does not show the complete Purchase Order number, Release number, and any other numbers necessary to identify the contract under which the Goods were manufactured and delivered. If Buyer rejects an invoice, payment is due based on the date Buyer receives a corrected invoice.
- 5.3. Buyer will pay for conforming Goods that are properly delivered and are not the subject of dispute at the price stated in the corresponding Purchase Order. Payment terms are Net 60 Days. If the payment date is not a business day, payment will be due on the next business day thereafter. Unless otherwise stated, all payments are in U.S. dollars and include all storage, handling, packing, freight, insurance, taxes, duties and any other charge of any nature.
- 5.4. Seller represents and warrants that the prices charged to Buyer are no less favorable than those that Seller extends to any other customer for the same or similar goods regardless of quantity. If Seller reduces its prices to third parties for the same or similar goods, Seller will correspondingly reduce prices charged to Buyer.
- 5.5. Buyer's liability for any of the Goods is limited to the price for those Goods shown on a corresponding Purchase Order issued by Buyer.
- 5.6. Buyer is not obligated to pay for defective deliveries until the defect is resolved and non-defective Goods are delivered, subject to Buyer's setoff rights.
- 5.7. Seller may not assign to, or have collected by, third parties any of Seller's claims against Buyer. If Seller assigns Seller's claims against Buyer to a third party without Buyer's prior written consent, Buyer may at its choice discharge its obligation either toward Seller or toward the third party.
- 5.8. If Buyer's customer requires Buyer to reduce Buyer's price during the term of the Contract, then Seller must also reduce its price to Buyer in a proportionate amount.

## **6. Duration**

- 6.1. Subject to Buyer's termination rights, the duration of the Contract is the life of each vehicle program into which the Goods are ultimately incorporated, including model refreshes as determined by Buyer's customer or ultimate OEM end customer, and including any period during which Buyer will provide service or replacement parts incorporating the Goods to Buyer's customer (the "Term"). The Term may be lengthened or shortened as a result of Buyer's customer or ultimate OEM end customer increasing or decreasing the life of the applicable vehicle program. Both Buyer and Seller acknowledge the risk of the vehicle program production life being cancelled or extended by the OEM. Nothing in this section affects Buyer's rights to

terminate the Contract in Section 29. Unless specifically waived in writing by an authorized representative of Buyer, Seller's obligations with respect to service and replacement parts will always survive the termination or expiration of the Contract.

- 6.2. Seller may not terminate the Contract before the end of the Term.
- 6.3. Upon the expiration or termination of the Contract for any reason, and notwithstanding any claimed or actual breach of any obligation by Buyer, Seller will cooperate with Buyer in the transition of supply to an alternate Seller. At no cost to Buyer, Seller will provide all reasonably requested support and information required by Buyer to facilitate Buyer's sourcing of the Goods to a replacement Seller. Further, Seller will continue production and delivery of Goods as required and as ordered by Buyer, at the prices stated in the corresponding Purchase Order and per the Terms, without premium or other condition, during the entire period reasonably needed by Buyer to complete the transition to the alternate supplier, such that there is no interruption in the delivery of Goods.

## **7. Packaging, Shipping, and Proof of Origin**

- 7.1. All Goods must be properly packed, labeled, and shipped in order to ensure the lowest transportation costs, using customary care and diligence. The Goods must be packaged as specified by Buyer. Seller will be liable for any damage due to faulty packaging.
- 7.2. Seller must immediately obtain all documents and other information required under customs provisions or any other applicable state provisions, including drawback documents, proofs of origin, and other information relating to the origin of the Goods and the materials they contain under commercial law or provisions governing preferential trade.
- 7.3. If Buyer specifies a carrier or a means of transport for the Goods, then the Seller must ship the Goods with the specified carrier and means of transport.

## **8. Subcontracting**

- 8.1. Seller may not assign, delegate or subcontract any of its rights or obligations under the Contract without the express written consent from an authorized employee of Buyer.
- 8.2. In the event of an approved assignment, delegation or subcontract, Seller remains responsible for the Goods, including all related warranties and indemnification obligations stated in the Terms. Further, regardless of whether Seller subcontracts any of its obligations under the Contract, Seller remains directly responsible to Buyer for the performance of all obligations under the Contract.

8.3. Buyer may assign its rights and obligations under the Contract without Seller's consent.

## **9. Force Majeure**

9.1. If Seller is unable to produce, sell or deliver any Goods, or Buyer is unable to accept delivery, buy or use the Goods, as a result of an event or occurrence beyond the reasonable control of the affected party and without such party's fault or negligence (a "Force Majeure Event"), then any delay or failure to perform under the Contract that results from such Force Majeure Event will be excused, but only for so long as the Force Majeure Event continues. Written notice of the Force Majeure Event (including the anticipated duration of the delay) must be given by the affected party to the other party as soon as possible (but in no event more than 5 days after the Force Majeure Event occurs). Force Majeure Events under this Section include, by way of example but not limitation, fires, floods, windstorms, explosions, riots, natural disasters, wars, and sabotage. Seller's inability to perform or delays caused by Seller's insolvency or lack of financial resources is not a Force Majeure Event and will not excuse Seller's performance under the Contract. Further, the change in cost or availability of materials or components, Seller's actions, or contract disputes or any labor strike or labor disruption applicable to Seller or any of its subcontractors or suppliers is not a Force Majeure Event and will not excuse Seller's performance under the Contract.

9.2. During any Force Majeure Event affecting Seller's timely performance under the Contract, Buyer may, at its option, (A) purchase substitute goods from other sources and reduce its delivery schedules to Seller by those quantities, without liability to Seller, except that Seller will reimburse Buyer for any additional costs over the Contract price of obtaining substitute Goods in this manner; or (B) require Seller to provide Goods from other sources in quantities and at times requested by Buyer at the price under the Contract.

9.3. Seller will use all diligent efforts to ensure that the effects of any Force Majeure Event are minimized and, as promptly as possible, resume full performance under the Contract. If requested by Buyer in writing, Seller will, within 5 days after Buyer's request, provide adequate assurances that the delay in Seller's performance resulting from the Force Majeure Event will not exceed 30 days. If the delay lasts more than 30 days or Seller does not provide the adequate assurances requested, Buyer may immediately terminate the Contract without liability to Seller.

## **10. Quality and Compliance with Specification**

10.1. All Goods, including prototype and production parts, delivered under the Contract must strictly comply with the Specification. The Specification includes each drawing and written specification approved by Buyer. Buyer may revise or amend the Specification on its own initiative or at the

request or suggestion of the Seller. If, during the course of production of any prototype, Seller develops any changes or improvements that it has verified are suitable for the intended purpose and required quality of the Goods, Seller must inform Buyer of that change or improvement before implementing it so that Buyer may consider amending the Specification accordingly.

- 10.2. Seller must comply with the accepted state of the art, as well as the agreed Specification, the agreed quality, environmental, safety, and testing rules and regulations, and the agreed technical data. Any change of the Goods or of materials, tools, or production processes (including the location of manufacture) requires the prior written consent of Buyer, and Seller acknowledges that it may often also require the prior written consent of Buyer's customer. Seller must review the Specification and notify Buyer immediately of any modifications that may be necessary.
- 10.3. Buyer reserves the right to make, or require Seller to make, modifications to the Goods, the Specification, the production processes, or time and place of delivery at any time. Seller will, within 10 days of the date it is notified of a modification by Buyer, demonstrate the effects of the modification on the price and delivery date through a cost breakdown and other appropriate documentation. If the modification requires any deviation in price or delivery date, Buyer and Seller will agree on an appropriate adjustment in writing. Notwithstanding any provision in this Section to the contrary, and while an agreement on an appropriate adjustment is pending, Seller will continue performing under the Contract, including the manufacture and delivery of Goods and prompt implementation of required changes and/or modification(s).
- 10.4. Seller must comply with Supplier Code of Ethics located at [www.buschegroup.com](http://www.buschegroup.com), and any additional requirements that both parties agree upon in writing. The Supplier Code of Ethics may be periodically updated, revised, and amended, and it is Seller's obligation to comply with the current Supplier Code of Ethics at all times.
- 10.5. Seller must observe the standards, statutes, and other rules and regulations relevant to the Goods of the countries in which the products containing the Goods are marketed and are manufactured, including VDE provisions for electrical parts, the End of Life Vehicles Directive, the Regulation on the Carriage of Dangerous Goods, and REACH. Seller will provide to Buyer all required inspection documents and certificates. Furthermore, Seller will, at Seller's cost, feed the required information into corresponding systems that serve to comply with the provisions listed in this section (such as the International Material Data System).
- 10.6. Seller will control the quality of the Goods in regular intervals and will present the agreed inspection documents to Buyer. Seller will inform Buyer immediately and in writing of any quality problems with the Goods.

- 10.7. Buyer has the right upon advance notice to confirm compliance with the provisions of this Section and to inspect the corresponding records at Seller's premises. Seller will permit Buyer and its representatives and consultants to enter Seller's premises at reasonable times to do so. Seller will support Buyer, make records available, and provide information as required. No such inspection by Buyer will constitute acceptance by Buyer of any raw materials, components, work-in-process or finished Goods.
- 10.8. To the extent that any public authority competent for motor vehicle safety, emissions rules, or the like requests access to the production process and the inspection documents of Buyer, Seller will, on Buyer's request, grant the authorities the same rights at Seller's premises and provide all reasonable support.

## **11. Competitiveness**

Maintaining the competitiveness of the Goods is of critical importance to the parties' commercial relationship. Competitiveness of the Goods is ensured if the Goods correspond to comparable goods of Seller's competitors with regard to prices and technology. If a comparable product is offered to Buyer at competitive conditions, Buyer will notify Seller in writing and will set a reasonable period of time, not less than 30 days, for Seller to restore full competitiveness of the Goods. Upon receiving that notice, Seller will promptly prepare a plan of actions that Seller will take in order to restore competitiveness of the Goods, and will furnish Buyer with that plan, together with a corrected offer. Through the corrected offer, Seller will restore competitiveness of the Goods within the period of time set by Buyer. Seller's obligation to maintain competitiveness is a material contractual obligation.

## **12. Defective Goods**

- 12.1. Buyer is not required to perform incoming inspections of any Goods, and Seller waives any right to require Buyer to do so. Payment by Buyer is not acceptance of nonconforming Goods. Any inspection by Buyer or its customer is not acceptance of the Goods or a waiver of strict performance and does not relieve Seller of any liability or warranty for the Goods.
- 12.2. Neither any payment made before the detection of defects, nor the acceptance of Goods, nor Buyer's issuance of further Releases means that the Goods are free from defects or that Seller is released from the warranty.

### 13. Warranties and Warranty Claims

#### 13.1. Seller warrants that:

- (A) all Goods conform to all applicable Specifications and other requirements for the Goods under the Contract;
- (B) all Goods are free from any defect in design, workmanship, production, and material;
- (C) all Goods are of merchantable quality;
- (D) it is aware of the particular purpose for which the Goods will be used, and that all Goods are fit for that particular purpose, including the purpose intended by Buyer's customer; and
- (E) it conveys good title to Buyer to all Goods free and clear of all liens and encumbrances.

These warranties are in addition to all other warranties provided by law.

#### 13.2. Defective Goods are Goods that fail to conform with any warranty in the Contract, including those in Section 13.1.

#### 13.3. If Seller delivers Defective Goods, Buyer, in its sole discretion, may: (A) request that Seller, at Seller's own risk and expense, rework the Defective Goods or replace the Defective Goods with Goods that conform to the Contract; or (B) if the Defective Goods are already in the production process of Buyer, its customer, or its ultimate OEM end customer, at Seller's cost and expense, have the Defective Goods replaced or reworked by Buyer, Buyer's customer, or a third party. If the Defective Goods have already been installed in a product and delivered to Buyer's customer and Buyer does not receive the Defective Goods from its customer for inspection, Seller will accept the determination of Buyer's customer, or Buyer's ultimate OEM end customer, or its agents or contractors (such as a dealer) as a reasonable determination that the Goods are Defective Goods.

#### 13.4. Seller must reimburse Buyer for all direct and indirect costs incurred by Buyer or charged to Buyer by its customer in connection with the delivery of a Defective Good (including costs for transport, examination, handling, sorting, dismantling, material, and work).

#### 13.5. Seller's warranties and its responsibility for delivering Defective Goods may not be waived, limited, or altered in any way except through a written document signed by Buyer expressly referencing the corresponding Purchase Order and this Section 13.

- 13.6. The warranty period for delivered Goods begins upon delivery of the Goods and continues through the longest of: (A) 36 months after the initial registration of the end product (vehicle or machine) or, for Goods for retrofitting purposes, from the assembly of the Buyer product; (B) the warranty period provided by applicable law; or (C) the warranty period offered by Buyer's customer to end-users for the Goods installed on or as part of vehicles. If Buyer or any direct or indirect customer, voluntarily or pursuant to a government mandate, makes an offer to owners of vehicles (or other finished products) on which the Goods, or any parts, components, or systems incorporating the Goods, are installed to provide remedial action or to address a defect or condition that relates to motor-vehicle safety or the failure of a vehicle to comply with any applicable law, safety standard, or corrective service action, the warranty will continue for the period of time that may be dictated by the customer or the federal, state, local, or foreign government where the Goods are used or provided.
- 13.7. Nothing in this section waives or alters Buyer's rights with respect to any claims for damages or costs according to any applicable statutes or laws, including any claims under product-liability laws, or any indemnity claims by Buyer against Seller.

#### **14. Recall and Other Field Actions**

Notwithstanding the expiration of the warranty period set forth in Section 13.6, if Buyer, its customer, or the manufacturer of the vehicles (or any other end products) into which the Goods, or products, components, or systems containing the Goods, have been assembled performs a recall, any other field- or garage-action, or a customer-service campaign, either upon its own initiative or upon the decision of any public or government authority (a "Recall"), Seller will be liable to Buyer for all damages in connection with the Recall to the extent that the Recall results from the delivery of Defective Goods or from any other breach of the Contract by Seller.

#### **15. Liability**

- 15.1. Seller is liable to Buyer for any breach of the Contract. Seller's liability includes Buyer's direct, indirect, incidental, and consequential damages, and any other damages or other remedies available under law or equity. Seller will reimburse Buyer for any attorneys' fees, other professional fees, and court costs incurred by Buyer in connection with any breach of the Contract by Seller or any action by Buyer to enforce its rights under the Contract.
- 15.2. Seller must defend, hold harmless, indemnify and pay Buyer and Buyer's customers for any loss that is caused by Seller's breach of the Contract; that arises from or relates to warranty, product-recall, or product-liability claims asserted by any party against Buyer; or that arises from or relates to any injuries to persons, including death, or damage to property caused by Seller.

Notwithstanding the foregoing, Seller need not pay for any loss that is caused solely by Buyer's negligence.

15.3. As used in Section 15.2:

- (A) A loss means any amount that Buyer is legally responsible for or pays in any form. Amounts include any judgment, settlement, fine, penalty, damages, cost, or expense, including attorneys' or other professional fees. A loss can be tangible or intangible; can arise from bodily injury, property damage, or other causes; can be based on tort, breach of contract, or any other theory of recovery; and includes Buyer's direct, indirect, incidental, and consequential damages and any other damages.
- (B) A loss is caused by an event if the loss would not have occurred without the event, even if the event is not a proximate cause of the loss.
- (C) Buyer includes its affiliated companies and Buyer's and its affiliated companies' directors, officers, employees, invitees, agents, and customers, as well as their respective successors and assigns.
- (D) Seller includes Seller's employees, subcontractors, and agents.

15.4. Seller waives the application of the doctrine of comparative negligence and other doctrines that may otherwise allocate the liability covered by Seller's obligations under this Section 15. Those obligations are in addition to Seller's warranty obligations.

15.5. Buyer will notify Seller within a reasonable time after Buyer knows of a claim for a loss that Seller might be obligated to pay. Buyer's failure to give notice within a reasonable time does not terminate Seller's obligation under this Section 15, except to the extent that the failure prejudices Seller's ability to defend the claim or mitigate losses.

15.6. If Seller is required to indemnify under this Section then, at Buyer's option and at Seller's expense, Seller will defend the claim through counsel approved by Buyer. Seller may not settle the claim without Buyer's written authorization unless the terms of settlement could not materially adversely affect Buyer. In the alternative, Buyer may elect to defend the claim itself, and if Buyer does so, Seller must reimburse Buyer on a monthly basis for all costs and expenses of defense, including attorneys' and other professional fees.

15.7. If any third party asserts any claim against Buyer under liability without fault that arises from the delivery or performance of Seller and that the third party could also assert against Seller, Seller will indemnify Buyer to the extent Seller would be directly liable to the third party.

- 15.8. **Limitations on Buyer's liability to Seller:** Buyer is not liable to Seller for anticipated profits or for special, incidental, or consequential damages under any circumstances. Buyer's liability for a claim of any kind or for any loss arising out of or in connection with or resulting from the Contract, the Goods, or any other agreement between Buyer and Seller is limited to any amounts due Seller through a termination claim under Section 30.
- 15.9. No action by Buyer, including the payment for Goods or acceptance of a later delivery, is a waiver of any of its rights under the Contract, including its rights to pursue any claim against Seller. No course of dealing or course of performance may be used to evidence a waiver or limitation of Seller's obligations under the Contract.

## 16. **Seller's Financial and Operational Condition**

- 16.1. Seller warrants to Buyer as of the date of each Purchase Order, and repeats on the date of each Release or delivery, that: (A) it is not insolvent and is paying all debts as they become due; (B) it is in compliance with all loan covenants and other obligations; and (C) all financial information provided by Seller to Buyer concerning Seller is true and accurate.
- 16.2. At Buyer's request, Seller will provide copies of its quarterly or annual financial statements to Buyer, Seller will permit Buyer and its representatives to review Seller's books and records concerning compliance with each Purchase Order and Seller's overall financial condition, and Seller will provide Buyer with full and complete access to all books and records for that purpose. If Seller experiences any delivery or operational problems, Buyer may designate a representative to be present in Seller's facility to observe Seller's operations. If Buyer provides to Seller any accommodations (including financial or providing designated representatives) that are necessary for Seller to fulfill its obligations under the Contract, Seller will reimburse Buyer for all costs, including attorney's and other professional fees, incurred by Buyer in connection with the accommodation, and will grant a right of access to Buyer to use Seller's premises, machinery, equipment, and other property necessary for the production of Goods (and a lien to secure the access right) under an access-and-security agreement. Additionally, Seller must provide prompt written notice to Buyer of any impending or threatened insolvency of the Seller.

## 17. **Insurance**

- 17.1. Seller must purchase and maintain comprehensive general liability insurance with extended product liability with coverage for assembly and disassembly costs and recall insurance of motor vehicles with an appropriate limit of indemnity, at least \$5,000,000 per occurrence. Seller must provide Buyer with evidence of this insurance, regarding both the objects of insurance coverage and the limits of indemnity, through an annual written confirmation of the insurer.

- 17.2. Seller will require any of its subcontractors to maintain appropriate insurance consistent with Section 17.1.
- 17.3. Seller's liability under the Contract is not limited to its insurance coverage or that of any of its subcontractors.

## **18. Proprietary Rights and Rights of Use**

- 18.1. Seller warrants that the Goods and use thereof by Buyer do not infringe any domestic or foreign patents, utility models, copyrights, or other intellectual-property rights (Proprietary Rights) of any third party. Seller will indemnify Buyer and Buyer's customers from and against all legal disputes, damage, costs claims or demands arising out of the actual or alleged infringement of Proprietary Rights by the use or the sale of the Goods. Section 15 applies to this duty to indemnify. Seller waives any claim against Buyer that any such infringement arose out of compliance with Buyer's specifications.
- 18.2. Where the use of the Goods by Buyer requires Proprietary Rights of Seller, Seller will, and Seller hereby does, grant to Buyer free of charge the world-wide, irrevocable right to use, sell, repair, import, export, and/or copy the Goods, either directly or through third parties.
- 18.3. If standard user software is the subject of a Purchase Order, the right of use under Section 18.2 applies and is freely transferable, including to third parties. Seller must provide Buyer with the required software to exercise Buyer's rights under Section 18.2. Buyer hereby grants to Seller a royalty-free, world-wide, irrevocable license in and to any such software, and expressly agrees that any standard software that is the subject of a Purchase Order will not include any further royalties or license fees in connection with use thereof. Seller warrants that the software is free from any virus or similar defect.
- 18.4. If a Purchase Order contains development work paid for by Buyer, either by means of a unique payment or through the price of the parts, any and all results of that development work, including any Proprietary Rights therein, are the exclusive property of Buyer (the "Developed Intellectual Property"). Buyer owns all right, title, and interest (including all Intellectual Property Rights) in and to all Developed Intellectual Property. Developed Intellectual Property is a work made for hire to the extent permitted by applicable law. If Seller develops or acquires any rights in Developed Intellectual Property, Seller hereby grants and assigns to Buyer, without reservation, all ownership rights, title, and interest that Seller may have in and to that Developed Intellectual Property. If applicable law prevents future assignments, Seller will assign (or will procure the assignment of) any Developed Intellectual Property as it is created. Seller will execute any documents reasonably requested by buyer to enable Buyer to secure, register, or enforce such Developed Intellectual Property.

- 18.5. Seller will not knowingly incorporate any third party's intellectual property or any open source materials into any Goods without Buyer's prior written approval of: (i) such incorporation; and (ii) any applicable license terms.

## **19. Product Labeling**

- 19.1. Seller will label the Goods as specified by Buyer.
- 19.2. Any Goods bearing a trademark proprietary to Buyer or provided with corresponding equipment or packed in Buyer original packaging must be delivered by Seller only to Buyer or to a third party designated by Buyer. Seller has no additional right to use the trademark. If trademarked Goods are rejected as defective, Seller will disable them at Seller's cost.
- 19.3. In addition to any other rights under the Contract, if Seller violates this Section 19, Buyer may terminate the Contract without notice, and Seller will surrender that which Seller gained from the violation as compensation of the damage incurred to Buyer.

## **20. Tooling and Other Provided Property**

- 20.1. All tools, parts, templates, matrices, measures, devices, jigs, gauges, fixtures, other appurtenances, and related drawings and forms (collectively, "Tooling"), equipment or material, if it:
- (A) is provided to Seller by Buyer, Buyer's customer, or Buyer's ultimate OEM end customer;
  - (B) has been paid for or is to be paid for directly or through amortization by Buyer; or
  - (C) is Tooling identified on the face of any Purchase Order issued by Buyer,
- as well as any and all replacements, additions, attachments, accessories, and maintenance (collectively "Provided Property"), are the property of Buyer, its customer, or its ultimate OEM end customer, unless agreed otherwise, and are held by Seller on a bailment basis only.
- 20.2. Seller may use the Provided Property solely for the production of Goods under the Contract. Seller may not use the Provided Property for any other purpose or permit others to use it without the Buyer's prior written consent.

- 20.3. Seller must clearly mark all Provided Property as property of Buyer, Buyer's customer, or Buyer's ultimate OEM end customer. Notwithstanding the foregoing, however, Seller's failure to mark in compliance with this Section will not negate Buyer's ownership of the Provided Property.
- 20.4. Seller must store all Provided Property safely and separately from Seller's property. Seller must maintain all Provided Property in good condition and replace it if necessary, all at Seller's cost. Seller bears the risk of loss of and damage to the Provided Property while the Provided Property is in its possession or control. Seller must insure the Provided Property in the event of loss to an amount equal to the replacement cost that would have to be paid to Buyer, its customer, or Buyer's ultimate OEM end customer, all at Seller's cost. Seller assigns all claims for payment against the insurer to Buyer, and Buyer accepts this assignment. Seller must treat the Provided Property carefully and safely and must hold Buyer harmless for any claim, liability, costs, or damages arising from or related to the assembly, use, safekeeping, or repair of the Provided Property. Buyer, Buyer's customer, or Buyer's ultimate OEM end customer is entitled to enter Seller's premises during regular business hours and to inspect the Provided Property and any records relating to it.
- 20.5. Without further notice or court hearings, which rights, if any, are hereby waived, Buyer may enter the Seller's premises and remove the Provided Property or otherwise demand its surrender at any time and without any reason and without any payment, regardless whether Buyer has terminated the Contract. Upon a demand by Buyer that Seller surrender any Provided Property, Seller must immediately surrender the Provided Property and prepare it for shipping (in accordance with the requires of the carrier and Buyer) or deliver it to Buyer or elsewhere, as directed by Buyer. If Buyer chooses to remove the Provided Property from Seller's premises itself, Seller will fully cooperate with that removal. If Buyer directs that Seller deliver the Provided Property to Buyer or elsewhere, Buyer will reimburse Seller for reasonable delivery costs. Seller may not retain the Provided Property, either from outstanding payment demands or for any other reason, and its cooperation with delivery and removal of Buyer's property is not contingent on final payment.
- 20.6. Seller affirmatively waives any lien, whether based in statute or common law, that it might otherwise have on any Goods or Provided Property for any work done on the Goods or Provided Property or for any other reason. Seller assigns to Buyer any claims Seller has against any third party relating to any Provided Property.
- 20.7. If the Provided Property is in the possession of any third party, including any subsupplier or service provider such as a repair shop, Seller's obligation to cooperate with Buyer's removal of the Provided Property or to surrender the Provided Property under this Section 20 includes an obligation to secure the Provided Property's release by the third party. Seller's obligation to secure the Provided Property's release includes the immediate payment of any claims made by

the third party and the immediate payment of any amounts necessary to remove, at its own cost, any lien asserted by the third party for any reason. In other words, Seller will immediately take all steps necessary to place the Provided Property in Buyer's possession, including the payment of any amount. Seller will immediately reimburse Buyer for any amounts Buyer pays to any third party, subsupplier or service provider to secure the release of the Provided Property.

- 20.8. Seller agrees that (i) Buyer is not the manufacturer of the Provided Property nor its agent or dealer; (ii) Buyer is bailing the Provided Property to Seller for Seller's benefit; (iii) Seller is satisfied that the Provided Property is fit for its intended purposes; and (iv) BUYER HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF THE PROVIDED PROPERTY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. Buyer will not be liable to Seller for any loss, damage, injury or expense of any kind or nature caused, directly or indirectly, by the Provided Property, including, without limitation, the use or maintenance thereof, or the repair, service or adjustment thereof, or by any interruption of service or for any loss of business whatsoever or howsoever caused, including, without limitation, any loss of anticipatory damages, profits or any other indirect, special or consequential damages and/or personal injury or death.

## **21. Tools of Seller**

- 21.1. At its own expense, Seller will furnish, keep in good condition, repair and replace when necessary all of its tooling, machinery and equipment, including related tools, jigs, dies, gauges, fixtures, molds, patterns and other accessories that are required to meet its obligations under the Contract ("Seller's Equipment"). Seller will insure Seller's Equipment for its full replacement value.
- 21.2. Seller grants Buyer the irrevocable option to acquire possession of and title to any tools that are necessary for, and specific to, the production of the Goods ("Necessary Tools"). To exercise this option, Buyer must pay to Seller the Necessary Tools' net book value, less any amounts already paid to Seller by Buyer or amortized via the purchase price of the Goods. Seller warrants to Buyer that it is not using the Necessary Tools for production of goods to any customer other than Buyer.
- 21.3. Seller will provide Buyer with any technical information required by Buyer in order to install, assemble, or use the Necessary Tools. Technical information includes: design, component, and installation drawings; technical documentation, test logs and results, and data; and any other information relating to Goods and Necessary Tools. Subject to Seller's patent rights, technical information may be used and published by Buyer without any limitation. Design or production information that is subject to any intellectual property right of Seller may be used by only Buyer for its own purposes.

## **22. Delivery of Service and Spare Parts**

During the Term, Seller will sell to Buyer all Goods necessary to fulfill Buyer's service and replacement parts requirements at the then current price under the Contract. Unless Buyer terminates the Contract, Seller will also sell Goods to Buyer to fulfill Buyer's and its customers' service and replacement parts requirements during the longer of the period required by Buyer's customers or 15 years following the end of production for the vehicle program for which the Goods were used by Buyer (the "Post Production Period"). This Contract will automatically remain in effect during the entire Post Production Period. During Post Production Period, the price will be the price on the most recent production Purchase Order, plus any additional costs for packaging and processing to which Buyer agrees. If requested by Buyer, Seller must provide servicing literature and other materials at no extra cost in order to support Buyer's spare-parts-sales activities.

## **23. Confidentiality**

- 23.1. Seller will keep all of Buyer's Information (as defined below) confidential and use it only to supply the Goods and will not share it with any third parties without Buyer's prior written consent. The Goods may not be used for Seller's own use or sold by Seller to third parties without prior express written consent from an authorized employee of Buyer. "Buyer's Information" means all information provided to Seller by Buyer or its representatives or subcontractors in connection with the Contract, including, without limitation, drawings, models, templates, samples, pricing, specifications, data, prototypes, software, designs or similar items. The parties may not reproduce any of Buyer's Information unless permitted within the scope of operational requirements and within the scope of copyright, patent, trademark, or trade-secret law.
- 23.2. Seller may not share any of the information regarding the Goods, Tooling, or Provided Property with any third party, including subsuppliers, without Buyer's prior written consent.
- 23.3. Seller may not use its business relationship with Buyer for advertising or promotional purposes without Buyer's prior written consent.

## **24. Reservation of Title**

Title to the delivered Goods will pass to Buyer upon delivery. Seller may not prolong or extend any reservation of title.

## **25. Buyer's Right of Setoff**

Buyer or its affiliates may set off any claim, whether due or not due, present or future, that it has or may have against Seller or its affiliates or to offset against any such claim that Seller or its affiliates may have against Buyer or its affiliates.

## **26. Change in Control of Seller**

26.1. A change of control of Seller includes:

- (A) the sale, lease, or exchange of a substantial portion of Seller's assets used for the production of Goods, or Seller's entrance into an agreement for the same;
- (B) the sale or exchange of more than 20% of Seller's stock or other ownership interest (or of such other amount as would result in a change of control of Seller), or Seller's entrance into an agreement for the same; or
- (C) the execution of a voting or other agreement providing a person or entity with control of Seller or control of more than 20% of Seller's stock or other ownership interest (or of such other amount as would result in a change of control of Seller).

26.2. If Seller enters into an agreement for change of control, or an event described in this section occurs, Seller must notify Buyer promptly in writing.

## **27. Default and Remedies for Default**

27.1. Default means:

- (A) Seller's repudiation, breach, or threatened breach of any of the terms of the Contract, including but not limited to any of Seller's warranties or delivery obligations (e.g., Buyer may terminate any or all of its Purchase Orders with Seller if Seller breaches any one of its Purchase Orders with Buyer);
- (B) Seller's failure to meet quality requirements so as to endanger timely and proper performance of the Contract;
- (C) Seller's failure to provide Buyer with adequate assurance of Seller's ability to perform timely any of Seller's obligations under the Contract; or

- (D) Seller's failure, after being provided with the notice described in Section 11, to remain competitive with respect to price, quality, delivery, technology, payment terms, or customer support.

27.2. In the event of a Default, Buyer may, in its sole discretion:

- (A) waive all or any part of the Default;
- (B) agree in writing to any modification of the Contract;
- (C) terminate the Contract for cause in whole or in part, immediately without written notice to Seller and without any liability to Seller;
- (D) purchase goods in substitution for those to be supplied by Seller under the Contract and charge Seller for any excess costs resulting from that purchase; and
- (E) exercise any other legal or equitable rights or remedies it has.

## **28. Seller May Not Stop Deliveries**

Under no circumstances may Seller cease deliveries to Buyer that are required by Contract. Seller acknowledges and agrees that its actual, anticipatory or threatened breach of the Contract would cause irreparable harm to Buyer for which money damages would not be a sufficient remedy and that, in addition to all other rights and remedies which Buyer may have, Buyer shall be entitled to specific performance and injunctive or other equitable relief to enforce the Contract, compelling Seller to resume and continue deliveries as required by the Contract, without any requirement of a bond or other security to be provided by Buyer.

## **29. Termination**

- 29.1. Termination for convenience: Buyer may terminate all or any part of the Contract at any time and for any reason by giving 30 days' written notice to Seller.
- 29.2. Termination due to customer termination: If Buyer's customer terminates all or any part of its order with Buyer for any reason, Buyer may immediately terminate all or any part of the Contract by giving written notice to Seller. A notice period of 30 days or of any other length is not required.
- 29.3. Termination for cause: Buyer may immediately terminate all or any part of the Contract without any liability to Seller in the event of any Default by Seller. A notice period of 30 days or any other length is not required.

- 29.4. Termination for change in control: In addition to its other remedies, Buyer may, at its option, terminate the Contract without any liability to Seller if there is a change of control of Seller as defined in Section 26. Buyer must give Seller 30 days' written notice of a termination for change in control.
- 29.5. Termination in event of a Seller Insolvency: Buyer may immediately terminate the Contract without any liability to Seller in the event of a Seller Insolvency. A Seller Insolvency includes: Seller's insolvency; Seller's inability to promptly provide Buyer with adequate assurance of Seller's financial capability to timely perform any of Seller's obligations under the Contract; the filing of a voluntary petition in bankruptcy by Seller; the filing of an involuntary petition in bankruptcy against Seller; the appointment of a receiver or trustee for Seller; the execution of an assignment for the benefit of creditors of Seller; or Buyer's reasonable judgment that Seller's financial or other condition will endanger timely performance of the Contract.
- 29.6. Seller may not terminate the Contract.

### **30. Termination Claims and Obligations**

- 30.1. Upon termination, Seller, unless otherwise directed in writing by Buyer, must (A) immediately terminate all work under the Contract; (B) transfer title and deliver to Buyer the usable and merchantable finished Goods, work in process, and raw materials and components that Seller produced or acquired in accordance with firm Release amounts and that Seller cannot use in producing Goods for itself or for others; (C) settle all claims by subcontractors approved by Buyer on the face of a Purchase Order or in a signed writing, if any, for reasonable actual costs that are rendered unrecoverable by such termination; (D) take actions reasonably necessary to protect all property in Seller's possession in which Buyer has an interest; and (E) at Buyer's request, cooperate with Buyer in resourcing the Goods to an alternative Seller designated by Buyer.
- 30.2. If the termination is for convenience or due to customer termination, Buyer will pay to Seller the following amounts without duplication: (A) the Contract price for all finished and completed Goods that conform to the requirements of the Contract and were not previously paid for; (B) Seller's reasonable actual cost of the usable and merchantable work in process and raw materials and components transferred to Buyer in accordance with Section 30.1 and within firm release amounts; (C) Seller's reasonable actual cost of settling claims for Seller's obligations (in the absence of termination) to the subcontractors so long as those costs were approved by Buyer on the face of a Purchase Order or in a signed writing; and (D) Seller's reasonable actual costs of carrying out its obligations to Buyer under this section.

- 30.3. If the termination is for cause, Seller Insolvency, or change of control as defined in Section 26, Seller is not entitled to any further payments by Buyer.
- 30.4. Except as stated in this Section 30, Buyer is not be liable for and is not required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for any alleged losses or costs, including loss of anticipated profit, unabsorbed overhead, interest on claims, product-development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, ancillary exit charges (including costs of riggers, warehousing, premium manufacturing costs, loading of trucks, or other standard business procedures related to transitioning production to an alternative Seller), obsolescence costs, or general and administrative burden charges resulting from termination of the Contract or otherwise. Notwithstanding anything to the contrary, Buyer's obligation to Seller upon termination will not exceed the obligation Buyer would have had to Seller in the absence of termination.
- 30.5. Within 30 days after the effective date of termination for convenience or due to customer termination, Seller must furnish to Buyer its termination claim, together with all supporting data (which will consist exclusively of the items of Buyer's obligation to Seller that are listed in Section 30.2). Buyer may audit Seller's records before or after payment to verify amounts requested in Seller's termination claim.

### **31. Customs and Export Controls**

- 31.1 US C-TPAT (U.S. Customs Service's Customs Trade Partnership Agreement Against Terrorism): For Goods to be imported into the United States, Seller will either: (A) be certified for deliveries to be made into the United States by the U.S. Customs & Border Protection in compliance with the Customs-Trade Partnership Against Terrorism (C-TPAT), and maintain that certification for the Term; or (B) accept, implement and comply with all applicable Trade Security Programs, including recommendations or requirements of the C-TPAT initiative (<http://www.cbp.gov>). At Buyer's or the Customs Service's request, Seller will certify in writing its acceptance, implementation, and compliance with the C-TPAT and any accompanying recommendation and guidelines. Seller will indemnify and hold Buyer harmless from and against any liability, claims, fines, demands, or expenses (including attorneys' or other professional fees) arising from or relating to Seller's failure to accept, implement, or comply with C-TPAT.
- 31.2 Transferable credits or benefits associated with or rising from purchased Goods, including trade credits, export credits, or rights to the refund of duties, taxes or fees, belong to Buyer. At Seller's expense, it will provide Buyer with all information necessary to permit Buyer to receive these benefits, credits or rights. At Seller's expense it will also provide Buyer with all information

necessary for Buyer to fulfill any customs related obligations, origin marking or labeling requirements and certification or local content reporting requirements, to enable Buyer to claim preferential duty treatment for the Goods as applicable, and to make all arrangements necessary for the Goods to be eligible for any duty deferral or free trade programs. At Seller's expense, it will obtain all export licenses and authorizations necessary for the export of the Goods and provide same to Buyer.

### **32. Federal Contracts / Fair Labor Standards**

To the extent required by law, the following clauses relating to contracts with the U.S. Government are incorporated into and made applicable to all purchase orders: (i) the Equal Opportunity clause, 41 C.F.R. 60-1.4; (ii) the Affirmative Action for Disabled Veterans & Veterans of the Vietnam Era clause, 41 C.F.R. 60-250; (iii) the Affirmative Action for Handicapped Workers clause, 41 C.F.R. 60-741; (iv) the posting requirements of Executive Order 13201; and (v) the Federal Acquisition Regulations. Seller will comply with all applicable requirements of Sections 6.7 and 12 of the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq. ("FLSA") in the performance of work under any Purchase Order, and with all applicable regulations and orders issued under Section 14 of FLSA. Seller will indemnify and hold Buyer harmless from and against any liability, claims, fines, demands, or expenses (including attorney's or other professional fees) arising from or relating to any claim that Seller violated these federal contract requirements or the FLSA.

### **33. Compliance with Laws and Certifications / Toxic Substances / OSHA**

33.1. Seller, and all Goods supplied by Seller, will comply with all applicable laws, rules, regulations, orders, conventions, or standards enacted by the United States of America that regulate the manufacture, labeling, transportation, licensing, approval, or certification of products or services, including those relating to environmental matters, data protection and privacy, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health and safety, and motor vehicle safety, and the Contract incorporates by reference all the clauses required by the provisions of those laws, orders, rules, regulations, and ordinances. Among other things, Seller will comply with the Occupational Safety & Health Act, 29 U.S.C. §§ 651 et seq., the Toxic Substance Control Act, 15 U.S.C. §§ 2601 et seq., and any state statutes implementing these or similar federal laws that apply to any place of Seller's performance.

33.2. All purchased materials used to manufacture the Goods must satisfy current governmental and safety constraints on restricted, toxic, and hazardous materials, as well as environmental, electrical, and electromagnetic considerations applicable to the country of manufacture and sale. Prior to shipment, Seller will furnish applicable Material Safety Data Sheets as well as

information on the safe use and hazards associated with use of the Goods. Seller must be in compliance with ISO14001, TS16949 and ELV or their successors, as amended from time to time. Seller warrants that neither it nor any of its subcontractors uses or will use child, slave, prisoner, or any other form of forced or involuntary labor, or engages or will engage in corrupt business practices, in the supply of the Goods under this Contract. At Buyer's request, Seller will certify in writing its compliance with this section.

- 33.3. Seller will indemnify and hold Buyer harmless from and against any liability claims, demands, fines, or expenses (including, without limitation, attorney's or other professional fees) arising out of or in connection with Seller's failure to comply with the provisions of this Section.

#### **34. General Provisions**

- 34.1. In these Terms, *including* and its variants means *including but not limited to*.
- 34.2. If any provisions of the Contract, any Release, these Terms, or any other related or incorporated documents is found invalid, the validity of the remaining documents and Terms will be unaffected. The parties will replace the invalid provision with a provision that comes as closely as possible in terms of economic results to the invalid provision.
- 34.3. Precedence: In the event of a conflict among the documents that constitute the Contract, the order of precedence will be: (A) a written agreement between the Buyer and Seller signed by authorized representatives of both; (B) the applicable Purchase Order; (C) the Terms; and (D) any other Contract document.
- 34.4. Relationship of Parties: Nothing in the Contract makes Buyer or Seller the agent or legal representative of the other for any purpose whatsoever.
- 34.5. Notices: Any notice required or permitted in the Contract must be in writing and will be effective on the date of actual receipt if that date is a business day. If that date is not a business day, then the notice will be effective on the first day after actual receipt that is a business day. Written notice under the Contract and this Section may be accomplished via email.
- 34.6. Survival: The expiration or termination of the Contract does not affect Seller's obligations or representations and warranties and Buyer's rights under the Contract with respect to Goods delivered and ordered, including Goods delivered and ordered under Sections 6.3 and 22. Without limiting the foregoing, Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 28, 32, 33, 34 shall survive termination or expiration of the Contract.

- 34.7. Buyer's Website: Buyer may modify these Terms from time-to-time by posting revised Terms applicable to Sellers on Buyer's internet website, at [www.buschegroup.com](http://www.buschegroup.com). Such revised Terms shall apply to all Contract documents issued on or after the effective date thereof. Seller shall be responsible to view Buyer's website periodically.
- 34.8. Seller's Claims: Any legal action by Seller under the Contract must be commenced no later than 1 year after the breach or other event giving rise to Seller's claim occurs, or Seller becomes aware of the existence of such claim, whichever occurs first.
- 34.9. Governing Law: The Contract, including these incorporated Terms, is governed by the laws of the State of Michigan. The provisions of the United Nations Convention on Contracts for the International Sale of Goods do not apply. Any conflict-of-laws or choice-of-law provisions or principles that would require application of the laws of a jurisdiction other than those of the State of Michigan are excluded.
- 34.10. Jurisdiction: Any action arising under or relating to the Contract is subject to the exclusive jurisdiction of the state and federal courts sitting in Indiana, without giving effect to any principles relating to conflicts or choice of law. These courts include the Allen County Circuit Court and the United States District Court for the Northern District of Indiana sitting Fort Wayne, Indiana. The parties consent to the jurisdiction of these courts, and Seller will stipulate to dismiss any lawsuit brought in any court other than these courts.
- 34.11. Exclusive Venues: The exclusive venues in which any dispute arising under or relating to the Contract may be litigated are the Allen County Circuit Court or the United States District Court for the Northern District of Indiana sitting in Fort Wayne, Indiana. Seller will stipulate to dismiss any lawsuit brought in any court other than these courts for improper venue. The remainder of this Section notwithstanding, Buyer reserves the right to bring a lawsuit in any court with jurisdiction over Seller.
- 34.12. WAIVER OF JURY TRIAL: BUYER AND SELLER ACKNOWLEDGE THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL RIGHT, BUT THAT IT MAY BE WAIVED. AFTER CONSULTATION, OR OPPORTUNITY FOR CONSULTATION, WITH ATTORNEYS OF THEIR CHOOSING, BUYER AND SELLER KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THE CONTRACT.