

# TOYOTA TSUSHO CANADA, INC.

## GENERAL TERMS AND CONDITIONS FOR PURCHASE OF AUTO PARTS

**THIS REVISION IS EFFECTIVE AS OF 12/17/2023 AND UNTIL UPDATED.**

Unless otherwise agreed to in writing, the following terms and conditions shall apply to all purchases of automotive parts and related services by Toyota Tsusho Canada, Inc.

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**1. DEFINITIONS.**

- a. "Applicable Laws" shall mean all applicable foreign, federal, state, provincial/territorial and local laws, rules, regulations, and ordinances applicable or related to Seller (or any Seller Party, as defined below in Section 18. a.), or to the activities occurring under the Contract, including, without limitation, the design, purchase, manufacture, sale, delivery and use of the Parts.
- b. "Approved Specifications" shall mean drawings, specifications, models and standards or any revision thereof (including information stored in electronic or digital format) that are developed or designed by Seller at Buyer's request and approved in writing by Buyer.
- c. "Buyer" shall mean TOYOTA TSUSHO CANADA, INC. or any other entity designated as the Buyer in the Purchase Order.
- d. "Buyer's Plant" shall mean the plant or facility of Buyer or the Customer specified in the Purchase Order or a Release.
- e. "Buyer's Website" shall mean <https://www.ttc.ca/terms-conditions/> or any subsequent Buyer website notified to Seller in writing.
- f. "Change of Control" shall mean any of the following: (1) the sale of all or substantially all of Seller's assets; (2) any merger of Seller with another company; (3) the transfer of more than twenty percent (20%) of Seller's issued and outstanding shares (or a substantially equivalent ownership interest) to a third party; or (4) a change in more than fifty (50%) of Seller's board members (or individuals substantially equivalent to board members).
- g. "Components" shall mean the elements, sub-parts, sub-assemblies, software, and sub-systems incorporated into and embodying the Parts.
- h. "Contract" shall mean the contract for the purchase of the Goods and services between Buyer and Seller and includes the Contract Documents.
- i. "Contract Documents" shall mean the documents comprising the Contract, including the Purchase Order, any document incorporated into it by Buyer's reference, these Terms and documents incorporated by reference in these Terms, the corresponding Releases, Buyer's corresponding quality manuals, the corresponding Specifications and Approved Specifications, and any other document(s) expressly identified by Buyer in writing as being part of the Contract.
- j. "Customer" shall mean Buyer's direct customer for the Parts, which may be an OEM or a higher tier automotive supplier.
- k. "Customers" shall mean the Customer, as well as indirect customers for the Parts, including higher tier buyers and OEMs.
- l. "End User" shall mean the actual end user of the Parts.
- m. "Federal Motor Vehicle Safety Standard" shall mean Canadian Motor Vehicle Safety Regulations and/or U.S. federal vehicle regulations specifying design, construction, performance, and durability requirements for motor vehicles and regulated automobile safety-related components, systems, and design features.
- n. "Forecast," as Buyer may issue under a Purchase Order, shall mean Buyer's written non-binding estimate of its future needs for Parts addressing a delivery period more than thirty (30) days from the date transmitted to Seller, and provided to Seller at Buyer's discretion to assist Seller in estimating its future delivery requirements.

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- o. “Goods” shall have the meaning set forth in the Sale of Goods Act (Ontario, Canada) .
- p. “Intellectual Property” shall mean any discoveries, ideas, methodologies, inventions, patented articles, concepts, creations, developments, know-how, trade secrets, works of authorship, materials, software (source and object code), writings, drawings, designs, processes, data, databases, techniques, formulas, specifications, technology, and other intellectual property, whether or not patentable.
- q. “Intellectual Property Rights” shall mean any right or protection existing from time to time in any jurisdiction, whether registered or not, under any patent law or other invention or discovery law, industrial design law, copyright law, performance or moral rights law, trade secret law, confidential information law (including breach of confidence) or any other similar laws, and includes legislation by competent governmental authorities and judicial decisions under common law or equity, and for greater certainty includes the right to file any applications, and the right to claim for the same the priority rights derived from any applications filed under any treaty, convention, or any domestic laws of a country in which a prior application is filed.
- r. “Loss” shall mean and all contractual and non-contractual liabilities, losses, claims, demands, causes of action, damages, fines, penalties, interest, deficiencies, awards, and expenses, including attorneys’ fees, consultant fees, legal expenses and costs, civil claims, criminal claims, administrative claims, labor, social security and employment claims, and all claims for personal injury and property damage (both tangible and intangible) (collectively “Losses”).
- s. “OEM” shall mean the original equipment manufacturer of the Vehicles.
- t. “Parts” shall mean the parts, as well as any services, covered by a Purchase Order and may include, without limitation, raw materials, tooling, export parts, prototype parts, production parts, service and replacement parts, repair or remediation work, maintenance, and testing and assembly services.
- u. “PPAP” shall mean the Production Part Approval Process, including all submission Levels.
- v. “Price” shall mean the unit price of each Part, as identified in the Purchase Order.
- w. “Purchase Order” shall mean any purchase order, or similar document or electronic/written communication through which Buyer orders Parts, issued by Buyer to Seller.
- x. “Releases” shall mean binding written orders, when issued by Buyer to Seller under a Purchase Order that does not identify all delivery date(s), for specified quantities of Parts to be delivered to Buyer by the date or within the timeframe, whichever applies, as specified in the Releases.
- y. “Returnable Packaging” shall mean reusable pallets, bins, tanks, intermediate bulk containers (IBCs), reusable plastic containers (RPCs) and other hand-held containers and totes, trays and dunnage packaging, items, equipment, or goods that Buyer or its Customer deems advisable or necessary for the transport of Parts.
- z. “Seller” shall mean the entity with whom Buyer places a Purchase Order for Parts.
- aa. “Service Part” shall mean a service or replacement Part as described in Section 21.
- bb. “Specifications” shall mean drawings, specifications, models and standards or any revision thereof (including information stored in electronic or digital format) approved by Buyer and furnished by Buyer to Seller.
- cc. “Subcontractor” shall mean any sub-supplier or other vendor providing goods or services used by Seller in its design, manufacture, provision, delivery, or sale of Parts to Buyer.

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- dd. “Sustainable Development” shall mean an operational model for meeting human development goals while also sustaining the ability of natural systems to provide the natural resources and ecosystem services on which the economy and society depend.
- ee. “Terms” shall mean the terms and conditions set forth in this document, entitled Toyota Tsusho Canada, Inc. General Terms and Conditions for Purchase of Auto Parts.
- ff. Third-Party Quality Standard shall mean: (1) any quality standard generally applicable to the automotive industry such as IATF-16949, TS-16949, QS-9000, ISO 14001, CAN3-Z299 and VDA quality assurance procedures propounded by the German Association of Automotive Manufacturers; or (2) any standard promulgated by an OEM such as the FCA US Quality Management System, the Ford Q1 program, the Hyundai New Part Quality Assurance Procedure, Volkswagen Formula Q, or similar programs.
- gg. “Vehicles” shall mean the vehicles into which the Parts are or will be incorporated.

**2. NO MODIFICATIONS/BATTLE OF THE FORMS.**

- a. **Formation/Acceptance.** These Terms are incorporated into, and are a part of, the Purchase Order, or other document or communication in which Buyer contracts to buy the Parts. These Terms shall be effective whether or not signed by Buyer or Seller and whether or not acknowledged by Seller. Seller shall have accepted the Purchase Order upon the earlier of (1) its commencement of performance under the Purchase Order or (2) its failure to provide Buyer with a written objection to the Purchase Order within five (5) business days after having received the Purchase Order. Buyer may change these Terms by providing Seller with thirty (30) days’ prior notice of the changes, which notice may be given and shall then become effective upon the posting of the changes to Buyer’s Website. Seller agrees that it will monitor Buyer’s Website for such changes. Changes will become effective and binding as to all existing Purchase Orders on the date identified in Buyer’s posting or, if applicable, other form of notice, unless the Buyer representative responsible for the Seller relationship and Buyer’s Legal Department each receive, at least ten (10) business days prior to the effective date of the changes, Seller’s written objection, which shall specify in detail the reasons for Seller’s objection to the changes. Buyer will consider Seller’s timely objection in good faith; however, although Buyer may, at its discretion, agree to modify or limit the application of such changes to existing Purchase Orders, Seller acknowledges and agrees that such changes, without modification or limitation, shall be effective and shall apply, as of their effective date, to all future Purchase Orders, notwithstanding Seller’s objection.
- b. **No Modification.** These Terms supersede any conflicting terms or conditions received at any time, in any document or other form, from Seller. Any Seller generated document which contains terms additional to or inconsistent with these Terms or the terms of the Purchase Order, which states that Seller’s terms supersede the Buyer’s terms in the Contract Documents, or which signals a rejection of any of these Terms or any term of the Purchase Order, shall be deemed to be a counteroffer to Buyer, rejected by Buyer, and shall not be binding upon Buyer, unless specifically accepted in a writing signed by an authorized representative of Buyer, notwithstanding any course of performance or contrary provision of the Uniform Commercial Code. Acceptance of a Purchase Order is expressly limited to the terms of the Contract Documents and this clause shall constitute a specific objection to and rejection of any other term proposed by Seller that is not expressly accepted in a writing signed by Buyer. Seller hereby waives all recourse to the “Battle of the Forms” provisions of U.C.C. §2-207 or corresponding aspect of Canadian common, statute, or equitable law in any dispute over what constitutes the Contract. These Terms, as of the effective revision date first listed above, shall supersede any previous set of general terms and conditions between Buyer and Seller, and shall

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apply to all transactions occurring and Purchase Orders issued after the date thereof and, subject to Section 2. a. above, shall apply to all transactions and Purchase Orders pre-dating such date.

3. **CHANGES TO SPECIFICATIONS.** The OEM, other Customers, and/or Buyer may, from time to time during the term of the Contract, revise any of the Specifications or Approved Specifications. In the event that Seller shall incur any additional cost or expense with respect to such revision to the Specifications and/or Approved Specifications, the Price shall be equitably adjusted, as agreed upon between Buyer and Seller in advance; provided, however, that if Buyer's revision to the Specifications or Approved Specifications is caused by reason of Seller's actions or inactions, Seller shall bear all related costs and expenses. Seller will, within the timeframe specified by Buyer, comply with all requests for documentation substantiating any requested Price increase. If no such timeframe is specified, Seller will provide any such documentation within ten (10) business days of receiving a request for revision of Specifications or Approved Specifications. In all instances, Seller shall not make changes to the Specifications or Approved Specifications or any revisions thereto, shall not make changes to the Parts, shall not change its production or quality control processes or change the facility manufacturing the Parts, absent Buyer's written consent.
4. **MODE.** The mode of shipment will be as designated by Buyer upon the placement of a Purchase Order, or, if issued, upon the placement of the Releases. If no mode of shipment is designated, Seller shall select a reliable, cost effective carrier to fulfill its obligations and notify Buyer of its selection. Unless otherwise specified, if an Incoterm is used in Buyer's Purchase Order, Incoterms 2020 shall apply.
5. **PRICING/DELIVERY TERMS.**
  - a. The Price shall be fixed and not increased under any condition unless otherwise agreed in a writing signed by an authorized representative of Buyer. Seller warrants that the Price and other commercial terms for Parts are no less favorable to Buyer than those Seller extends to any other of its customers for the same or similar parts sold in similar quantities. Seller understands that the Customers require Buyer to be competitive as to the price, technology, and quality of Parts, and Seller shall be required to meet such requirements of the Customers. Unless otherwise specified in a separate writing executed by an authorized representative of Buyer, the Contract shall not constitute a requirements or output contract, and Buyer shall be free to buy parts identical or similar to the Parts at any time in any quantities from sources other than Seller.
  - b. Except as otherwise set forth in the Purchase Order, delivery shall be DAP to the destination designated by Buyer. The Price includes all government tariffs, duties, assessments, surcharges, and other levies now existing and applicable, and any increase that may hereafter be imposed on the Parts. Transferable credits or benefits associated with the Parts, including trade credits, export credits, or rights to the refund of duties, taxes, or fees, belong to Buyer unless otherwise prohibited by applicable law. Seller will provide Buyer with all information, records and certifications relating to the Parts necessary for Buyer to: (1) receive these benefits, credits, and rights; (2) fulfill any customs obligations, origin marking or labeling requirements, and certification or local content reporting requirements, including Free Trade Agreement (FTA) certifications and United States-Mexico-Canada Agreement (USMCA) Certificates of Origin; (3) claim preferential duty treatment under applicable trade preference regimes; and (4) participate in any duty deferral or free trade zone programs of the country of import. Seller will obtain all export licenses and authorizations and pay all export taxes, duties, and fees unless otherwise stated in the Contract, in which case Seller will provide all information and records necessary to enable Buyer to obtain those export licenses or authorizations. Buyer reserves the right to direct Seller to supply Parts to a foreign-trade zone or subzone.

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- c. Forecasts are Buyer's estimates of its needs for quantities of Parts and may be transmitted to Seller, at Buyer's option, as an accommodation to assist Seller in estimating its own production and delivery requirements and in the interest of enabling supply chain fulfillment, but Forecasts shall not be binding on Buyer. Buyer and Seller acknowledge that Forecasts are based upon corresponding forecasts received from Buyer's Customer, and Seller shall comply with the specific forecasting and release procedures established by Buyer in the corresponding Purchase Order or otherwise. Seller also agrees to comply with all forecasting and release requirements of Buyer's Customer to ensure continuous fulfillment of Customers' supply chain requirements and to minimize obsolescence.

**6. PACKAGING.**

- a. Seller shall be responsible for all packaging and labeling of the Parts.
- b. Design and Use. The design, specifications and use of all packaging and labeling for the Parts shall comply with all Applicable Laws, including without limitation: (1) laws regarding transportation, disclosure and labeling of hazardous materials, hazardous products or dangerous goods such as (a) the regulations promulgated by the Pipeline and Hazardous Materials Safety Administration (U.S) and the Transportation of Dangerous Goods Act, 1992 and the Transportation of Dangerous Goods Regulations (Canada); (b) the International Maritime Dangerous Goods Code; and (c) the regulations of the International Air Transport Association; and (2) required product content disclosures for purchasers, including without limitation, wholesale and retail purchasers. All packaging and labeling shall also conform to the general packaging requirements and any Parts-specific requirements established by Buyer at any time. Seller shall use its best efforts to package products in such a way to provide the maximum amount of protection with consideration given to Parts size, weight, and order quantities. At no time shall Seller's packaging, packing, shipping, and labeling practices fail to meet industry best practices.
- c. Buyer may at any time request changes in packaging, packing, shipping, and labeling specifications for any Parts. Seller shall notify Buyer within thirty (30) days after receiving Buyer's request of any cost savings or cost increase associated with the request. Seller shall implement all changes to packaging, packing, shipping, and labeling specifications requested by Buyer as quickly as possible if such changes are required due to safety, legal or other concerns requiring, in Buyer's good faith judgment, prompt implementation, and, for other requested changes, within ninety (90) days after Buyer's written notice of the change request, unless such request is rescinded by Buyer following receipt of the cost information. Notwithstanding any change requested by Buyer in packaging, packing, shipping or labeling specifications under this Section 6. c., such changed packaging, packing, shipping, and labeling specifications must continue to meet the requirements of Section 6. b. above.
- d. Seller Suggested Changes. Seller may, on its own initiative, offer Buyer suggestions or requests to change packaging, packing, shipping, or labeling specifications with advance notification to Buyer. Seller shall not initiate any changes without Buyer's prior written approval. All changes proposed or implemented by Seller must comply with the provisions of this Section 6. d., including, without limitation, compliance with Section 6. b. above.
- e. Returnable Packaging. If Buyer or its Customer requires Returnable Packaging, Buyer will make separate payment(s) to Seller for the reasonable expense of such Returnable Packaging, unless such expense has been incorporated into the Price. Buyer will specify the amount to be paid for such Returnable Packaging (the "RP Cost"), the process for payment, the quantity of Returnable Packaging, and any other terms and conditions generally applicable to such Returnable Packaging.

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- f. Requirements. All packaging, crating and/or other shipping materials, including dunnage, blocking and bracing, and shipping pallets shall comply with ISPM 15 Solid Wood Packaging Requirements and any region-specific requirements at the point of delivery, for all modes of transport. Buyer's Purchase Order number must appear on the packaging and packing slip.

**7. INSPECTION OF PARTS, QUANTITY.**

- a. Inspection. Buyer is not required to inspect any incoming Parts. Final inspection will be performed by the OEM. Buyer may, on behalf of the OEM or other Customers, present to Seller all claims related to the Parts. Notwithstanding payment or any prior inspection by Buyer, Buyer may at any time revoke acceptance, require remediation of Parts, return non-conforming Parts at Seller's expense and risk of loss, and exercise any other legal remedy for non-conformance. All warranties of Seller, express and implied, and all remedies available to Buyer shall survive the delivery, inspection, testing, acceptance and payment for the Parts. Buyer and Customers may inspect the production facilities for the Parts, on reasonable notice to Seller, and Seller shall provide the necessary unobstructed access and ensure the availability of necessary information for such inspection. Additionally, at any time, Seller shall provide Buyer, the OEM, or other Customers access to the records specified in Section 36 (e) on the minimal notice reasonable under the circumstances.
  - b. Documentation. If requested by Buyer, Seller will provide and identify the following information for any Component: (1) project data; (2) the manufacturer; (3) the manufacturer's designation of the Component; (4) the production location; and (5) any technical qualifications or specifications. Without limiting the generality of the foregoing, Seller shall provide all documentation necessary to fulfill the requirements of Section 22(c).
  - c. Overshipments; Undershipments. Buyer shall have no liability for payment for Parts delivered in excess of the quantities specified in the Purchase Order, applicable Release, or other applicable Contract Document. At the sole option of Buyer, Buyer may do any of the following: (i) keep any excess Parts and elect to have the quantities of Parts under the applicable Contract Document increased by the number of excess parts; (ii) (A) keep a portion of the excess Parts and elect to have the quantities of Parts under the applicable Contract Document increased by the number of excess parts retained by Buyer; and (B) return the unretained portion of the excess parts to Seller at Seller's sole cost and expense; or (iii) return all of the excess Parts to Seller at Seller's sole cost and expense. In cases of undershipments of any Parts, Seller shall, if so requested by Buyer, immediately ship, at Seller's sole cost and expense, to the destination and by the time designated by Buyer, the additional Parts needed to fully complete the applicable Buyer requirements. Alternatively, Buyer may elect to have the quantities of Parts under the applicable Contract Documents reduced by the number of undelivered Parts; provided, however, that following an election by Buyer to reduce the quantities of Parts under the applicable Contract Document, Buyer shall continue to be entitled to any volume discount pricing or tiered pricing, if applicable, as if Buyer had purchased the entire quantity of undelivered Parts.
8. **DELAYS.** Delivery dates identified on the Purchase Order or, if applicable, the Release, are firm and must be honored. Time is of the essence of the Contract. Seller acknowledges that Buyer is an automotive supplier, subject to damage claims for lost production if the supply chain is disrupted. Seller shall immediately notify Buyer of any potential disruption or delay that may affect its ability to deliver Parts timely to Buyer. If any such disruptions or delays occur, whether expected or not, Seller must continually advise Buyer of the situation and give revised delivery dates and the reasons for delay. In the event delivery is or will be delayed, Buyer may: (1) cancel the Purchase Order or Release without further liability; (2) purchase replacement Parts from a third party; and (3) charge all damages, costs and



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expenses resulting from the delay, including line shut down charges, to Seller. Seller shall use expedited delivery methods at its own expense if Seller is responsible for a delay.

9. ***FORCE MAJEURE/LABOR EVENTS.***

- a. Force Majeure Events. Neither Buyer nor Seller shall be in breach of the Contract for its failure or delay due to causes beyond its control that impair performance under the Contract. Such causes include, without limitation, fire, storm, flood, earthquake, explosion, acts of any public enemy, war, rebellion, insurrection, sabotage, terrorism, epidemic, pandemic, quarantine restrictions or lockdowns, transportation embargoes, power interruptions or failures, acts of God, acts, rules, regulations, orders or directives of any government or political subdivision, agency or instrumentality thereof, or the order of any court, regulatory, or arbitral body of competent jurisdiction (collectively, "Force Majeure Events"). An increase in Seller's costs to provide the Parts (including costs of Components or raw materials) shall not constitute a Force Majeure Event. Seller's inability to obtain raw materials, fuel, or other supplies shall not be a Force Majeure Event unless such inability is caused by a natural disaster. The party claiming a Force Majeure Event shall notify the other party of the occurrence of the Force Majeure Event and its expected duration as soon as practicable under the circumstances, but in no event more than three (3) business days after its occurrence. Seller shall take all steps necessary to mitigate the disruption or delay caused by a Force Majeure Event. An intrusion or disruption of Seller's Information Technology Systems shall not be a Force Majeure Event if such event results from Seller's or any of its employees' negligence, including, without limitation, failure to adopt reasonable information security protocols and technology.
- b. Labor Events/Notice. Labor disruptions affecting Seller's work force, or those of its Subcontractors, shall not be Force Majeure Events. Seller shall notify Buyer at least ninety (90) days prior to the expiration of any current labor contract and, to avoid the possibility of any related delay or disruption in Seller's performance, Seller shall maintain sufficient safety or buffer stock to meet Buyer's needs through the period ending no fewer than thirty (30) days after such expiration (the "Minimum Safety Stock"), or through such longer period as Buyer or any of the Customers may direct in their good faith judgment. Seller shall provide Buyer with notice of a potential labor dispute as soon as possible. If Buyer or any of the Customers requires more than the Minimum Safety Stock, the parties will work together to comply with such requirement and to allocate any incremental costs in an equitable manner.
- c. Cancellation. In the event that a Force Majeure Event lasts for more than thirty (30) days, the party that is not claiming the Force Majeure Event may cancel the affected portion of the Contract without penalty and seek an alternative source or customer for the Parts as the case may be, upon ten (10) business days' notice to the other party. The existence of a Force Majeure Event shall not limit Buyer's right to terminate for convenience.
- d. Trade Events. The imposition (or announcement of a potential future imposition) of a trade - related quota, new or higher import tax, tariff, or other trade-related surcharge applicable to the Parts (a "Charge") or any temporary or permanent measure by the federal or any state or provincial/territorial government of the Dominion of Canada and/or United States (or if the Dominion of Canada or the United States is not the place of destination of the Parts then the government of the place of such destination), whether promulgated by legislation, policy or other means, which results in: (a) an increase to Buyer in the cost of purchase; (b) Buyer's inability to claim, as a business expense deduction, its cost of imported Parts; or (c) any limitation or restriction on the ability of Buyer to purchase Parts, after the acceptance of the Purchase Order shall, at Buyer's option, be deemed a Force Majeure Event. Buyer shall notify Seller of its intention to exercise the option and cancel the Contract without penalty within ten

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(10) business days of the imposition of the Charge or other measure. All such notices shall be given by electronic mail and in accordance with Section 35. c. below.

**10. CANCELLATION/TERMINATION FOR CONVENIENCE/TRANSITION SUPPORT.**

- a. Suspension/Termination for Convenience. Buyer reserves the right, at any time, for any or no reason, to terminate or suspend any portion of the Purchase Order or Release which has not been shipped. Seller acknowledges that Buyer's Purchase Orders are subject to demand fluctuation by the OEMs and corresponding rights of termination for convenience. Upon such termination or suspension by Buyer, and subject to the other provisions hereof, Buyer shall pay Seller only the following amounts, without duplication, in final satisfaction of all obligations relating to the Purchase Order or Release: (a) any amounts owing for conforming Parts received by Buyer prior to the termination or suspension and accepted in accordance with the Purchase Order; (b) the reasonable direct out of-pocket costs incurred by Seller in connection with the production or manufacture of Parts covered by the Purchase Order or Release and not shipped prior to termination or suspension; provided that the Seller shall use its best efforts to resell or re-use Parts, including their Components, not shipped to Buyer, and Buyer shall not be liable for the cost of Parts, including any Components, that are part of Seller's general inventory and/or can be sold to third parties; and (c) an equitable Price adjustment or, at Buyer's sole discretion, another form of reimbursement for reasonable costs incurred by Seller due to suspension. However, under any circumstances, Buyer shall not be liable for Parts produced or Components ordered or produced in advance of agreed upon lead times or in greater amounts than required in Purchase Orders or Releases, and Buyer shall not be liable for equipment rearrangement costs, unamortized capital or depreciation costs, labor under-absorption costs, general administrative costs, or Seller's lost profits. Seller shall submit its termination or suspension claim, with supporting documentation, no later than sixty (60) calendar days after the date of the termination or suspension, unless Buyer's contract with its Customer provides for a shorter deadline, in which case Seller shall submit its claim and all supporting documentation within time limits as reasonably directed by Buyer. Buyer may audit Seller's termination or suspension claim and supporting documentation. For the avoidance of doubt, the rights and remedies available to Seller under the Contract in the event of termination for convenience or suspension shall not apply in the event that Buyer otherwise terminates or cancels the Contract, in whole or in part, pursuant to these Terms.
- b. Transition Support. In connection with the expiration, cancellation, or any termination of the Purchase Order, in whole or in part, or Buyer's other decision to change from Seller to an alternate supplier (including but not limited to a Buyer-owned or operated facility) of Buyer's choosing (an "Alternative Seller"), Seller shall cooperate in the transition of supply, including the following: (i) Seller will continue production and delivery of all Parts as may be ordered by Buyer, for the Price and upon the other terms stated in the Contract, without premium or other condition, during the entire period reasonably needed by Buyer to complete the transition to the Alternative Seller(s) including, at Buyer's request, providing a sufficient bank of Parts at the Price in the quantities requested by Buyer, such that Seller's action or inaction causes no interruption in Buyer's ability to obtain Parts as needed; (ii) at no cost to Buyer, Seller (A) will promptly provide bill-of-material data, and samples of Parts; (B) will provide all notices and other documents necessary or desirable for Buyer to resource the Purchase Order to an Alternative Seller, (C) when requested by Buyer, will return to Buyer, or send to the third party directed by Buyer, all Buyer-Owned Tooling (as defined below) in as good condition as when received by Seller (reasonable wear and tear excepted); and (D) will comply with Seller's obligations relating to Seller-Owned Tooling (as defined below) and to subcontracts; and (iii) subject to Seller's reasonable capacity constraints, Seller will provide special overtime production, storage and management of extra inventory of Parts, extraordinary packaging and transportation and other special services (collectively, "Transition Support") as expressly

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requested by Buyer in writing. If the transition occurs for reasons other than Seller's breach of the Contract, Buyer will, at the end of the transition period, pay the reasonable, actual additional costs of Transition Support as incurred by Seller, if Seller has advised Buyer of the estimated amount of such costs prior to incurring them. If the parties disagree on the cost of Transition Support, Buyer will pay the agreed portion to Seller and pay the disputed portion to Seller, if so required, after resolution of the dispute through mediation or arbitration.

- c. No Seller Termination. Seller acknowledges that, in a tiered supply chain, Buyer has relied upon Seller's agreement to manufacture the Parts at the fixed Price and on the terms stated in the Contract to allow Buyer to fulfill its contract to sell the Parts, or the Goods that incorporate the Parts, to Buyer's Customer. Consequently, Seller may not terminate a Purchase Order before expiration, except in the event of a material breach by Buyer that Buyer fails to cure after thirty (30) days' written notice from Seller. Buyer's non-payment of Seller's invoices that are subject to a dispute shall not be a material breach hereunder, so long as Buyer or its Customer provides Seller a reason for the dispute.

**11. PAYMENT TERMS.**

- a. Buyer's payments to Seller shall be net 30 unless otherwise specified in the Purchase Order. All invoices from Seller shall include the Purchase Order number on them and such other information as Buyer may reasonably require from time to time.
- b. If Buyer has been directed to purchase Parts from Seller by Customer: (1) for integration into Goods sold by Buyer to Customer; or (2) because Buyer is acting as a supply chain intermediary between Seller and Customer, payment to Seller may be delayed until Customer has paid Buyer for such Goods or Parts according to the established schedule between Buyer and Customer.
- c. Seller hereby authorizes Buyer to deduct immediately an amount equivalent to the aggregate purchase price of any damaged, defective, missing or mispacked Parts from any sums due to Seller from Buyer. Buyer's failure to deduct such amount shall not release Seller from its obligation to reimburse Buyer in full in the same amount.
- d. The payment of an invoice by Buyer shall not waive in whole or in part the right of Buyer to dispute any invoice or any amount or charge appearing thereon. Buyer shall give Seller notice of any such dispute and the basis thereof. The parties shall act in good faith to resolve any such disputes promptly. Buyer shall have the right to offset the full amount of any disputed sum that has been previously paid if such dispute has not been resolved within thirty (30) days of Buyer's notice of the dispute.
- e. Set-Off. In addition to any right of set off provided by applicable common law or statute, all amounts due to Seller will be considered net of indebtedness of Seller and its affiliates or subsidiaries to Buyer and its affiliates or subsidiaries. Buyer will have the right to set off against or to recoup from any payment or other obligation owed to Seller, in whole or in part, any amounts due to Buyer or its affiliates or subsidiaries from Seller or its affiliates or subsidiaries. Buyer will provide Seller with a statement describing any offset or recoupment taken by Buyer.
- f. Buyer may require Seller to transmit shipping information, to invoice Buyer, and to receive payment through Electronic Data Interchange or a Supplier network. In such event, Seller will submit invoices and receive payment through such methods and using such software as selected by Buyer in its reasonable discretion, and Seller shall comply with Buyer's terms of use of such system. Seller will supply such information as is reasonably requested by Buyer to comply with the information technology requirements of the Customer.

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- g. IN NO EVENT SHALL BUYER BE LIABLE TO SELLER FOR CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PRODUCTION OR LOSS OF USE, FOR ANY CLAIM OR CAUSE OF ACTION ASSERTED UNDER OR IN CONNECTION WITH THE CONTRACT.
12. **URGENT DELIVERY.** If urgent delivery is needed due to delays, other than delays occasioned by the conduct of Buyer, then Seller shall use the fastest means of transport available and will be responsible for additional charges associated with expedited shipment of the Parts being delayed.
13. **WARRANTY.** In addition to any other warranties provided in these Terms, by law, or otherwise, Seller warrants that the Parts shall: (i) be new and conform to the Contract in all respects, including, without limitation, all Specifications and Approved Specifications; (ii) conform to all quality manuals or standards, drawings, samples, and descriptions furnished or specified by Buyer; (iii) be merchantable and fit for their intended purpose; (iv) be free from all defects in design and workmanship; (v) be free of firmware or software defects, malware, viruses and other malicious codes; (vi) be in full compliance with industry standards and best practices, Applicable Laws, including but not limited to the Third-Party Quality Standards of the ISO, AIAG and VDA, and the labor standards set forth in Section 22 of these Terms; and (vii) be in full compliance with any sustainability directives of Buyer or Customers, as communicated to Seller. The Parts shall not deviate from validation samples such as PPAP Parts. The Parts shall not contain any materials or substances prohibited by Applicable Laws, the OEM, Customers or Buyer.
- a. No Liens. Seller further represents and warrants that good title to all of the Parts shall be vested in Buyer, free and clear of any and all liens, encumbrances and future obligations or restrictions of any kind.
- b. Corrective Actions. In the event of a breach of warranty, in addition to all other remedies under the Contract or Applicable Laws or in equity, Buyer may: (i) cancel all or any portion of the Contract; (ii) require Seller to repair or replace any or all Parts, at Buyer's option and at Seller's expense; (iii) return nonconforming Parts to Seller and request that Seller investigate the nonconformity and submit an action plan to Buyer to correct the nonconformity in a timely manner, at Seller's expense; (iv) require Seller to sort the non-conforming Parts; (v) require the Seller to pay all transportation and other charges arising from delivery, storage or return of non-conforming Parts, and (vi) purchase replacement Parts from a Third Party and charge the same to Seller.
- c. OEM/Customer Warranty Requirements/Warranty Period/Cost-Sharing. Seller represents that it is aware that Buyer is not the End User of the Parts and Seller has access to copies of the terms and conditions of the Customer and any other Customers, including the OEM, as applicable to the Parts and all Goods made from the Parts. Seller warrants that it is familiar with such terms and conditions, including, but not limited to the Customers' applicable warranty and delivery requirements, and the provisions of any Customer Supplier Quality Manual. Seller shall comply with all warranty and quality requirements imposed upon Buyer by the Customer and shall be liable for all charges imposed on the Buyer by the Customer on account of Seller's non-performance of its obligations to Buyer. These charges may include but are not limited to: (1) the cost of the defective Parts; (2) labor and material costs for the removal of defective Parts and installation of replacement Parts; (3) costs of work performed by third parties for sorting, removal and replacement of defective Parts; (4) taxes and related costs; and (5) loss of production or down time, and lost profits. Seller will participate in any warranty cost settlement program or procedure required by Customer, and meet any financial obligations imposed on

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account of a breach of its warranty obligations. The Customer is an intended third-party beneficiary of the Contract. In the event a Customer's terms and conditions provide for additional rights of the Buyer beyond those provided here, the Customer's terms and conditions shall control. The Customer may enforce this Contract.

- d. **Warranty Period.** The warranty period shall be the longer of the longest applicable period set forth in the OEM Vehicle warranty to its retail customer, or any warranty applicable to the retail customer under Applicable Laws. The warranty period for Service Parts shall be the greater of one (1) year from the date of delivery of the Part to the retail customer or the remainder of the retail customer warranty period on the Vehicle in which the service Part is installed, which period shall be subject to extension by the OEM. If Buyer is required to participate in any warranty cost sharing with the OEM related to the Parts, Buyer may charge Seller to the extent that such cost sharing is attributable to the Parts. Warranty liability may be based on sampling by the OEM or by Buyer. If Seller becomes aware that any Part or Component may be harmful to a person or property, it shall immediately advise Buyer.
- e. **Seller Quality.** Seller has adopted industry standard quality procedures such as Advanced Product Quality Planning (APQP) and Design Failure Mode and Effects Analysis (DFMEA). If the OEM has adopted a Third-Party Quality Standard, Seller warrants that the Parts and its operations are compliant with such standard. Seller will fulfill the requirements of any OEM quality manual and Buyer quality manual applicable to the Parts and provided to Seller, and shall participate in any required OEM quality program. Seller is responsible for implementing its own quality compliance system, in accordance with industry best practices and which may be reviewed and/or audited by Buyer. Seller shall also be responsible for the quality compliance of its Subcontractors. If the OEM has promulgated a policy or standard for Sustainable Development, Seller shall comply with it.
- f. **Seller represents and warrants that:**
  - i. the Parts are not classified or regulated as hazardous or a hazardous product under any state, provincial, territorial, national or federal law except as shall be clearly stated on the packaging, shipping and storage containers in accordance with the requirements of Applicable Laws. Seller shall provide Safety Data Sheets compliant with the Hazardous Products Act and the Hazardous Products Regulations (Canada) and 29 (US) CFR 1910.1200 D.1, as applicable, prior to the importation or delivery of any Parts containing hazardous materials or a hazardous product.
  - ii. there are no substances contained in the Parts that are not listed on the Domestic Substances List (DSL) under the Canadian Environmental Protection Act, 1999 and such DSL listings are not associated with any restriction that may require additional regulatory notification in connection with Buyer's intended use, and that there are no substances within the Parts that are otherwise prohibited or restricted from being manufactured or imported into Canada under Applicable Laws. Seller represents and warrants that there are no substances contained in the Parts that are not listed on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to the Toxic Substances Control Act (15 U.S.C. §. 2601 et. seq.).
  - iii. there are no substances contained in the Parts that are not in the Inventory of Existing Commercial Chemical Substances under the European Union Registration, Evaluation, Authorization and Restriction of Chemicals (and any implementing legislation or regulation), as may be applicable.

Seller shall provide certifications of compliance with the foregoing upon Buyer's request.

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**14. INTELLECTUAL PROPERTY.**

- a. Buyer IP. Buyer does not grant Seller any license or right to any Intellectual Property or Intellectual Property Rights of Buyer, Customers, or the OEM (collectively, “Buyer Party IP”) other than the limited ability to use such Buyer Party IP strictly and solely as necessary for Seller to fulfill its obligations under the Contract. This limited permission shall not be deemed to be a right or license. For the avoidance of doubt, notwithstanding anything to the contrary herein and without limiting the generality of the foregoing, Seller shall not use Buyer Party IP to make, provide, or sell any products or services for or to a third party.
- b. Created IP. Any Intellectual Property created by Seller that results from design, engineering, consulting, or development services charged to Buyer (“Created IP”) shall belong solely to Buyer. Created IP includes, without limitation, Approved Specifications. Seller shall promptly disclose any Created IP to Buyer. Seller agrees to assign, and hereby irrevocably assigns to Buyer all right, title and interest worldwide in and to the Created IP, including, without limitation, all Intellectual Property Rights thereto, effective immediately upon the inception, conception, creation or development thereof. . All works of authorship, including software, computer programs and databases (including object code, micro code, source code, and data structures), and all enhancements, modifications and updates and all other written work products or materials that are created by Seller in performing under the Contract are “works made for hire” and the sole property of Buyer. To the extent that such works do not qualify as works made for hire under Applicable Laws, Seller hereby assigns to Buyer all right, title and interest in any Intellectual Property Rights in such works. If such assignment is not possible under Applicable Laws, Seller hereby grants to Buyer, to the maximum extent legally permissible, an exclusive (including the exclusion of Seller), royalty-free, worldwide, fully-paid, irrevocable, perpetual right and license (including the right to grant sublicenses) in and to all such Created IP. Seller hereby waives, and shall cause all those who contributed to the inception, conception, creation and development of any Created IP to waive, all moral rights therein. To the extent that any Seller’s Intellectual Property Rights and/or any of Subcontractors’ Intellectual Property Rights are incorporated into or otherwise included in, or are necessary for the use or exploitation of the Created IP (including any Intellectual Property Rights therein), Seller hereby grants Buyer and Customers a royalty-free, non-exclusive, irrevocable, worldwide, fully-paid, sublicensable, perpetual right and license to use any such Intellectual Property Rights as part of or in connection with such Created IP, without any obligation to account to, or obtain consent from, Seller or any third parties.
- c. Warranty. Seller warrants that the Parts, including all Components, and including all work, materials, products, services, equipment, parts, subsumed production processes, designs (other than Buyer’s designs), and other items developed or provided by Seller pursuant to the Purchase Order, shall be free from all claims of infringement of third-party Intellectual Property Rights, and that any use or sale of the Parts, or of other Goods incorporating the Parts, by Buyer, Customers, dealers, distributors and users of the Vehicles shall be free from any such claims of infringement. Unless otherwise disclosed and accepted in a writing signed by Buyer, Seller warrants that there is no open-source code in any software embedded or otherwise incorporated in the Parts, including all Components.
- d. IP Indemnity. Seller shall defend (at Buyer’s sole option and in strict compliance with Buyer’s terms), reimburse, indemnify, and hold harmless Buyer, Customers, and OEMs, and their respective directors, officers, employees, agents, subcontractors and representatives (including any respective successors or assigns) from and against any and all demands, claims, lawsuits, damages, costs, expenses, and other losses related to or arising from the actual or alleged infringement by Seller of a third party’s Intellectual Property Rights (including rights to

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confidentiality, privacy, or non-publicity). Additionally, if such a demand, claim, or lawsuit results, or is likely to result, in an injunction or other order that would prevent Seller from rendering full performance under the Contract, or Buyer or its designees (including Customers, dealers, distributors or affiliates, including any global affiliate of Buyer) from using, distributing, selling, leasing, maintaining, modifying, copying or creating derivative works of, any of the Parts, Seller shall, at Buyer's sole election and at Seller's sole cost and expense: (a) secure a license for the applicable Intellectual Property Rights that permits Seller to render continued full performance of the Contract, and Buyer and its designees (and each global affiliate of Buyer, if any) to continue using, distributing, selling, leasing, maintaining, modifying, copying or creating derivative works of, the Parts; (b) if requested by Buyer and solely in conformity with any requirements of Buyer, modify the Parts so they become non-infringing, so long as the modification does not materially alter the operation or performance of the Parts, as determined by Buyer in its sole discretion; or (c) replace the Parts with non-infringing but functionally equivalent parts, which, if approved by Buyer in writing in its sole discretion, shall replace the Parts.

- e. License. Seller hereby grants Buyer a royalty-free, non-exclusive, irrevocable, worldwide, fully-paid, sublicensable, perpetual right and license to use any of Seller's Intellectual Property Rights and any of Subcontractors' Intellectual Property Rights embedded in and/or used to develop the Parts and Components (collectively, "Seller IP"). Seller hereby grants Buyer and Customers a royalty-free, non-exclusive, irrevocable, worldwide, fully-paid, sublicensable, perpetual right and license to use Seller IP to use, sell, repair, reconstruct, remanufacture, re-flash or re-build the Parts. Seller hereby grants Buyer and Customers a royalty-free, non-exclusive, irrevocable, worldwide, fully-paid, sublicensable, perpetual right and license to use, repair, modify and sell any operating software embedded or otherwise incorporated in the Parts in conjunction with the use or sale of the Parts. For the avoidance of doubt, but without limiting the generality or applicability of the foregoing provisions, if Seller ceases manufacturing operations or no longer offers the Parts to Buyer, Buyer may use Seller IP to enable Buyer to continue to provide the Parts to its Customers in order to meet ongoing production and service part obligations.
- f. Temporary License. Without limiting the generality or applicability of the foregoing provisions, in the event that Seller, in Buyer's sole judgment, becomes or may become unable to supply Buyer with the number of Parts needed on the dates required, and immediately upon Buyer's request, Seller shall make available to Buyer all Intellectual Property, including all know-how, and shall license to Buyer all corresponding Intellectual Property Rights, as necessary to manufacture the Parts for the duration of Seller's inability to fully perform under the Contract, as determined by Buyer. These rights shall be sublicensable by Buyer to an Alternative Seller. The rights specified in this Section 14. f. shall last for the duration of Seller's inability to fully perform under the Contract, as determined by Buyer.
- g. Buyer Trademarks. Seller shall not use or incorporate any of the OEMs', Customers', or Buyer's logos, trademarks, trade names or unique part numbers (for example, on any other products manufactured or distributed by Seller, including aftermarket parts), except: (i) as may be provided under the production Purchase Order or another written document issued to Seller by Buyer, or (ii) to the limited extent required to comply with a government requirement.

**15. BUYER OWNED TOOLING AND MATERIALS.**

- a. Buyer Tooling. To the extent the Contract (for the avoidance of doubt, any document titled "Tooling Order" or something similar shall be considered a Purchase Order) specifies Buyer's (or its Customer's) purchase of, or reimbursement (including via amortization in the form of a

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per unit charge included in the Price) to Seller for, any tooling, jigs, dies, gauges fixtures, molds, patterns, equipment, supplies, materials and other items (collectively with all refurbishments or replacements of any of the foregoing items, "Buyer Tooling") to be used in connection with Seller's actual or anticipated supply of Parts to Buyer, Seller will acquire such Buyer Tooling on behalf of Buyer and Buyer will either (i) reimburse Seller through the per unit charge included in the Price, as set forth above; or (ii) pay Seller the lower of: (a) the amount specified in a Purchase Order or Buyer Tooling Order; (b) Seller's actual out-of-pocket cost to acquire the Buyer Tooling from an unrelated third party, or (c) if the Buyer Tooling is constructed or fabricated by Seller or any affiliate of Seller, the actual direct reasonable costs for materials, labor and overhead associated with such construction and fabrication. If no payment date for the Buyer Tooling is set forth in the Purchase Order or Buyer Tooling Order, and unless such payment will be amortized through the per unit Price, payment for the Buyer Tooling shall be due by the later of thirty (30) days after PPAP approval, or, if Buyer is being reimbursed for Buyer Tooling charges by its Customer, upon Buyer's receipt of such full reimbursement from its Customer. Buyer may audit Seller's Buyer Tooling charges. If Buyer is being reimbursed for Buyer Tooling charges by its Customer, Seller shall provide all documents requested to allow Buyer and its Customer to substantiate such charges.

- b. Title. Title and full ownership to the Buyer Tooling shall transfer from Seller to Buyer upon payment by Buyer for such Buyer Tooling, as set forth in Section 15. a. above. Notwithstanding the transfer of such title, the entire risk of loss, theft, or damage to the Buyer Tooling shall remain with Seller while in Seller's possession or control, and its loss, theft, or damage shall not relieve Seller of its obligations under this Agreement. Seller will not move the Buyer Tooling without written notice to, and the written consent of, Buyer. Seller shall properly mark the Buyer Tooling as the property of Buyer.
- c. Maintenance. Unless otherwise stated in the Contract, Seller, at its expense, shall furnish, keep in good condition, and repair or replace when necessary, all Buyer Tooling to enable and maintain the production of Parts. In the event of loss, theft or damage to the Buyer Tooling in whole or in part, Seller shall promptly so notify Buyer and, at Buyer's option, and at Seller's sole cost, shall: (a) restore the Buyer Tooling to good condition and working order; or (b) replace the Buyer Tooling with like tooling in suitable condition and working order, which tooling shall then become Buyer Tooling; or (c) if Buyer determines that any item of Buyer Tooling is beyond repair, pay to Buyer, within ten (10) days of such notification, the amounts paid by Buyer for such Buyer Tooling. Seller shall maintain all Buyer Tooling for the period necessary to supply Service Parts under the Contract and shall notify Buyer at least thirty (30) days before destroying or scrapping any Buyer Tooling. If Buyer objects, Seller shall maintain Buyer Tooling on such commercial terms as may be reasonable under the circumstances.
- d. Seller shall insure all Buyer Tooling at full replacement value.
- e. Unless otherwise agreed to by Buyer in the Purchase Order, any Buyer Tooling paid for in whole or in part by Buyer (including through reimbursement based upon a per unit charge included in the Price) shall be used exclusively by Seller for the supply of the Parts to Buyer and not for any other use, including, without limitation, the supply of product to any third party.
- f. Option to Take Possession of Buyer Tooling. Seller grants Buyer an irrevocable option, at any time, to take possession of, and title to, free and clear of all liens or other encumbrances, all or any part of the Buyer Tooling. Buyer shall pay for the Buyer Tooling at the Price and on the terms set forth in the Purchase Order or Tooling Order, whichever, if either, applies. In the event that Buyer is to pay for such Buyer Tooling via amortization in the form of a per unit charge included in the Price, as set forth in Section 15. a. above, and such Buyer Tooling has not been fully amortized at the time Buyer takes possession, Buyer shall pay Seller the lower of: (a) the net book value of such Buyer Tooling (actual cost less amortization), or (b) the then



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current fair market value of such Buyer Tooling, in each case less any unit charge or other amounts that Buyer has previously been paid to Seller for such Buyer Tooling. If Buyer and Seller do not agree on the price to be paid for such Buyer Tooling, Buyer and Seller will negotiate in good faith to resolve the disagreement; provided that Buyer shall have the right to take immediate possession of such equipment upon payment of any undisputed amount(s).

- g. Security Interest.
  - i. Seller hereby creates and grants to Buyer a purchase money security interest (or equivalent security interest in accordance with Applicable Laws in the Seller's jurisdiction) in the Buyer Tooling. In addition to all other remedies available to Buyer, upon Seller's default under the Contract, Buyer may exercise its rights of enforcement and shall have all remedies under the Uniform Commercial Code and/or other Applicable Laws in Buyer's and Seller's jurisdiction with respect to the Buyer Tooling. The provisions of this Article 15 shall not mitigate or restrict, but shall be in addition to, all the other obligations of Seller under the Contract.
  - ii. Seller shall take every possible step to ensure that the interest of Buyer in the Buyer Tooling is fully secured, perfected, and is enforceable by Buyer at any time. This obligation includes, but is not limited to, cooperating in the filing of appropriate financing statements and other instruments, including protective filings, and/or such other documents, if any, as may be necessary or desirable to perfect Buyer's valid and enforceable rights in the Buyer Tooling in accordance with Applicable Laws.

**16. SELLER OWNED TOOLING**

- a. Cost in Piece Price. In the case of tooling that is not to be purchased by Buyer ("Seller-Owned Tooling"), Seller acknowledges that the Price in the production Purchase Order includes the capitalization and amortization of Seller-Owned Tooling and no additional charge shall be made for such tooling.
- b. Maintenance Obligation. Seller will, at its expense, properly maintain the Seller-Owned Tooling in a condition that ensures continued production and delivery of the Parts in accordance with the terms of the applicable Purchase Order. Seller will notify Buyer prior to disposing of any Seller-Owned Tooling.
- c. Option to Purchase Tooling. Seller grants the Buyer an exclusive, irrevocable option to purchase the Seller-Owned Tooling at the present value of the Seller's actual cost of the Seller-Owned Tooling, which Seller has not yet recovered in the piece price of the Parts by the time the Buyer exercises the option. Seller will provide Buyer with all documentation and other information requested by Buyer to substantiate the actual cost of the Seller-Owned Tooling.
- d. When Option Exercisable. Buyer may exercise its option to purchase under Section 16. c. at any time, but only if the Seller-Owned Tooling is not being used by Seller to manufacture products for a third party other than Buyer's affiliates. If Seller has financed any portion of the Seller-Owned Tooling, Seller will obtain from its financing source any waiver, release, or approval necessary for Buyer to exercise the rights under Section 16. c.

**17. RECALLS.** This Section applies to any voluntary or government-mandated offer by the OEM (or Buyer or Customers) to vehicle purchasers to remedy an alleged defect that may or may not affect motor vehicle safety or to address an alleged failure of a vehicle to comply with an applicable motor vehicle safety and/or vehicle emission or range estimates/specifications standard or guideline (each, a "Recall"). "Recalls" shall include, without limitation, all field service and/or monitoring actions, all National Highway Transportation Safety Administration ("NHTSA") US Environmental Protection Agency, California Air Resources Board,, Environment and Climate Change Canada, and/or Transport Canada

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recalls, and all warranty and other cost recovery actions and disputes related thereto. Seller's obligations in the event of a Recall are not subject to any time or mileage limitation. It is Buyer's expectation that Seller will continue to monitor the performance and reliability of its Parts in the field, and to analyze instances of Part failure, for the lifetime of the applicable Vehicles, in accordance with Seller's requirements under Applicable Laws, and to ensure Vehicle safety and emissions compliance.

- a. **Decision to Recall.** Seller acknowledges that Buyer is not the End User of the Parts and the decision whether to initiate a Recall that is not mandated by a government may be made by the OEM, other Customers, or Buyer. Buyer may be obligated to participate in any Recall initiated by the OEM or other Customers, and Seller shall likewise be required to participate. Buyer's decision, or that of any of the Customers to contest any determination by any governmental agency or authority will not waive or diminish any rights of Buyer under this Section 17.
- b. **Seller Liability for Recall, Damages.** Seller will be liable for all of Buyer's Losses resulting from a Recall if the Recall results in whole or in part from a failure of the Parts to conform to Seller's warranties, covenants, or other obligations set forth in the Contract, which shall be deemed to include warranties given by Buyer to the Customers. Seller shall hold Buyer harmless, and defend and indemnify Buyer, for and against all charges imposed upon Buyer by any of the Customers, and all other costs incurred by Buyer, on account of a Recall due to a defect in the manufacturing or design (other than Buyer's design) of the Parts or any instance of non-compliance of the Parts with Seller's warranties, covenants, or obligations set forth in the Contract, which shall include warranties given by Buyer to the Customers. Such charges and costs shall include, but not be limited to, charges and costs resulting from or related to reimbursements to OEMs, Customers, or dealers of the Vehicles, the cost of developing, manufacturing, and providing replacement parts, labor charges, and disbursements or reimbursements to owners of the Vehicles. If, as a result of a Recall involving a Part, the OEM voluntarily or involuntarily extends the warranty period for the Vehicle, Seller's warranty responsibilities under Section 13 shall extend throughout such period. At Buyer's request, Seller shall promptly provide all information and support sought by Buyer for the purpose of addressing any Recall, including investigating if a Recall is required or prudent, that is wholly or partly attributable to, or that, in Buyer's judgment, relates in any way to, a Part.
- c. **Seller's Duty to Notify.** Seller shall promptly apprise Buyer of any Recall, defect, or non-compliance affecting automotive parts identical to, or substantially similar to, the Parts, generally in any jurisdiction, and specifically in accordance with the requirements of Title 49 of the US Code of Federal Regulations, (US) 49 CFR § 573.6 et seq., and shall provide all information to allow Buyer and Customers to comply with such regulations. Seller shall supply any quarterly reports required by (US) 49 CFR § 573.7, or any information requested to enable Buyer or Customers to provide such reports to NHTSA or other applicable agencies, or to provide reports or notices to, or respond to inquiries from, any vehicle safety or emissions authority worldwide. Seller shall promptly advise Buyer of any information provided to NHTSA regarding the Parts or substantially similar parts, whether provided by Seller or other entities of which it is aware. Seller shall notify Buyer of the identity of persons on its safety/compliance committee or otherwise responsible for reviewing complaints and analyzing data regarding potential problems with the Parts.

**18. INDEMNIFICATION.**

- a. **Allocation of Risks.** Seller assumes all risks of injuries, death, sickness, or disease to persons, economic loss, or damage to property wherever located, arising or incurred in connection with the Parts or Seller's acts or omissions, including, without limitation, those arising or incurred in connection with the negligent performance, willful misconduct, or breach of the Contract by Seller (including by any of its Subcontractors) or the directors, officers, members,

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managers, employees, agents, or representatives of any of the foregoing (each such party, including Seller, a “Seller Party,” and all such parties collectively referred to as the “Seller Parties”). Seller expressly waives all statutory or legal immunity it might be entitled to as an employer under workers’ compensation laws or any other employee benefit or Applicable Laws.

- b. Indemnification. In addition to Seller’s indemnification obligations set forth elsewhere in these Terms, including, without limitation, as set forth in Sections 14. d., and 18. a., Seller shall defend, reimburse, indemnify and hold harmless Buyer, Customers, and their respective officers, directors, agents, representatives, contractors, employees, consultants, successors and assigns (each, a “Buyer Indemnitee” and collectively, the “Buyer Indemnified Parties”) from and against any Losses based upon, relating to, arising from, or in connection with, any of the following:
- i. Breach of any of Seller’s warranties contained in these Terms, including but not limited to those warranting the quality and conformity of the Parts and the non-infringement of third-party Intellectual Property Rights;
  - ii. Seller’s non-performance of any obligation under the Contract;
  - iii. A Seller Party’s use of any Buyer-Owned Tooling or any other property of Buyer;
  - iv. A Seller Party’s use or occupancy of any Buyer premises or activities thereon;
  - v. A Seller Party’s non-compliance with any manufacturing requirements or Applicable Laws;
  - vi. Any actions taken by Buyer in response to any Recall attributable, in whole or part, to the Parts;
  - vii. Seller’s failure to remit or pay any foreign, international, federal, state, provincial/territorial, or local sales, use, value added, excise duty, or any other taxes or contributions of any nature, as and when due, or failure to file any return, form, or information that any Seller Party may be required to file with any government agency pursuant to applicable manufacturing and legal requirements, in each case to the extent such failure results in taxes, contributions, interest, or penalties assessed against a Buyer Indemnitee;
  - viii. Labor and employment claims or allegations made by any officer, employee, contractor or other agent of a Seller Party, including those involving or based on: (i) payment when due of wages and benefits; (ii) withholding of all payroll taxes, including unemployment insurance, workers’ compensation, and any other withholding or tax required by Applicable Laws (iii) compliance with the U.S. Immigration Reform Control Act, the Immigration and Refugee Protection Act (Canada) and/or other Applicable Laws relating to immigration; (iv) compliance with any applicable manufacturing or legal requirements relating to labor, employment, hiring or termination of employment by a Seller Party in connection with the Contract; and (v) co-employment or joint employment in connection with the Contract; and
  - ix. The tortious misconduct or other wrongdoing of a Seller Party.
- c. Third-Party Claims. The parties will cooperate in the investigations and analysis required for the defense of a Third-Party Claim.

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- i. If a Buyer Indemnitee becomes aware of any dispute, action or suit involving a third party (each, a “Third-Party Claim”) with respect to which such Buyer Indemnitee reasonably believes Seller shall have an obligation pursuant to Section 18. b. to defend, reimburse, indemnify, or hold harmless such Buyer Indemnitee, then the Buyer Indemnitee shall notify Seller of the Third-Party Claim; provided that any delay or failure to notify Seller shall not relieve Seller of its obligations under these Terms or the Contract overall. Following delivery of the notice, Seller shall notify the Buyer Indemnitee as to whether Seller elects to conduct and control the defense or resolution of the Third-Party Claim; provided that such election by Seller shall serve as an affirmation that Seller accepts responsibility to defend, reimburse, indemnify, and hold harmless the Buyer Indemnitee from all Losses. Upon request, Seller shall provide evidence acceptable to the Buyer Indemnitee that Seller has adequate financial resources to fulfill its obligations under this Section 18. c.
- ii. Unless and until Seller delivers the foregoing notice that it elects to conduct and control the defense or resolution of the Third-Party Claim, the Buyer Indemnitee shall have the right to defend, contest, settle or compromise such Third-Party Claim in the exercise of its sole discretion and such defense or settlement shall be subject to, and the Buyer Indemnitee shall receive, reimbursement and indemnification from Seller as set forth in the provisions of this Section. If Seller provides the foregoing notice, then, subject to Buyer Indemnitee’s right to assume sole control of the resolution or defense of the Third-Party Claim as set forth in Section 18. c. (iv) below, Seller shall have the right to conduct and control, at its sole cost and expense and with counsel of its choice (which counsel must be reasonably satisfactory to the Buyer Indemnitee and/or any affected OEM or other Customers), the defense or resolution of such Third-Party Claim, and the Buyer Indemnitee will reasonably cooperate in connection therewith. If Seller elects to assume the defense of a Third-Party Claim, Seller shall diligently conduct the defense and keep the Buyer Indemnitee fully apprised of the status thereof. The Buyer Indemnitee may participate in the defense of such Third-Party Claim that is defended by Seller with counsel of its choice, and the fees and expenses of the Buyer Indemnitee’s counsel shall be paid or reimbursed by Seller as set forth in the provisions of this Section 18. c.
- iii. Seller shall not have any right or authority to compromise or settle such Third-Party Claim without the Buyer Indemnitee’s prior written consent unless all of the following apply: (i) the compromise or settlement would not involve any finding or admission of any violation by the Buyer Indemnitee of any manufacturing requirement or Applicable Laws or any rights of any person or entity, or admission of guilt, wrongdoing or culpability; (ii) the Buyer Indemnitee receives a full and unconditional release of and from all claims that may be made against any of the Buyer Indemnified Parties by the third party asserting the Third-Party Claim with respect to, related to, or arising out of the asserted facts on which the Third-Party Claim is based; and (iii) the sole relief provided is monetary damages that are paid in full by Seller (and there is no imposition of any obligation on any of the Buyer Indemnified Parties, nor any limit on the ability of any of the Buyer Indemnified Parties to conduct its business). No Buyer Indemnitee shall have any liability with respect to any compromise or settlement of such claims effected without its prior written consent.
- iv. Notwithstanding any of the foregoing provisions in this Section 18. c., the Buyer Indemnitee may, at any time, by notice to Seller, assume the exclusive right to defend, compromise, settle or resolve such Third-Party Claim, at Seller’s sole cost and expense, if: (i) the Buyer Indemnitee determines in good faith that defense of the Third-Party Claim by counsel selected by Seller would be inappropriate for reasons

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of existing or potential conflict of interest or because the Buyer Indemnitee has defenses available to it that are distinct from or in conflict with defenses available to Seller or another Buyer Indemnitee; (ii) the Buyer Indemnitee determines that there is a reasonable possibility that the Third-Party Claim may adversely impact it, including damage to reputation, brand or business prospects; or (iii) the Third-Party Claim is asserted by or on behalf of a person or entity that is a, direct or indirect, seller to, or customer of, the Buyer Indemnitee or seeks an injunction or other equitable relief.

- v. Seller shall pay or reimburse the applicable Buyer Indemnitee monthly for its costs of investigation and defense, including reasonable attorney's fees and all other costs actually incurred. Any indemnification for Losses shall be made promptly upon request therefor by a Buyer Indemnitee. If an indemnity or reimbursement payment made by Seller to Buyer is subject to any tax, Seller shall also be liable in an amount equal to such tax payable, including any interest and penalty imposed thereon.
- vi. For purposes of statutes of limitation, and without affecting any of Seller's obligations to the Buyer Indemnified Parties under this Section 18. c., Buyer's indemnification claims under this Section shall not accrue until the indemnifiable liability accrues.

**19. ASSIGNMENT AND SUBCONTRACTING.**

- a. Except as provided for in this Agreement, the rights and obligations under the Contract shall not be assigned, delegated, or otherwise transferred by Seller without the prior written consent of Buyer, which may be withheld in its sole discretion. Buyer may assign the Contract or transfer the Contract, in whole or in part. Without limiting the generality or applicability of the foregoing, Buyer may assign its rights of recovery under the Contract to higher tier suppliers or OEMs in the event of a claim, while remaining responsible for its payment obligations to Seller.
- b. If Seller wishes to have Parts or any Components manufactured, designed, or otherwise dealt with by a Subcontractor, Seller shall notify Buyer in advance, and obtain Buyer's prior written consent, unless Buyer has agreed in writing to exemption of such notice. Such notice shall be given by Seller for all such Parts and Components and for each Subcontractor. Seller shall only utilize Subcontractors approved by Buyer. Notwithstanding the foregoing provisions, Seller shall remain fully responsible and liable for all obligations under the Contract in connection with Parts and Components manufactured by Subcontractors. Seller shall enter into an agreement with each Subcontractor which provides Buyer with all the rights accruing to Buyer under the Contract. Seller's agreements with its Subcontractors shall be freely assignable by Seller to Buyer, at Buyer's sole option, and shall provide that Buyer shall have the right to inspect Subcontractor's relevant manufacturing operations and audit its records of production of any Parts or Components on reasonable notice.

**20. DEFAULT/REMEDIES/CANCELLATION**

- a. Events of Default. The following events shall constitute a default (a "Default") under these Terms and the Contract:
  - i. Seller repudiates, breaches, or threatens to breach any provision of the Contract, including, without limitation, any of Seller's warranties, or fails to timely perform or deliver Parts as specified by Buyer;
  - ii. A material adverse change in the business, operations or property and assets of Seller, the consequence of which is a likelihood that Seller's performance under the Contract may be imminently interrupted, all as determined by Buyer in its sole discretion;

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- iii. A material adverse change in the financial condition of Seller, all as determined by Buyer in its sole discretion, including but not limited to any of the events listed in Section 36(b);
  - iv. Seller fails to timely provide Buyer with adequate and reasonable assurance of Seller's ability to perform timely any of Seller's obligations under the Contract; or
  - v. A change in ownership of more than twenty-five percent of the voting interests (whether direct or beneficial) in Seller without prior notice to, and the prior written consent of, Buyer.
- b. Remedies in Event of Default. Upon the occurrence of a Default by Seller, Buyer's remedies shall be cumulative, shall include the following, and shall be in addition to all remedies provided to Buyer at law or in equity:
- i. Canceling the Contract, in whole or in part, which cancellation shall be effective immediately on the date of the notice of cancellation;
  - ii. Upon demand, Seller shall grant Buyer and its representatives access to the premises of Seller to allow Buyer to pursue its remedies, and if requested, immediately return to Buyer or, if Buyer so elects, release to a third party directed by Buyer, all tooling to which Buyer is entitled under the Contract pursuant to written instruction from Buyer regarding such tooling, such return or release to be at Seller's sole cost and expense;
  - iii. Purchasing any and all Parts, work in process, raw materials, and inventory from Seller by making a termination payment to Seller (provided that Seller has complied with Section 10 and setting off against any termination payment any Losses that Buyer may have incurred under the Contract);
  - iv. Dealing directly with any applicable Subcontractor, including to conduct the following actions: (i) to assume the subcontract or to contract independently with the Subcontractor for provision or completion of the Parts; and (ii) to make payments to Subcontractor and require that all amounts paid to Subcontractor be credited against any amounts still due and owing to Seller. Seller hereby agrees that the payments to Subcontractor shall fully satisfy and discharge any additional amounts due to Seller, irrespective of the original agreed-upon price or the actual amount paid to Subcontractor, and if a Subcontractor provides the Parts because of Seller's Default and, as a result, Buyer is required to pay an amount in excess of the Price, Seller shall reimburse Buyer for such differential in price;
  - v. Commencing arbitration or otherwise seeking all rights and remedies to which it may be entitled, including recovery of all Losses, under law or equity, including the Uniform Commercial Code, the applicable Canadian provincial/territorial Sale of Goods Act, and/or the laws of Mexico, as a Buyer of Goods;
  - vi. Requiring Seller to accept the return of Parts or to provide Buyer with remedial work or replacement Parts that conform to the Contract, all pursuant to Buyer's instructions;
  - vii. Setting off against any amounts owed to Seller the costs incurred in Buyer's exercise of its rights under the Contract prior to or because of Seller's Default; and/or
  - viii. In Buyer's sole discretion, requiring specific performance of the Contract by Seller and adequate assurance of Seller's future performance (which may include a performance bond), and if the same is not provided within a reasonable time not to exceed ten (10) days, terminating the Contract and exercising any of Buyer's remedies available under the Contract, at law, or in equity.
- c. No Election. The remedies reserved to Buyer under the Contract shall be cumulative and additional to any other remedies provided by law or equity. Resort to any remedy by Buyer, as set forth in these Terms or otherwise, shall not be deemed an election of remedies or a waiver of any breach, claim, or other remedies.
- i. No Waiver. No waiver of a breach of any provision of these Terms shall constitute a waiver of any other breach, or of such provision in any other situation. Any failure by

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Buyer to insist on strict performance by Seller of any term or condition contained in the Contract shall not be deemed a waiver of Buyer's rights under the Contract. No waiver by Buyer shall be effective unless reduced to a writing executed by Buyer.

- ii. Taxes. If Buyer receives from or on behalf of Seller any payment in respect of a Default by Seller where the payment is subject to GST/HST/PST levied under the applicable legal requirements (such as the Excise Tax Act (Canada)) or is deemed by the applicable legal requirements (such as Excise Tax Act (Canada)) to be inclusive of GST/HST/PST or is subject to any other tax (including the Mexican Value Added Tax Law), Seller shall be liable for and shall pay to Buyer, in addition to the Default payment, an amount equal to the GST/HST/PST or other tax payable in connection with the payment and such additional amount including any interest and penalty imposed thereon. Any payment received by Buyer from Seller shall be in an amount equal to the agreed amount in addition to any applicable taxes and duties that may be applicable to such payment.

**21. REPLACEMENT AND SERVICE PARTS.** For fifteen (15) years after the conclusion of production of the Vehicles or for so long as Seller continues to manufacture or distribute Parts or for any other period that shall apply under this Section (whichever is longer) (the "SPP"), Seller will make Parts available to Buyer for Buyer's or any of the Customers' current or past model service requirements at the last Contract Price, as adjusted only as Buyer may agree based on quantity of production, changes in the cost of labor and materials, additional costs for special packaging, shipping, and handling, and/or other related services. Seller will maintain all necessary tooling for the duration of the SPP, subject to Buyer's tooling rights, so as to fulfill the requirements of this Section. If the OEM's terms and conditions require a longer SPP, such longer period shall apply. If requested by Buyer, Seller shall provide a reasonable proposal for the continued supply of Service Parts subject to an extended OEM time period. Seller shall provide service literature at a reasonable cost if requested of Buyer by OEM or any other Customers. After the conclusion of the SPP, Seller shall notify Buyer prior to the destruction of any tooling necessary for the manufacture of the Parts, so that Buyer may place a last time buy.

**22. COMPLIANCE WITH LAWS/EQUAL EMPLOYMENT OPPORTUNITY/SUPPLIER CODE OF CONDUCT.**

- a. Seller agrees to comply with all Applicable Laws, including, without limitation, the Customs Tariff (Canada), the Special Economic Measures Act (Canada), the United Nations Act (Canada), the Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law) (Canada), the Corruption of Foreign Public Officials Act (Canada), the Foreign Corrupt Practices Act (US), the Patriot Act (US), the National Defense Authorization Act (US), Money Laundering Control Act (US), the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada), the United Kingdom Bribery Act of 2010 and the other laws, rules, and regulations expressly addressed in these Terms. Seller will ensure compliance with applicable Whistleblower Protection laws. Seller shall comply with applicable sections of the Canadian Environmental Protection Act, 1999, Canadian provincial/territorial environmental protection legislation, EU Directive 2000/53, and regulations promulgated thereunder. All invoices must carry the following certificate, and Seller agrees to comply with the referenced statute as to all Parts: "We hereby certify that these Auto Parts were produced in compliance with all applicable labor and employment laws and regulations and any orders issued by a governmental authority thereunder, including, without limitation, 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, and all applicable requirements of applicable Canadian minimum employment standards legislation." Seller and the Parts shall comply with all applicable data privacy laws and regulations including, without limitation, the California Consumer Privacy Act, the Illinois Biometric

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Information Privacy Act, the EU General Data Protection Regulation, the Personal Information Protection and Electronic Documents Act (Canada), and the Consumer Privacy Protection Act (Canada) (if enacted). All Parts must comply with any applicable Federal Motor Vehicle Safety Standard. At the request of Buyer, Seller will certify its compliance with Applicable Laws in a form reasonably requested by Buyer or Customers.

- b. Equal Employment Opportunity. The parties hereby incorporate by reference the requirements of the Canadian Human Rights Act, Canadian provincial/territorial laws that protect human rights, (US) 41 CFR §§ 60-1.4(a), 60-300.5(a), 60-741.5(a) and if applicable, (US) 29 CFR Part 471, Appendix A to Subpart A, and other similar Applicable Laws, including, without limitation, applicable Canadian human rights legislation and accessibility legislation. The Seller shall abide by the requirements of (US) 41 CFR §§ 60- 1.4(a), 60-300.5(a), 60-741.5(a) and (US) 29 CFR Part 471, Appendix A to Subpart A and other similar Applicable Laws, which, inter alia prohibit discrimination of individuals based on a number of protected grounds, including, without limitation, status as protected veterans, disabilities, citizenship, race, ethnic origin, color, ancestry, age, creed, religion, sex, sexual orientation, gender identity, gender expression, genetic characteristics, family status, marital status, or place of origin.
- c. Forced Labor/Environmental Responsibility. Seller warrants that neither Seller nor any of its Subcontractors will use any illegal or involuntary labor of any type in manufacturing or providing Parts for sale to Buyer, including, but not limited to, child, forced, slave, or prisoner labor. Seller is aware of Buyer's Supplier Sustainability Code of Conduct (the "SSCOC") and acknowledges its responsibilities to comply with the provisions of the SSCOC regarding forced and child labor, environmental and sustainability practices, and support of local communities in locations where Seller does business. The SSCOC is incorporated into, and shall be part of, the Contract. Upon request by Buyer or Buyer's compliance service provider(s), Seller shall provide clear and convincing evidence that the Parts have been produced in compliance with the requirements of the SSCOC. In fulfilling Buyer's Purchase Orders, Seller shall follow procedures promulgated by U.S. Customs and Border Protection ("CBP") to ensure due diligence of the labor practices of its Subcontractors, effective supply chain tracing, and supply chain management of Parts imported into the United States. Without limiting the generality or applicability of the foregoing, Seller may be required to trace the origin of all material used in its Parts to the raw material source, and to confirm the compliant labor practices of all Subcontractors via evidence satisfactory to governmental entities. Seller shall cooperate with, and provide requested information to, Buyer or Buyer's third-party providers of supply chain and content verification regarding the sourcing and production of all raw materials and Components contained in the Parts, including to enable Buyer to comply with the Fighting Against Forced Labour and Child Labour in Supply Chains Act (Canada).

**23. PRODUCT AND CHEMICAL DISCLOSURE.** Buyer reserves the right to request 100% disclosure of material, substance, and chemical composition as necessary to meet the reasonable requirements of Buyer, including regulatory reporting requirements, and/or the requirements of Customers. Seller shall provide product material content reports through the Safety Data Sheets (SDS) or other means identified by Buyer, for all Parts, Components and raw materials sold to Buyer, to the extent required by law or as requested by Buyer. Seller shall: (1) comply with the International Material Data System (including any OEM specific requirements); (2) comply with the United Nations Globally Harmonized System of Classification and Labeling of Chemicals ("GHS"), including (US) 29 CFR 1910.1200, the Hazardous Products Act and Hazardous Products Regulations (Canada) and other applicable regulations; (3) package all Parts containing hazardous substances or hazardous products with labeling, hazard statements and precautionary statements as required by Applicable Laws relating to GHS; (4) provide Buyer with compliant SDS under (US) 29 CFR 1910.1200 (g) or the Hazardous Products Act and Hazardous Products Regulation (Canada) for all Parts containing hazardous substances or hazardous products; (5) comply with all Applicable Laws relating to the transportation of the Parts,



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including the regulations promulgated by the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, including regulations under (US) 49 CFR 100-185 and the Transportation of Dangerous Goods Act, 1992 and the Transportation of Dangerous Goods Regulations (Canada); and (6) provide Buyer with any other information regarding material and chemical composition reasonably requested by Buyer or Customers.

**24. TITLE TRANSFER.** Unless otherwise expressly agreed in writing by Seller and Buyer, title to the Parts shall be conveyed by Seller to Buyer at the point that the risk of loss of the Parts passes from Seller to Buyer under the applicable provision of Incoterms 2020, or, in its absence, other provisions of the Contract.

**25. PARTNERS IN PROTECTION (PIP) AND CUSTOMS TRADE PARTNERSHIP AGAINST TERRORISM (C-TPAT) PROGRAM.** The Canada Border Services Agency (“CBSA”) created the Partners in Protection Program (“PIP”) and CBP has created the Customs Trade Partnership Against Terrorism (“C-TPAT”) program. Under these programs, government and business will work to protect the supply chain from the introduction of terrorist contraband (weapons, explosives, biological, nuclear or chemical agents, etc.) in shipments originating from off-shore of Canada or the United States to entities such as Buyer, drop shipments to sub-tier sellers, or drop shipments to customers, originating from off-shore of Canada or the United States. Seller will comply with applicable Minimum Security Criteria established by CBP or CBSA as applicable. Seller will inform Buyer if Seller is accredited under supply chain security programs such as C-TPAT, AEO (Authorized Economic Operator) or PIP (Partners in Protection) and obtain any necessary authorization to carry out its obligations under the Contract. Seller agrees to ensure the physical integrity and security of all shipments under the Contract against the unauthorized introduction of harmful or dangerous materials, drugs, contraband, or weapons (including weapons of mass destruction), or the introduction of unauthorized personnel in transportation conveyances or containers. Seller’s security measures shall include, but not be limited to, physical security of manufacturing, packing, and shipping areas, restrictions on access of unauthorized personnel to such areas; personnel screening to the maximum limits of Applicable Laws in Seller’s or Subcontractor’s country; and development, implementation, and maintenance of procedures to protect the security and integrity of all shipments.

**26. FREEZING ASSETS OF CORRUPT FOREIGN OFFICIAL ACT/OFAC. RESTRICTED PERSONS.** Seller shall comply with the requirements of the economic sanctions laws of Canada and the United States, including but not limited to: (1) The Freezing Assets of Corrupt Foreign Officials Act (Canada); (2) The Special Economic Measures Act (Canada); and (3) Executive Order No. 13224, 66 Fed Reg. 49079 (September 25, 2001) (the "Order") and other similar requirements contained in the rules and regulations of the Office of Foreign Asset Control, Department of the Treasury of the United States ("OFAC") and in any enabling legislation or other Executive Orders in respect thereof (collectively "Economic Sanctions Laws"). Seller represents, warrants, and covenants that it: (a) is not listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order, (b) is not listed as a designated person in a regulation to the Special Economic Measures Act (Canada), United Nations Act (Canada) or Justice for Victims of Corrupt Foreign Officials Act (Canada); (c) is not listed on any other list of terrorists or terrorist organizations established under U.S. or Canadian law (such lists referred to in (a), (b), and (c) are a "List" and are collectively referred to as the "Lists"); (d) has not been determined by competent authority to have contravened Economic Sanctions Laws; (e) is not and will not become owned or controlled by, nor act for or on behalf of, any person or entity on a List or any other person or entity that has been determined by competent authority to have contravened Economic Sanctions Laws; (f) is not knowingly engaged in, and will not knowingly engage in, any dealings or transactions or be otherwise associated with such persons or entities on the Lists or that has been determined by competent authority to have contravened Economic Sanctions Laws; and (g) will cooperate with Buyer in providing such additional information and documentation on Seller's legal or beneficial ownership, policies, procedures and sources of funds as Buyer reasonably deems necessary or

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prudent solely to enable Buyer (or Seller) to comply with Economic Sanctions Laws or anti-money laundering laws as now in existence or hereafter amended.

**27. EXPORT CONTROLS.**

- a. Seller shall comply with: (1) the Export and Import Permits Act of Canada (“EIPA”); (2) the International Traffic in Arms Regulations of the United States (“ITAR”); (3) the Export Administration Regulations (“EAR”) of the United States ; (4) similar laws, regulations and rules in force in Canada or the United States controlling the exportation of goods (collectively “Export Control Laws”); and (5) the terms of any export permit, export license, or export or temporary import exemption/exception applicable to the Contract. Seller shall exercise strict control over the disclosure of and access to technical data, information and other items received under the Contract in accordance with applicable Export Control Laws.
- b. Seller agrees that no technical data, information or other items provided by Buyer in connection with the Contract shall be provided to any Non-U.S./Non-Canadian Persons or to a foreign entity, including without limitation, a foreign employee or subsidiary of Seller (including those located in Canada or the U.S.), without the express written authorization of Buyer, together with the Seller’s obtaining of the appropriate export license, technical assistance agreement or other requisite authorization for EIPA or ITAR-controlled technical data or items.

**28. CONFLICT-FREE MINERALS.** Seller warrants that the Parts do not contain conflict minerals as defined by the Wall Street Reform and Consumer Protection Act enacted by the United States of America and its implementing regulations. Seller will supply documentation demonstrating that Parts are conflict-free within fourteen (14) days of such a request by Buyer. Seller will include contractual language in agreements with Subcontractors, prohibiting the use of conflict minerals and requiring Subcontractors to supply, within fourteen (14) days of Buyer’s request, documentation demonstrating that the Goods or inputs they provide for incorporation into the Parts are free of conflict minerals.

**29. ENVIRONMENTAL, SOCIAL AND GOVERNANCE DIRECTIVES.** Buyer or Customers may, from time to time, adopt policies and procedures intended to meet Sustainable Development goals (collectively, “ESG Directives”). Buyer may require Seller to adopt reasonable policies and procedures consistent with such ESG Directives in its development and production of the Parts, and to report from time to time on its progress in meeting such requirements relating to the ESG Directives.

**30. CYBERSECURITY/DATA PRIVACY/PRODUCT CYBERSECURITY.**

- a. Seller shall: (1) keep and maintain the Buyer’s information in such a manner and using such a degree of care as is appropriate to avoid unauthorized access, use, disclosure and/or modification; (2) implement administrative, physical and technical safeguards to protect its electronic information technology systems (“IT Systems”) that are no less rigorous than accepted industry practices and shall ensure that all such safeguards, including the manner in which information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws; and (3) limit access to Buyer’s identifiers, such as its employer identification number, banking information and account numbers to personnel with a need to know such information. Seller shall timely notify Buyer in event of a security breach, which for purposes of this Agreement shall mean any act or omission that compromises: (A) the security, confidentiality, or integrity of its IT Systems; (B) the physical, technical, or administrative or organizational safeguards put in place by Seller that maintain the security, confidentiality, or integrity of its IT Systems; or (C) the Parts or other deliverables provided by Seller to Buyer. Software used or delivered in connection with the Contract may not contain any features which Seller could have detected in accordance with the current state of the art and which endanger the

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integrity, trustworthiness and availability of the Parts, other hardware or software, or data. Seller shall also: (4) assist Buyer and provide requested information to Buyer to the extent permitted by Applicable Laws in the event of a security breach or other cybersecurity incident; (5) adopt other reasonable cybersecurity measures identified by Buyer; and (6) upon request from Buyer, demonstrate compliance with this Section 30 through a third-party audit or other reasonable measure selected by Buyer. If Seller is found to be non-compliant, such audit will be at Seller's expense.

- b. Personal Data. For purpose of these Terms, "Personal Data" is: (1) information that relates to an identifiable natural person (including but not limited to Buyer's employees, Customers and consumers) that directly or indirectly can identify that person; or (2) personal data according to national, federal, state, provincial/territorial, and international laws and regulations now or later in effect. Seller shall process any Personal Data in accordance with all Applicable Laws. Seller shall not provide any Parts which transmit any Personal Data without all proper disclosures and consent. Without limiting the generality or applicability of the foregoing, Seller in its operations, and in the manufacture of the Parts, shall comply with the General Data Protection Regulation of the European Union, the Personal Information Protection and Electronic Documents Act (Canada), the Consumer Privacy Protection Act (Canada) (if enacted), the California Consumer Privacy Act, and the California Privacy Rights Act.
- c. Seller shall maintain a reasonable, risk-based program, supported by appropriate policies and procedures, to ensure the cybersecurity of any Part that includes software, hardware, and/or other electronic components, and such product cybersecurity program must provide for security by design, vulnerability management, governance, and other elements identified by Buyer. Such program must be consistent with industry best practices. Upon request from Buyer or its Customer, Seller shall at its expense, demonstrate compliance with this Section 30. c. through a third-party audit or other reasonable measure selected by Buyer or its Customer.

**31. DISPUTE RESOLUTION.** Any and all disputes, claims or causes of action arising out of or relating to the Contract or the Parts (including, without limitation, any alleged violation of the Contract, any controversy relating to the interpretation or enforceability of this Section 31, the arbitrability of any dispute, or any claim that any of these Terms (or any part of the Contract at large) is invalid, illegal or otherwise voidable or void) (collectively, "Disputes") shall be resolved in accordance with the procedures specified in this Section 31, which shall constitute the sole and exclusive procedures for the resolution of any such Disputes:

- a. Negotiation. The parties shall attempt promptly and in good faith to resolve any Dispute by without prejudice negotiation between senior party representatives not having day to day responsibilities for the transactions underlying the Dispute;
- b. Mediation/Arbitration.
  - i. Mediation. If any Dispute should arise between the parties which, in either party's good faith judgment, cannot be resolved through negotiation, the parties shall endeavor to settle the Dispute by mediation. Either party may request in writing that the other party mediate the Dispute; such notice shall set forth the subject of the Dispute and the relief requested ("Dispute Notice"). Unless the parties otherwise agree, the mediation shall be conducted by a mediator affiliated with and under the rules of JAMS (jamsadr.com).
  - ii. Arbitration. If the Dispute is not resolved for any reason within one hundred and twenty (120) days following the issuance of the Dispute Notice, or if either party confirms in

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writing that it has no wish to engage in negotiation or mediation, either party may refer the dispute to final and binding arbitration under the JAMS International Arbitration Rules (the "JAMS Rules"), except to the extent of conflicts between the JAMS Rules and the provisions of this Contract, in which event the provisions of this Contract shall prevail.

- iii. If, independent of the parties' actions or inactions, JAMS cannot provide mediation or arbitration services, as the case may be, the mediation or arbitration, as the case may be, shall be conducted by the International Institute for Conflict Prevention & Resolution (formerly known as the CPR Institute for Dispute Resolution) (the "CPR") in accordance with its respective CPR Mediation Procedure and/or Arbitration Rules except as provided herein..
- c. The arbitration shall be conducted by a panel of three (3) arbitrators, none of whom may be the mediator who presided over the mediation provided for in Section 31.a. The party initiating the arbitration shall designate its selected arbitrator in its demand for arbitration. The other party shall then designate its selected arbitrator in its Statement of Defense (as defined in the JAMS Rules). The arbitrators selected by the parties shall then agree upon a third arbitrator, who shall be the presiding arbitrator, within thirty (30) days after the selection of the second arbitrator. If either or both of the parties fails to appoint an arbitrator as required in this Section 31.c., or if the party-selected arbitrators cannot agree on the third arbitrator, then the remaining arbitrators shall be appointed in accordance with the JAMS Rules to yield a total of three (3) arbitrators.
- d. Damages. The arbitrators shall not award to either party damages of a different nature than, or in excess of, the damages available to such party under the Contract. The award of the arbitrator(s) shall be made in writing and shall contain the reasons or grounds therefor. Any award issued by the arbitral tribunal shall be final and binding on the parties, may be filed in any court of competent jurisdiction, and may be enforced by a party as a final judgment in such court.
- e. The parties shall each bear their own attorneys' fees and legal costs and expenses. The parties shall share the fees and expenses of the arbitrators and JAMS' administrative fees in equal proportions. Notwithstanding the foregoing, if Buyer is forced to reimburse any of the Customers for their attorneys' fees, Seller shall reimburse Buyer for all such attorneys' fees.
- f. Provisional Remedies; Legal Action. Notwithstanding the provisions of this Section 31, a party may file a court proceeding limited to seeking provisional judicial relief pending the outcome of mediation or arbitration. If any legal action or court proceeding (each, a "Proceeding") becomes necessary to seek such judicial relief, or to enforce the provisions of this Section 31 such Proceeding shall be brought exclusively in the Superior Court of Justice located in Toronto, Ontario, and the parties attorn and agree to the exclusive jurisdiction of such court for such purpose. For the avoidance of doubt, the commencement of any Proceeding shall not affect Seller's obligations under the Contract regarding Buyer's Confidential Information.
- g. Governing Law/Venue. The interpretation of the Contract, and the adjudication or resolution of all Disputes in any mediation, arbitration, or Proceeding shall be governed by the substantive laws of the Province of Ontario of the Dominion of Canada. The provisions of the United Nations Convention on Contracts for the International Sale of Goods, the International Sale of Goods Act (Ontario, Canada), and all conflicts of law provisions that would require application of any substantive law other than that of the Province of Ontario, are excluded and shall not apply. Provided however, that the provisions of these Terms and the Contract as a whole shall prevail over any contrary provision of the Sale of Goods Act (Ontario, Canada). For the avoidance of doubt, this Section 31 g. shall not relieve Seller of its obligations to comply with Applicable Laws outside Ontario or Canada as set out in these Terms. The place of mediation

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and arbitration shall be Toronto, Ontario, Canada except that if Buyer's Customer requires Buyer to arbitrate in another jurisdiction, and Buyer wishes to join or implead Seller in such proceeding, Seller hereby consents to arbitration in such jurisdiction as set forth in subparagraph k below. The language to be used in all aspects of mediation and arbitration shall be English.

- h. The Parties agree that any negotiation, mediation or arbitration carried out hereunder shall be kept strictly private and confidential, and that the existence of the negotiation, mediation or arbitration and any element of such proceedings (including but not limited to all awards, the identity of the Parties and all witnesses and experts, all materials created for the purposes of the negotiation, mediation or arbitration, all testimony or other oral submissions, all documents disclosed in the negotiation, mediation or arbitration and all documents produced by a party that were not already in the possession of the other party) shall be kept strictly private and confidential, except (i) with the consent of the parties, (ii) to the extent disclosure may be lawfully required in bona fide judicial proceedings relating to the arbitration, (iii) where disclosure is lawfully required by a legal duty, and (iv) where such information is already in the public domain other than as a result of a breach of this clause. The parties shall request that the arbitral tribunal and JAMS keep any arbitration carried out hereunder strictly private and confidential, including but not limited to all of the foregoing items, and shall request that the arbitral tribunal and JAMS refrain from publishing or disclosing any such items.
- i. The parties agree that while any proceeding is pending pursuant to this Section 31, and subject to the rights and obligations specified in the remainder of the Contract, the parties shall continue to perform their obligations under this Contract, provided that such performance shall be without prejudice to the rights and remedies of the parties and shall not be read or construed as a waiver of a party's right to claim for recovery of any losses suffered as a result of the continued performance of this Contract.
- j. Except as otherwise specifically permitted by the Contract, no undisputed payment due or payable by a party shall be withheld on account of a pending proceeding pursuant to this Section 31.
- k. OEM or Customer Proceedings. Notwithstanding the foregoing provisions, should the OEM or any of the other Customers assert a claim against Buyer relating to the Parts or to Seller's performance under the Contract, and should the OEM or other of the Customers initiate any kind of a dispute resolution procedure, including, without limitation, a senior party negotiation, mediation, arbitration, or Proceeding against Buyer arising out of such claim (each, a "DR Proceeding"), Seller hereby agrees to: (1) be joined as a party or impleaded in each such DR Proceeding if Buyer so elects; (2) otherwise participate in such DR Proceeding as Buyer so elects; and (3) waive any defense or objection to venue, legal seat, admissibility, jurisdiction, composition of the arbitral tribunal (if any), applicable rules, and language in each such DR Proceeding unless Buyer agrees otherwise in writing.
- l. Any arbitration or Proceeding initiated by Seller must be commenced no later than one (1) year after the breach or other event from which Seller's claim accrues.
- m. Tolling. Each party agrees that any applicable limitation period, whether arising from the Contract, Applicable Laws, or otherwise, will be tolled and suspended beginning when a party provides a Dispute Notice to the other party or when the parties begin negotiations under Section 31 a., whichever is earlier. Tolling and suspension of the limitations period will continue until: (a) the parties resolve the Dispute as evidenced by a written settlement agreement; or (b) the Dispute is referred to binding arbitration pursuant to paragraph (b) above, whichever is earlier. Notwithstanding the foregoing, in the absence of a notice from one party to the other to submit the Dispute to binding arbitration, either party may provide the other party

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with notice that it desires the running of the limitation period to recommence. Such limitation period will recommence 45 days thereafter.

**32. CONFIDENTIALITY.** Seller acknowledges that the information transmitted by Buyer to Seller in the course of performance of the Contract or previously includes proprietary and confidential information of Buyer and/or Customers (the “Confidential Information”), regardless of whether such information is marked or identified as confidential, or is or has been delivered to Seller on a confidential and nonpublic basis for the purpose of performing the Contract only. Additionally, all Contract Documents are among the Confidential Information. Seller agrees to keep all Confidential Information in strictest confidence, and further agrees not to disclose or permit its disclosure to others, or use it for other than the purpose of fulfillment of the Contract. Seller shall: (i) disclose Confidential Information within Seller's organization only to those employees who have a need to know it in order to fulfill Seller's obligations under the Contract and who have agreed to maintain its confidentiality; and (ii) secure the Confidential Information from being divulged to third parties not employed by Seller without the prior written consent of Buyer, including by having all recipients acknowledge the confidential status of such Confidential Information and agree to the same restrictions as those which bind Seller under this Section 32. This obligation of confidentiality shall survive termination of the Contract and will continue for the longest of (i) a period of five years from the date of disclosure of the Confidential Information or (ii) a period ending three years after termination or expiration of the Contract or (iii) the duration for which the Confidential Information remains a trade secret. Notwithstanding the preceding sentence, Buyer reserves the right to extend the period of confidentiality at its reasonable discretion. The restrictions and obligations of this Section 32 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; (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 the Confidential Information; or (d) is required to be disclosed pursuant to law, regulation or lawful order or process, in which event, however, Seller shall promptly notify Buyer upon Seller's receipt of such demand for disclosure so as to permit Buyer to oppose or limit such disclosure before it happens, unless such notice is unlawful. Notwithstanding anything to the contrary in these Terms, any separate prior confidentiality or nondisclosure agreement between the parties will remain in effect except as expressly modified in a subsequent writing, and to the extent of a conflict between the express terms of such prior agreement relating to Buyer's or Customers' Confidential Information and this Section 32, the terms of such prior agreement will control with respect to the Confidential Information. Either party may make disclosures: (x) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney solely for the purpose of reporting or investigating a suspected violation of law; or (y) in a complaint, Statement of Claim, Notice of Application, or other document filed in a lawsuit or other proceeding, if such filing is made under seal or protective order.

**33. ADVERTISING/MARKETING.**

- a. Advertising. Without Buyer's prior written consent in each instance or as required for the Parts subject to a Purchase Order, Seller shall not (i) use or permit use of the name of the OEM or any Customers, the words “Toyota Tsusho” or any similar word, any trademark, trade dress, service mark, logo, or other proprietary designations of Buyer or any Customers, whether registered or unregistered, in the description or marketing of the Parts or any other product produced, provided, distributed or sold by or on behalf of Seller (including by any of its Subcontractors) or (ii) advertise, publicize, state, or publish that Buyer or any of its Affiliates is a customer of Seller or has endorsed Seller or its Subcontractors in any way.

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- b. **Marketing Claims.** Seller will not disclose or imply in its marketing efforts or otherwise that any of Seller's other products are equivalent to the Parts purchased by Buyer unless proven and then only to the extent agreed in advance in writing by Buyer.

**34. INSURANCE.** Seller further agrees to obtain, at its own cost and expense, insurance against all liability arising from any of its acts or omissions in connection with the Contract, including commercial general liability, products liability, recall liability, completed operations liability and contractual indemnity liability, naming itself and Buyer as insured in the amount of ten million dollars (\$10,000,000) per occurrence and twenty million dollars (\$20,000,000) aggregate annual limit. Seller shall also obtain: (1) all risk property perils insurance covering the full replacement value of Buyer Tooling and all other tooling and equipment required by Seller to perform its obligations under the Contract; (2) employer's liability insurance with a minimum coverage of one million dollars (\$1,000,000); and (3) workers' compensation insurance as commonly carried by prudent businesses similarly situated. All insurance coverages required under the terms of this Agreement shall be procured from insurers with A.M. Best Company ratings of at least A- and with financial size categories of at least Class VII. Buyer (and if applicable each of its parent and subsidiary companies participating in the supply chain for the Parts) shall be an additional insured on all such insurance (except for workers' compensation). Such policies shall waive subrogation against Buyer, and against any Customers if Buyer requests same. Such policies shall contain endorsements that the insurance is primary and not excess over any other insurance that Buyer shall obtain. Buyer may require Seller to increase the amount of coverage or modify the coverages required by this Section 34 if Buyer determines that such increase or modifications are necessary to provide adequate protection to Buyer, or if Customer requires additional coverage of Buyer. Seller shall furnish Buyer, within five (5) business days of any Buyer request, a certificate or certificates from Seller's insurance carrier(s) evidencing such insurance and including an endorsement naming Buyer and its affiliates (including without limitation, its parent and subsidiary companies) as additional insureds and providing that Buyer shall receive ninety (90) days prior written notice by the insurance carrier(s) of any change, expiration, cancellation or reduction in any such coverage. To the extent Applicable Laws require greater and/or additional coverages, Seller shall comply with such requirements. Buyer's approval of any of Seller's insurance policies does not relieve, limit, or otherwise affect: (A) any of Seller's obligations under the Contract, including but not limited to its indemnity or defense obligations to Buyer; and (B) Seller's liability to Buyer on any claims which are outside the scope of Seller's insurance coverage or which exceed the required insurance limits of such policy(ies).

**35. MISCELLANEOUS PROVISIONS.**

- a. **Entire Agreement.** The Contract constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior oral or written representations or agreements by the parties with respect to such subject matter, including Buyer's request for quotation and Seller's quotation unless the parties expressly and specifically incorporate one or the other or both into the Contract. The parties shall not be bound by any subsequent terms, conditions, understandings, or agreements purporting to modify the terms of the Contract, unless such modification is made in accordance with these Terms or is reduced to a writing signed by the parties.
- b. Buyer and Seller are independent contracting parties and nothing in the Contract makes either party the agent or legal representative of the other party for any reason.
- c. **Notices.** Notices required under these Terms must be in writing and must be sent by one of the following means: (i) certified mail return receipt requested; (ii) hand delivery; or (iii) a nationally recognized overnight courier service. Notices to Buyer shall be sent to Buyer's address designated in the Purchase Order, with a copy to Toyota Tsusho America, Inc. 825 Third Avenue, New York, New York 10022 Attn: Legal Department. Notices sent to Seller shall be sent to such address and to the attention of such department or individual that is

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set forth on the most recent Purchase Order or that reflects the most recent contact information on file with Buyer. Seller shall promptly notify Buyer of any of the following events:

- i. if Seller changes its name or changes its principal place of business to a location other than that maintained in Buyer's files;
  - ii. any cancellation, material change, or reduction of insurance coverages addressed in Section 34;
  - iii. a Change of Control;
  - iv. any and all facts, circumstances, incidents, or notices that, in connection with any of the Parts or the Contract, may give rise to (a) a Loss in an aggregate amount greater than or equal to \$1,000,000; (b) a claim for any personal injury, or property damage caused by a Part; or (c) a Recall, including, without limitation, a recall relating to any component, material, or ingredient contained in any Part;
  - v. if Seller: (a) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (b) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any domestic or foreign bankruptcy, insolvency, or similar proceeding; (c) makes or seeks to make a general assignment for the benefit of its creditors; (d) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business; or (e) knows or has reason to believe that a Subcontractor that Seller relies upon to fulfill Seller's obligations under the Contract has or is reasonably likely to experience a material adverse change in its business, operations, property, assets, or financial condition.
  - vi. if Seller knows or has reason to believe that Seller or a Subcontractor that Seller relies upon to fulfill Seller's obligations under the Contract is non-compliant with the requirements of the SSCOC or is unable to demonstrate full compliance.
- d. No Waiver. No waiver of a breach of any provision of the Contract shall constitute a waiver of any other breach or of such provision. Any failure by Buyer to insist on strict performance by Seller of any term or condition of the Contract shall not be deemed a waiver of Buyer's rights thereunder. Any such waiver must be explicit and in writing.
- e. The Contract will not be construed against either party as the drafter.

**36. *AUDIT, INSPECTION AND INFORMATION RIGHTS.***

- a. Financial Review. Buyer or a third-party auditor designated by Buyer may at any time review the financial condition of Seller and its affiliates, and 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 such 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 Contract.
- b. Seller Insolvency. The Contract may be terminated immediately by Buyer without liability to Seller if any of the following or comparable events occur, and Seller will reimburse



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Buyer for all costs incurred by Buyer in connection with any of the following, including, without limitation, attorneys' and other professional fees: (i) Seller becomes insolvent; (ii) Seller files a voluntary petition in bankruptcy; (iii) an involuntary petition in bankruptcy is filed against Seller and is not dismissed within ninety (90) days; (iv) a receiver or trustee is appointed for Seller; (v) Seller needs accommodations from Buyer, financial or otherwise, in order to meet its obligations under the Contract; (vi) Seller executes an assignment for the benefit of creditors; (vii) Seller fails to meet the credit underwriting standards of an applicable credit insurance program; or (viii) Seller is unable promptly to provide Buyer with adequate assurance of Seller's financial capability to perform any of Seller's obligations under the Contract on a timely basis. In the event that the Contract is not terminated in accordance with the immediately preceding sentence, upon the occurrence of an event described in the immediately preceding sentence, Buyer may make equitable adjustments in the Price, payment terms, and/or delivery requirements under the Contract as Buyer deems appropriate to address the change in Seller's circumstances, including, without limitation, Seller's actual or potential diminished ability to perform fully its warranty obligations or any of its other requirements under the Contract.

- c. Operational Problems. Seller agrees that if Seller experiences any delivery or operational problems, Buyer may, but is not required to, designate one or more representatives to be present in Seller's applicable facility to observe Seller's operations. Seller agrees that if Buyer provides to Seller any accommodations (financial or other) that are necessary for Seller to fulfill its obligations under the Contract, Seller will reimburse Buyer for all costs, including attorneys' and other professionals' fees, incurred by Buyer in connection with such accommodations and will grant access to Buyer to use Seller's premises, the machinery and other equipment therein, and all other property as are necessary to produce the Parts. Notwithstanding anything contained in this Section 36 to the contrary, financial information provided by Seller to Buyer under the Contract and pursuant to a directed supply relationship may be provided to Customers if Seller fails to provide Buyer with adequate assurance of Seller's financial capability to perform any of Seller's obligations under the Contract on a timely basis.
- d. To the extent requested by Buyer or any of the Customers, Seller will provide information regarding its Subcontractors, as well as its ownership and control.
- e. Inspection. If requested by Buyer, Seller shall make its production facilities, and its records of production and/or testing of Parts available for inspection by Buyer or Customers on reasonable notice. Seller shall maintain the records of its design, testing, production, and inspection of Parts for at least fifteen (15) years after termination of the OEM's production of the Vehicles, or for any longer period required by the OEM, any of the other Customers, or Applicable Laws. This requirement shall also pertain to, without limitation, all records (and each level of revision thereto) regarding Advanced Product Quality Planning (APQP), Production Part Approval Process (PPAP), Design Failure Mode and Effects Analyses (DFMEA), and Process Failure Mode and Effects Analyses (PFMEA).
- f. LIMITATION OF LIABILITY. IN NO EVENT SHALL SELLER BE ENTITLED TO RECOVER FROM BUYER OR ANY OF BUYER'S AGENTS, DIRECTORS, OFFICERS, EMPLOYEES, OR SUBCONTRACTORS (COLLECTIVELY, THE "BUYER PARTIES") ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR ANY OTHER DAMAGES INCIDENT TO, ARISING OUT OF, IN CONNECTION WITH, OR RESULTING FROM ANY CLAIM THAT (1) ANY OF THE BUYER PARTIES BREACHED THE CONTRACT, (2) ANY OF THE BUYER PARTIES ARE LIABLE FOR NEGLIGENCE OR OTHER TORTIOUS MISCONDUCT IN CONNECTION WITH ACTIONS OR OMISSIONS

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RELATED TO THE CONTRACT, OR (3) ANY OF THE BUYER PARTIES ARE LIABLE UNDER ANY OTHER LEGAL THEORY OR CAUSE OF ACTION FOR ANY OTHER WRONGFUL ACTS OR OMISSIONS IN CONNECTION WITH ACTIVITIES RELATED TO THE CONTRACT. ADDITIONALLY, IN NO EVENT SHALL THE BUYER PARTIES' TOTAL DAMAGES LIABILITY EXCEED THE TOTAL AMOUNT PAID TO SELLER UNDER THE CONTRACT AT ISSUE DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF ACCRUAL OF SELLER'S CLAIM(S).

- 37. SURVIVAL.** Sections 1, 2, 7, 10-11, 13-37, and any other provision of the Contract, including any of these Terms, which by its nature extends beyond the expiration, termination or cancellation of the Contract shall remain in full force and effect until fulfilled or performed and shall inure to the benefit of and be binding upon Seller and Buyer and their respective permitted successors and assigns.

Seller, by its designated representative, acknowledges that it has reviewed and accepted these Terms.

\_\_\_\_\_ (Seller)

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_