

## General Terms and Conditions of Purchase

### I. General

1. These terms and conditions (“Terms”) apply to, are incorporated into, and form a part of: (i) all purchase orders and scheduling agreements (both referred to as “Orders”) issued by Schaeffler Group USA Inc. or one of its U.S. subsidiaries or affiliates (as applicable, “Buyer”); and (ii) all project/supply agreements in which the Terms are referenced or otherwise incorporated. The terms “Buyer” and “Supplier” refer to the entities designated as such on the Order or other Agreement (The term “Agreement” includes Orders, Project/Supply Agreements, and where no Project/Supply Agreement is executed, the contract is formed when Supplier accepts any Order, schedule, release, or any other documents incorporated by reference. An “Affiliate” or “Affiliates” shall mean any entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with a party. A “Project/Supply Agreement” means a master purchase agreement or other supply agreement, if any and as applicable. A “Release” means any delivery schedule issued under a Blanket Order or on the face of a Blanket Order. A “Blanket Order” shall mean an Order where Contract Products are ordered over a period of time by means of Releases issued from time to time under such Blanket Order, or, as the case may be, via amendments on the face of such Blanket Order). No Order may be construed as an acceptance of any offer made by Supplier, and if Supplier makes an offer, Buyer’s Order is a rejection of that offer. Each Order issued by Buyer is an offer to Supplier for the purchase of Contract Products (the term “Contract Products” refers to the Contract Products and/or services to be provided to Buyer by Supplier). A quotation or any other response to a request for quote (“RFQ”) or request for proposal (“RFP”) does not constitute an acceptance of any offer, quote or proposal made by Buyer. No terms or conditions stipulated by the Supplier or any deviating agreements will apply unless confirmed by Buyer in a Signed Writing (A “Signed Writing” is a writing signed by Buyer, and does not include the body of an e-mail or other electronic document, although a Signed Writing may be attached to an e-mail or other electronic document.). Neither Buyer’s failure to expressly object to an agreement nor any acceptance of or payment for Contract Products by Buyer may be construed as Buyer’s agreement to nor acceptance of any Supplier proposed terms or conditions.

### II. Contract Formation

2.1. Acceptance. Supplier accepts the Agreement at the earliest of Supplier’s: (i) shipment of Contract Products, (ii) performance of services, (iii) commencement of work, (iv) written acknowledgement confirming acceptance, or (v) performance of any other action that recognizes the existence of a contract pertaining to the Contract Products.

2.2. Incorporated Documents. In case of any delivery of Contract Products, the applicable quality assurance agreement, logistics agreement, as well as the shipping and transport instructions of Buyer in their respective applicable version shall be entered into, form an integral part of this Agreement, and are incorporated herein by reference. The parties shall exchange fully-executed copies of these agreements for their records.

### III. Scope of Provision of Goods and Services / Changes to Scope / Spare Parts / Subcontractors

3.1. Supplier Responsibilities. Supplier shall ensure that all significant data and circumstances in terms of its performance of its contractual obligations as well as the intended use of its deliveries are known to the Supplier in good time. Offers shall be at no expense to Buyer. The Supplier shall ensure before providing any offer that it fully understands the Buyer’s and Customers’ intended purposes, and that Buyer understands and has all information required to meet all Buyer and legal requirements exactly. The Supplier shall check all documents, including drawings and specifications, provided for matters including the local situation, correctness, and feasibility, as well as any performance of preliminary work by third parties. The Supplier shall notify Buyer in writing without unreasonable delay of any concerns with any of these documents and work with Buyer to ensure a resolution to any such concern.

3.2. Buyer Modifications/Changes. Buyer is entitled to request from the Supplier modifications in the design and construction of the Contract Products during the Planning Zone and the Trade-off Zone (as those terms are defined herein). The Supplier shall implement such requested modifications within a reasonable period of time. Mutually satisfactory agreements shall be concluded concerning the impact of such modifications, in particular with regard to delivery dates and extra and reduced costs, in accordance with the definitions stated below. Buyer will determine such impact within its reasonable discretion if agreement regarding these matters cannot be reached within a reasonable period of time. Supplier shall not suspend performance under any Agreement as a result of any such modifications or changes.

Lead Times (defined as the calendar days from the time of the Order to delivery to the Incoterms/shipment terms named place) for Orders shall mean Firm Zone plus Trade-off Zone, and shall be governed by the following:

(a) “Firm Zone” is the time period in which Supplier has the go-ahead for production. If the date of a scheduled line lies within the Firm Zone, Supplier has the go-ahead to produce the relevant quantity and Buyer has the obligation to purchase such production at the applicable Prices. Should Buyer cancel an Order within the Firm Zone, Buyer will bear any and all material and work-in-process costs that cannot be used by Supplier in a subsequent Order or elsewhere in its production (“WIP”), as well as production costs, at the agreed-upon prices, associated with the scheduled quantity. In order to receive such reimbursement, Supplier must deliver to Buyer the WIP with reasonable documentation of its costs and the related production costs, or Buyer may elect to have Supplier continue production on WIP subject to Buyer’s obligation to purchase such conforming Contract Products under the terms of the Agreement in question. Notwithstanding the foregoing, Buyer shall not be responsible for any raw materials purchased by Supplier which can be used elsewhere, which burden is on Supplier to prove they cannot, and any liability of Buyer to Supplier for said cancellation shall be capped at the purchase price of the Contract Products.

(b) “Trade-off Zone” is the time period in which Supplier has the go-ahead for procurement of input materials. If the date of a scheduled line lies within the Trade-Off Zone, Supplier has the go-ahead to purchase any input materials necessary to produce the scheduled quantity. Buyer will purchase from Supplier in full such materials, at the agreed-upon prices, but not for any other production costs or WIP, in

## General Terms and Conditions of Purchase

the event that Buyer should subsequently cancel the scheduled quantity. Such purchased materials will be delivered by Supplier to Buyer, FCA (Supplier's facility). Notwithstanding the foregoing, Buyer shall not be responsible for any raw materials purchased by Supplier which can be used elsewhere, which burden is on Supplier to prove they cannot, and any liability of Buyer to Supplier for said cancellation shall be capped at the purchase price of the Contract Products.

(c) "Planning Zone" or "Forecasts" Scheduled lines that lie beyond the Firm and Trade-Off Zones fall within the Planning Zone, also called Forecasts, and, in accordance with Section 3.6 below, are for rough guidance only, being without any commitment on the part of Buyer.

3.3. No Supplier Modifications/Changes. Supplier shall not change any specifications, manufacturing locations, subcontractors, suppliers, physical composition of, or processes used to manufacture the Contract Products without prior approval in a Signed Writing from Buyer's quality management department.

3.4. Duration. When the Contract Products will make up or be incorporated into a Buyer product sold directly or indirectly to an automotive OEM for incorporation into a motor vehicle, unless the Agreement states otherwise, the Agreement will be subject to the Terms and for the life of the applicable vehicle program.

3.5. Forecasts. Buyer may provide Supplier with forecasts of its future anticipated supply requirements. Supplier acknowledges that any such forecasts, including, without limitation, estimated annual volumes and Target Volumes, are for informational purposes only and are based on a number of factors that may change over time. Buyer makes no representation, warranty, guaranty or commitment of any kind or nature, express or implied, regarding any such forecasts, including, without limitation, with respect to the accuracy or completeness of such forecasts.

3.6. Service and Replacement Requirements.

(a) Procurement of Contract Products for Service Requirements. In return for Buyer entering into an Agreement, Supplier grants to Buyer an option during the term of such Agreement, and for fifteen (15) years thereafter, to purchase Buyer's requirements for Contract Products, including any that become obsolete. The price of such Contract Products shall be firm, at the last pre-termination price, for the first five (5) years following the termination of such Agreement or obsolescence of such Contract Products, as applicable, except for and only to the extent changes are required by cost differences in packaging, or at the then current price offered by Supplier, whichever is lowest.

(b) Procurement of Replacement Parts and Service. For Contract Products that are serviceable or repairable but that are not warrantable or that are otherwise not the responsibility of Supplier to repair hereunder, Supplier agrees to provide service to repair or replacement subcomponents for Contract Products to Buyer, at Buyer's option, at Supplier's lowest price for the same quality service or replacement subcomponents, as applicable, as offered or sold by Supplier to other customers of Supplier. This option of Buyer to purchase service and replacement subcomponents on these serviceable Contract Products, is granted by Supplier in return for Buyer agreeing to enter into an Agreement and shall survive for the longer of (i) the warranty term or (ii) fifteen (15) years following either the applicable Agreement termination or the obsolescence of the Contract Products, whichever is later.

3.7. Subcontractors. The Supplier shall be entitled to assign any of its duties to subcontractors only with Buyer's prior Signed Writing.

### IV. Prices / Payment Terms

4.1. Payment. The agreed prices are firm prices. No increases or surcharges shall be effective unless agreed to by Buyer in a Signed Writing. Unless otherwise agreed, payment will be made after ninety (90) days (NET 90). These periods are computed from (i) the time of performance in compliance with the contract and (ii) receipt of a proper and verifiable invoice. If Buyer receives and accepts a delivery at an earlier date than the date agreed upon, the payment period begins with the agreed delivery date. Invoices are to be submitted without carbon copies but shall include the purchase order number, purchase order line, Buyer's account and customer reference, place of unloading, Supplier number, part number, number of pieces, price per piece, and volume per delivery. The Supplier agrees to participate in a credit memo procedure upon Buyer's request.

4.2. Competitiveness.

(a) If at any time during the term of an Agreement, a third party makes a competitive offer to sell Contract Products pursuant to one or more terms (including price, volume, quality or payment) that are more favorable to Buyer than the terms then in effect under the Agreement ("Favorable Terms"), then Supplier will meet, or notify Buyer that it will not meet, such Favorable Terms within fourteen (14) days of receipt of Buyer's notice thereof. Supplier's failure to meet such Favorable Terms within such fourteen (14) day period shall be deemed a decision not to meet such Favorable Terms regardless of whether Supplier specifically notifies Buyer thereof.

(b) If Buyer is obligated under an Agreement to buy (i) certain quantities of Contract Products, or (ii) some or all of its requirements for the Contract Products from Supplier, then if Supplier does not meet Favorable Terms as provided in Section 4.2(a) or 4.2(b), then Buyer, at its option, is released from its obligations to Supplier with respect to any quantities of Contract Products available from the third party on such Favorable Terms. Buyer may, at its option, remove such Contract Products from the Agreement. Buyer's only liability for exercising either or both such options shall be to pay for 1) Contract Products already delivered to Buyer as of the date of termination and 2) Contract Products ordered prior to termination that are subsequently delivered pursuant to the applicable Agreement. Liability for Contract Products that are ordered but not yet delivered is limited to Orders and Releases that are within the applicable Firm Zone Lead Time (as that term is defined herein) at the time of the notification, not to exceed six (6) weeks, unless otherwise directed by Buyer in writing.

## General Terms and Conditions of Purchase

4.3 Productivity. Buyer and Supplier agree that enhanced productivity is a mutually strategic objective. Unless otherwise agreed between the parties, a year-over-year goal of three percent (3%) shall be in effect, which both companies will strive to achieve. As such, Supplier commits to reduce the year-over-year costs associated with Contract Products. Examples of productivity savings include, but are not limited to, negotiated reductions in price, cost reductions associated with Value Analysis or Value Engineering, savings associated with Supplier acquiring new business from Schaeffler, and reduction or elimination of inventory.

4.4. Contractual Recoupment and Set-Off. Supplier shall only have the right to contractually recoup or set-off against any claims of Buyer or the right of retention, if and to the extent that Supplier's claims are undisputed or if adjudicated, are final and non-appealable. In addition to any right of setoff or recoupment provided by law, Buyer shall have the right to contractually recoup or set-off against claims of Supplier any claims of Buyer's direct or indirect subsidiaries or Affiliates. Buyer shall also have the right to set-off claims against any claim of any Affiliate of Supplier. Buyer will provide Supplier with a statement of any offset or recoupment taken by Buyer.

### V. Delivery Dates / Governmental Permits / Export Control

5.1. Delivery Terms. Time is of the essence for all deliveries. Unless expressly agreed otherwise, all deliveries are DAP (Incoterms 2010) to a location determined by Buyer and, unless determined otherwise, shall include packaging and conservation. Buyer and the consignee determined by Buyer shall be advised about a shipment on the day of its dispatch. Each shipment shall include a delivery note in duplicate listing Buyer's order number, item number, and Supplier number. Dates and time limits are binding. The Supplier shall inform Buyer immediately in written form about any delay in delivery. The Supplier must also indicate the reasons for such delay and its expected duration. If the reason for the delay is beyond the Supplier's control, the Supplier may invoke such reason only if the Supplier has met its obligation to notify Buyer in due time.

5.2. Government Permits. The Supplier shall notify Buyer of any governmental permits or notification requirements that may be required for the import and the use of the delivered items.

5.3. Export Control.

(a) General. Supplier hereby certifies that it will comply with all U.S. export control laws and regulations, including but not limited to the ITAR and EAR ("Export Laws"). Supplier certifies that it will not export, reexport, or transfer any items in this purchase order in contradiction to U.S. law or local applicable laws. Supplier, if it engages in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services, hereby certifies that it is registered with the U.S. Department of State, Directorate of Defense Trade Controls, as defined in 22 CFR Part 122, Registration of Manufacturers and Exporters.

(b) Controlled Technical Data/Technology. Supplier shall exercise strict control over the disclosure of and access to technical data, information and other items received in relation to this Purchase Order in accordance with applicable U.S. and local Export Laws and any other applicable agreement between Supplier and Buyer during and after the completion of activities related to this Agreement. Supplier certifies that no technical data, information or other items provided by Buyer in connection with this Agreement shall be provided to any foreign persons or to a foreign entity, including without limitation, a foreign employee or subsidiary of Supplier (including those located in the U.S.), in contradiction to applicable U.S. or local laws and without express written authorization of the Buyer.

(c) Additional Documentation. When requested by Buyer's authorized representative or agent, Supplier shall, promptly and without additional cost, furnish Buyer with any documentation, including import certificates or end-user statements from Supplier or Supplier's government, which is reasonably necessary to support Buyer's application for U.S. import or export authorizations.

(d) Compliance with U.S. Sanctions. Supplier agrees that no goods, technology, software or services supplied under this Agreement are sourced from or originate with: (i) A country or government subject to U.S. economic sanctions (hereinafter "Restricted Country"); (ii) An entity or individual identified on any U.S. Government list, (e.g., the U.S. Department of the Treasury's Specially Designated Nationals List, U.S. Department of Defense Federal Acquisition Regulations) with which the U.S. Government prohibits or restricts U.S. persons from engaging ("Restricted Person); or (iii) An entity or individual that is owned or controlled by any Restricted Country or Restricted Person.

### VI. Acceptance of Work Performed

6.1. Inspection. Buyer has no obligation to inspect Contract Products. Buyer may inspect, but this is generally only with respect to externally apparent damage to the Contract Products box or other shipping container containing the Contract Products. Buyer will give notice of such defects without unreasonable delay. Supplier hereby waives the right to assert that the defects have been asserted too late. Notwithstanding any of the foregoing, inspection of and payment for the Contract Products does not relieve Supplier of its warranty obligations, nor does it act as acceptance of the Contract Products.

6.2. No Deemed Acceptance. Any deemed acceptance by way of failing to respond to a request for inspection, or by way of payment or actual use is hereby excluded.

### VII. Confidentiality / Information

7.1. Confidential Information. The Supplier (i) shall keep secret all information received from Buyer, including without limitation drawings, documents, know how, samples, production devices, models, media (collectively, the "Confidential Information"), (ii) may not make such Confidential Information available to third parties (including sub-suppliers) without Buyer's written consent and (iii) may not use such Confidential Information for purposes other than as determined by Buyer. These obligations apply *mutatis mutandis* to copies and duplicates. This

## General Terms and Conditions of Purchase

confidentiality obligation does not apply to information (i) that the Supplier had already obtained legitimately at the time of disclosure provided such information was not subject to a confidentiality obligation, (ii) that the Supplier later obtains legitimately without being obligated to keep such information confidential from a third party without a duty of confidentiality, (iii) that is or becomes generally known without any breach of contract by one of the parties or (iv) for the disclosure or the independent use of which the Supplier has received permission via a Signed Writing. The Supplier may not advertise its business relationship to Buyer, nor use Buyer's trademarks, trade names, logos, or any other Confidential Information in Supplier's advertising, promotional materials, or electronic communications (including but not limited to websites), without Buyer's prior Signed Writing.

7.2. **No Transfer.** Buyer retains title and reserves all other rights (such as copyright) to the Confidential Information. Copies may be made only with Buyer's prior written consent. Title to the copies passes to Buyer at the time such copies are created. Supplier hereby agrees with Buyer that the Supplier stores the copies on behalf of Buyer as bailee. The Supplier agrees to properly store at its expense all documents and other objects, including copies thereof, that were made available to Supplier, to keep them in perfect condition, to obtain insurance for them and to return them to Buyer or destroy them, in each case upon Buyer's request. The Supplier has no right, on whatever grounds, to retain such objects. The Supplier shall confirm the complete return or destruction of the relevant object(s) in writing.

7.3. **Breach of Confidentiality.** If the Supplier breaches its obligations set forth in 7.1, Supplier understands and agrees that monetary damages will not provide sufficient relief for said breach, and that Buyer is entitled to seek specific performance and injunctive relief against the Supplier as remedies for any such breach. Such remedies are not the exclusive remedies for a breach of these obligations, but are in addition to any and all other remedies available at law or equity.

### VIII. Quality Control

8. Supplier shall comply with the requirements of Buyer's global supplier quality manuals, S 296001 – S 296003, as may be amended from time to time, the terms of which are incorporated herein by reference (the "Quality Standards") and are located at: [http://www.schaeffler.us/content.schaeffler.us/us/supplier/quality\\_new/quality\\_new.jsp](http://www.schaeffler.us/content.schaeffler.us/us/supplier/quality_new/quality_new.jsp). At Supplier's request, Buyer will mail Supplier a copy. Buyer alone shall decide whether Quality Standards are being met. Supplier shall, in accordance with the Quality Standards, provide, maintain and enforce all standards necessary to secure the quality of the Contract Products and the manufacturing process thereof, including but not limited to quality control, inspection and specifications. The Supplier shall constantly monitor the quality of its performance. Before any delivery of Contract Products, the Supplier shall ensure that Contract Products intended for delivery are free of defects and conform to the agreed technical requirements, and the Supplier shall warrant such to Buyer in writing. Supplier is required to notify Buyer in writing of any quality issue related to the Contract Products, even if the issue has been contained and corrected, and Supplier shall provide Buyer with all reasonable documentation requested by Buyer in response to said notice, related to the issue and subsequent correction, if any. The escalation process contained in the quality manual referenced above applies only at Buyer's option.

### IX. Warranties / Reimbursement of Costs / Warranty Period / Indemnification

9.1. **General Warranty.** A Contract Product is defective if it is not as warranted. Supplier warrants to Buyer, Buyer's customer and their respective direct or indirect customers, successors and assigns ("Customer"), in addition to all other express or implied warranties provided by law or otherwise, that the Contract Products: (i) conform to all applicable specifications, standards, drawings, samples, descriptions, and revisions; (ii) conform to all applicable laws, orders, regulations, and standards in the countries where Contract Products, or Buyer's goods into which the Contract Products are incorporated ("Final Products"), are to be sold, including, in the case of Contract Products used in connection with the manufacture of motor vehicles, the National Traffic and Motor Vehicle Safety Act and all United States and European Union motor vehicle safety and end-of-life standards; (iii) be merchantable and free of defects in (1) design (to the extent designed by Supplier or any of its suppliers, subcontractors, agents, subsidiaries or Affiliates, even if the design is approved by Buyer), (2) materials (including rust or other contamination), and (3) workmanship; (iv) be fit and sufficient for the purposes intended by Buyer (Supplier assumes responsibility for determining Buyer's purposes and the suitability of the Contract Products to operate within those purposes and the operating environment of the Final Product), (v) be free of all liens, claims, defects in title, and encumbrances whatsoever, including claims of intellectual-property infringement; (vi) be, unless expressly provided for differently in an Agreement, manufactured entirely with new materials; (vii) be performed or prepared in a professional and workmanlike manner and in compliance with Buyer's requirements, (viii) be, in the case of software or code, free from viruses, disabling code, and open source software, and (ix) comply strictly and completely with Buyer's quality standards.

9.2. **Future Performance Warranty.** All warranties of Supplier extend to future performance of Contract Products and are not modified, waived, or discharged by delivery, inspection, tests, acceptance, or payment, or the failure of any of the foregoing. Buyer's approval of any design, drawing, material, process, or specifications does not relieve Supplier of these warranties. Supplier shall indemnify and hold harmless Buyer pursuant to Section 9.4 Indemnification, in case of any claim of a third party based on product liability if and to the extent that the damage is caused by a defective Contract Product.

9.3. **Warranty Period.** Unless a longer period is determined by an Agreement, the warranty period shall run to the latest of the following: (i) four (4) years from the date Buyer accepts the Contract Products; (ii) the warranty period provided by applicable law; (iii) the warranty period offered by Buyer to Customer; or (iv) the warranty period or guaranty period Customer offers to end-users of the products into which the Contract Products are incorporated, which durations are publically available, are incorporated herein by reference, and will be provided by Buyer to Supplier upon written request. In the case of supplementary performance (cure of defects or delivery of Contract Products free of defects), this period is extended by the time during which the delivery item cannot be used as stipulated in the contract. Supplementary performance is also subject to the periods stated above.

## General Terms and Conditions of Purchase

### 9.4. Indemnification.

(a) General. Supplier shall indemnify, defend and hold Buyer, its Affiliates, and its respective officers, directors, employees, Customers, users and agents (collectively "Indemnitees") harmless from and against all suits, actions, losses, damages, claims, or liability of any character, type, or description, including without limiting the generality of the foregoing, all expenses of litigation, court costs, and attorneys' fees for injury or death to any person, or injury to any property (collectively, "Damages"), received or sustained by any person or property arising out of, occasioned by, attributable or related to (i) the Contract Products, (ii) any breach of any representation or warranty made by Supplier, (iii) any failure by Supplier to perform or fulfill any of its covenants, (iv) any litigation, proceeding or claim by any third party relating in any way to the obligations of Supplier, or (v) any act or omission, negligent or otherwise, in the performance of any Agreement, whether by Supplier, its suppliers, subcontractors, or employees, or (vi) any violation of law by the Supplier. Supplier shall not consummate any settlement without the relevant Indemnitees' prior written consent. Supplier's indemnification obligation will continue in full force and effect notwithstanding the termination or expiration of any Agreement. For any claim against Indemnitees by a supplier, subcontractor or Affiliate of Supplier, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, these indemnification obligations shall not be limited under any applicable worker's compensation act, disability or other employee benefit act.

(b) Intellectual Property Indemnity. Supplier represents and warrants to Indemnitees that Contract Products shall not infringe any intellectual property rights including, without limitations, claims arising from patent, copyright, trademark, trade secret, or other intellectual property infringement. Supplier agrees to hold Indemnitees harmless from and defend Indemnitees against any such claim of intellectual property infringement, including any Damages resulting from such claim, the cost to Indemnitees of complying with any preliminary or permanent injunction, and all other costs of defense (including the attorneys' fees and costs), in connection with such claim.

9.5. Non-Assertion of Claims and Indemnification. Supplier agrees not to assert any claim (other than a claim for patent infringement) with respect to any technical information that Supplier shall have disclosed or may hereafter disclose to Buyer in connection with the Contract Products covered by this Agreement.

9.6. Buyer's Limited Liability to Supplier. Buyer's sole liability under any Agreement (including its termination, expiration, or cancellation) is to pay for the Contract Products in accordance with Section 4 and to pay the specific termination related amounts described in Section 17, as applicable. **IN NO EVENT SHALL BUYER BE LIABLE TO SUPPLIER FOR ANY OTHER DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO COMPENSATORY, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL (AS OPPOSED TO COMPENSATORY) DAMAGES, LOST PROFITS OR OTHER DAMAGES DIRECTLY OR INDIRECTLY RELATED TO PROFITS, OR LIABILITIES OF ANY KIND IN CONNECTION WITH AN AGREEMENT, WHETHER FOR BREACH OF CONTRACT, TORT LIABILITY, LATE PAYMENT, PROPERTY DAMAGE, PERSONAL INJURY, ILLNESS, DEATH, OR OTHERWISE.**

## X. Remedies

10. The rights and remedies reserved to Buyer herein are cumulative and in addition to all other legal or equitable remedies.

10.1. General Remedies. Supplier will reimburse Buyer for any damages caused by Supplier's breach or by nonconforming Contract Products, including, without limitation: (i) cost incurred for replacement materials or parts; (ii) freight costs incurred to deliver replacement material to a Customer or to expedite shipments or to return Contract Products to Supplier; (iii) expenses incurred to diagnose and repair Final Product, including labor, travel and per diem, diagnostic time, and locally purchased materials and sublet services; (iv) costs associated with containing and correcting recalls, field service actions, or other large scale issues, including, without limitation, manpower spent planning, directing and coordinating containment efforts, engineering testing, jobsite product inspections, training and travel for repair crews, and warranty concessions to Customers; (v) costs of inspecting, sorting, storing, reworking, repairing or replacing nonconforming Contract Products; (vi) costs resulting from production interruptions; recall campaigns, Customer field service actions or other corrective service actions; (vii) costs resulting from personal injury, death or property damage; (viii) actual and reasonable professional fees, settlements and judgments incurred by Buyer and other costs associated with Buyer's administrative time, labor and materials; and (ix) costs incurred as a result of Contract Products being accused of or found to be infringing any intellectual property right (including and in addition to the remedies specified in Section 9.4 all costs relating to obtaining suitable replacement Contract Products). If nonconforming Contract Products are rejected by Buyer, the quantities under any Order shall be reduced unless Buyer otherwise notifies Supplier. Supplier shall not replace reduced quantities without a Signed Writing. Buyer's damages include, without limitation, third party charges and Buyer internal expenses (e.g. hourly wages, salaried wages and carrying costs) relating to transportation (including expedited freight), containment, sorting and other attempts at mitigation relating to any Supplier breach.

10.2. Recalls and Field Fix Programs. If a governmental agency of any country, state, province or municipality requires Buyer to conduct a product recall or field fix program, or Buyer or Customer voluntarily undertakes such an action, related to Contract Products, Buyer will notify Supplier on the later of: (i) within thirty (30) days of the start of such action or (ii) within ten (10) days of determining that the cause for such recall is Supplier and Supplier shall, at Buyer's option, either repair or replace related Contract Products, and reimburse Buyer for any related costs and damages. In connection with a recall campaign, service action or other corrective action, the warranty shall be extended beyond the normal warranty duration (see Section 9.3) and continue for such time period as may be dictated by Customer or the government unit.

10.3. Return of Non-Conforming Contract Products to Supplier. Upon Supplier's prior written request, Buyer will use commercially reasonable efforts to return, at Supplier's expense, nonconforming Contract Products to enable analysis and determination, at Supplier's expense, of the

## General Terms and Conditions of Purchase

root cause. Sample size for root cause testing will be determined in Buyer's sole reasonable discretion. For not less than thirty (30) days after Supplier's written notification to Buyer of any intent to deny a claim, Supplier will hold all returned Contract Products at Supplier's facility, during which time the parties will agree on the disposition of the nonconforming Contract Products.

10.4. Credit. Reimbursement for warranty claims will be, at Buyer's option, through Supplier credits, Buyer debits, or cash payments from Supplier to Buyer, executed no more than thirty (30) days after notification to Supplier, within the warranty period, of product failure.

### XI. Performance of Work on Buyer's Premises / Relationship of the Parties

11.1. Contractors. In relation to any performance at Buyer's premises, the "Company Regulations for Contractors" shall apply and such can be accessed at <http://www.schaeffler.us/content.schaeffler.us/us/supplier/supplier.jsp> and will be made available to the Supplier upon request. The Supplier shall comply with directions of the facility security and site requirements.

11.2. Relationship of the Parties. Supplier and Buyer are independent contracting parties and nothing in any Agreement or these Terms shall make either party the employee, agent, or legal representative of the other for any purpose. No Agreement shall grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Supplier shall be solely responsible for all employment and income taxes, insurance premiums, charges, and other expenses it incurs in connection with its performance of any Agreement, unless part of a Signed Writing. All employees and agents of Supplier or its respective contractors are employees or agents solely of Supplier or such contractors, and not of Buyer, and are not entitled to employee benefits or other rights accorded to Buyer's employees. Buyer is not responsible for any obligation with respect to employees or agents of Supplier or its contractors.

### XII. Use of Supplier's Technical Information

12. Supplier will provide Buyer with Technical Information required by Buyer to install, assemble and otherwise use the Contract Products. "Technical Information" includes engineering, package and installation drawings, specifications, testing protocols and results, documents, data and other information relating to the Contract Products and any tooling. Buyer reserves the right to use the Technical Information for in-house production or by third party suppliers, as necessary.

### XII. Tools and Other Buyer Property

13.1. Application. This Section XIII shall only apply if there is no current bailment agreement between the parties for the Buyer's Property in question.

13.2. General. "Buyer's Property" shall mean and include: all information and materials, including tooling which has been furnished by Buyer to Supplier or for which Supplier has been reimbursed by Buyer (such as fixtures, gauges, jigs, patterns, castings, cavity dies, molds, and all related appurtenances, accessions, and accessories, collectively "Buyer's Property"), packaging, documents, standards, specifications, samples, trade secrets, manufacturing processes, marketing and pricing data, proprietary information, and other materials and items (including such materials that are in any way modified, altered or processed) furnished by Buyer either directly or indirectly to Supplier to perform any Agreement, along with any and all supplies, Buyer's Property, deliverables, data, and intellectual property rights that are the property of Buyer under the terms of any Agreement. Buyer's Property shall be and remains the sole and exclusive property of Buyer. However, the term "Buyer's Property", as between Buyer and Supplier, shall also include property that belongs to a third party (e.g., a Customer).

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

13.4. Bailee at Will/Other Agreements. Supplier shall have only temporary possession of Buyer's Property as a bailee at will. Supplier shall execute, deliver and perform Buyer's tooling agreement or other bailment agreement as Buyer may from time to time reasonably request.

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

13.6 Assumption of Risk. Supplier shall assume all risk of death or injury to persons, or damage to property, arising from its use of Buyer's Property. TO THE EXTENT PERMITTED BY LAW, BUYER SHALL HAVE NO LIABILITY TO SUPPLIER OR ANYONE CLAIMING BY OR THROUGH SUPPLIER FOR ANY INCIDENTAL OR CONSEQUENTIAL OR OTHER DAMAGES OF ANY KIND WHATSOEVER RELATING TO BUYER'S PROPERTY SUPPLIED BY BUYER. BUYER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO SUCH BUYER'S PROPERTY, INCLUDING

## General Terms and Conditions of Purchase

WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND SUPPLIER WAIVES, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, ALL CLAIMS OF NEGLIGENCE AND STRICT LIABILITY.

13.7 Return of Buyer's Property. Immediately upon Buyer's request and without payment of any kind, Supplier shall return Buyer's Property, and shall comply with Buyer's instructions relating to its return, including the method and location for its return. Supplier shall be responsible for labor and other costs incidental to the return of Buyer's Property. Supplier shall cooperate with Buyer and shall provide Buyer with access to all facilities at which Buyer's Property is located. Supplier expressly waives any right to additional notice or process relating to Buyer's exercise of its rights under this Section XIII. Supplier waives, to the extent permitted by law: (i) any lien or other rights that Supplier might otherwise have on any of Buyer's Property, including molder's and builder's liens; and (ii) any objection to Buyer's repossession and removal of Buyer's Property for any or no reason, including bankruptcy or insolvency proceedings.

13.8 Trust Payments for Buyer's Property. Any payments made by Buyer for Buyer's Property are expressly intended by Buyer to be held in trust for the benefit of any subcontractor(s) used by Supplier to produce such Buyer's Property, as applicable. Supplier agrees to hold such payments as trustee in trust for such subcontractor(s) until Supplier has paid the subcontractor(s) in full for such Buyer's Property. Supplier acknowledges and agrees that such subcontractor is an intended third-party beneficiary of the terms of this Section 13.8 relating to the trust and accordingly, such Buyer's Property subcontractor shall have the right to enforce the terms of this Section 13.8 directly against Supplier in subcontractor's own name. Supplier agrees that Buyer has no obligation to Supplier or such subcontractor under this Section 13.8 other than making the payment to Supplier in accordance with an Agreement. In the event such subcontractor brings an action against Supplier under this section, Supplier agrees that it shall not join Buyer in any such action.

### **XIV. Software**

14. To the extent Supplier is supplying software to Buyer, the Supplier agrees to modify/improve the software pursuant to Buyer's instructions and in exchange for an adequate reimbursement of costs for a period of five (5) years from the shipment of the supplied item, unless the scope of the delivery includes standardized software. To the extent the software originates with a supplier of the Supplier, the Supplier shall obligate such earlier supplier accordingly.

### **XV. Force Majeure / Long Term Inability to Deliver**

15.1 Force Majeure Event. Natural disasters, riots, acts of government (including if, through no fault of the party, a government denies, fails to grant, or revokes any import or export authorizations necessary for performance under the Agreement) and any other events that are unpredictable and unpreventable exempt both Buyer and the Supplier from the contractual obligations, in each case for such time as the disturbance exists and within the scope of its effects. The party affected by the force majeure event must fully inform the other party and must make all efforts, within the limitations of what can reasonably be expected, to limit the effects of such events. The party affected by the force majeure event must notify the other party without undue delay of the end of the force majeure event. None of the following is individually, or collectively, a force majeure event: (i) Supplier's ability to sell Contract Products at a higher price; (ii) increases in Supplier's production, raw material or other costs; or (iii) a strike, a legal or illegal labor disruption, or Supplier's inability to obtain labor.

15.2 Long Term Inability to Deliver. In cases of a long term inability to deliver, cessation of payments, the opening of an insolvency proceeding, the refusal to open insolvency proceedings due to insufficient assets, or the commencement of comparable proceedings with respect to one of the parties, the other party shall be entitled to rescind the contract with respect to the part that has not yet been performed. If one of the foregoing events occur with respect to the Supplier, the Supplier shall support Buyer to the best of its abilities in Buyer's efforts to move the manufacture of the supplied item(s) to Buyer or to a third party, which support shall include the granting of licenses to intellectual property rights to the extent such rights are necessary for the manufacture of the relevant product(s), such licenses to be granted on terms customary in the industry.

### **XVI. Compliance**

#### **16.1. Compliance with Laws**

(a) General. Contract Products supplied to Buyer shall comply with, and Supplier agrees to be bound by, all applicable foreign, United States federal, state and local laws, orders, rules, regulations, guidelines, standards, limitations, controls, prohibitions, or other requirements contained in, issued under, or adopted pursuant to such laws, including the U.S. Toxic Substances Control Act and applicable RoHS and REACH regulations, Proposition 65, "Conflict Mineral" prohibition and disclosure requirements, anti-bribery, and anti-corruption laws. Supplier agrees that neither it nor any of its subcontractors will utilize child, slave, prisoner or any form of forced or involuntary labor, or engage in abusive employment or corrupt practices, in the production or provision of Contract Products. At Buyer's request, Supplier shall certify in writing its compliance with the foregoing.

(b) Environmental Compliance. Supplier shall comply with (i) all applicable environmental laws and regulations, and (ii) the environmental compliance guidelines located in the Quality Standards, as they may be amended by Buyer from time to time, the terms of which are INCORPORATED HEREIN BY REFERENCE. At Supplier's request, Buyer will mail Supplier a copy.

(c) Equal Employment Opportunity. Buyer is a U.S. federal contractor that complies with Executive Order 11246, as amended, and applicable regulations in 41 CFR Parts 60-1 through 60-60, 29 U.S.C. § 793 and applicable regulations in 41 CFR § 60-741; and 38 U.S.C. § 4212 and applicable regulations in 41 CFR Part 60-250 and 60-300. THE FOLLOWING PROVISIONS ARE INCORPORATED HEREIN BY REFERENCE: Executive Order 11246 and 41 CFR § 60-4.3(a); Executive Order 11701 and 41 CFR §§ 60-250.5(a), 60-300.5; Executive Order 11758 and

## General Terms and Conditions of Purchase

41 CFR § 60-741.5(a); U.S. immigration laws, including the L-1 Visa Reform Act of 2004 and the H-1B Visa Reform Act of 2004; and Executive Order 13496. The Supplier and its subcontractors shall abide by the requirements of 41 CFR 60-741.5(a) and 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities and qualified protected veterans.

(d) Department of Labor and Fair Labor Standards Act. Supplier hereby warrants and represents that all Contract Products were produced in compliance with the applicable requirements of sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and with all applicable regulations and orders of the U.S. Department of Labor.

(e) Schaeffler Code of Conduct. Supplier shall comply with Buyer's Code of Conduct, as revised or amended from time to time (the "Code of Conduct"). The Code of Conduct, incorporated herein by reference, can be downloaded at: [https://www.schaeffler.us/content.schaeffler.us/us/supplier/contractual\\_conditions/supplier\\_code\\_of\\_conduct/supplier\\_code\\_of\\_conduct.jsp](https://www.schaeffler.us/content.schaeffler.us/us/supplier/contractual_conditions/supplier_code_of_conduct/supplier_code_of_conduct.jsp). Supplier acknowledges receipt, review, and acceptance of the Code of Conduct. At Supplier's written request, Buyer will mail Supplier a hard copy of the Code of Conduct.

16.2. Improper Actions. The Supplier shall refrain from actions or omissions that, regardless of the form of participation, may lead to administrative fines or criminal prosecution, in particular but not limited to for corruption or a violation of antitrust or competition law by the Supplier, by employees of the Supplier or by third parties engaged by the Supplier (hereinafter referred to as "Violation" or "Violations"). The Supplier shall be obligated to take all steps necessary to avoid Violations. For this purpose, the Supplier shall be responsible for the compliance and proper performance by its employees and all third party representatives with all relevant laws.

16.3. Compliance Questionnaire. Upon written request by Buyer, the Supplier shall submit information about the above measures, in particular regarding the content and status of implementation. The Supplier shall be obliged, upon written request by Buyer, but not more than once within a period of three years, to completely and accurately answer a compliance questionnaire issued by Buyer and will provide Buyer with the documents related to such questionnaire.

16.4. Investigations. The Supplier will inform Buyer without undue delay of the commencement of official investigations by any authority regarding a Violation. Additionally, if there are any indications of a Violation by the Supplier, Buyer is entitled to request written information about the Violation and all steps taken by the Supplier for rectification and future law.

16.5. Violations. In the event of a Violation, the Supplier shall immediately cease such actions and shall compensate Buyer for any and all damage suffered by Buyer due to such Violation.

### **XVII. Termination and/or Cancellation**

#### **17.1. Termination for Cause.**

(a) Buyer may, in its discretion, terminate any Agreement (in whole or in part) for cause by giving Supplier seven (7) days' prior written notice if Supplier: (i) becomes insolvent; (ii) becomes unable to pay its debts as they mature; (iii) makes a general assignment for the benefit of creditors; (iv) comes under a suspension of payments; (v) has a receiver appointed for the whole or any part of its assets; (vi) becomes in any way the subject of a bankruptcy petition; (vii) has a change in ownership or management such that a competitor of Buyer gains an ownership or controlling interest in Supplier; or (viii) defaults in the performance of any provision or part of an Agreement. If Supplier, within seven (7) days following Buyer's notice, remedies the cause giving rise to the notice to Buyer's sole satisfaction, then the termination will be deemed void and any Agreement so terminated will continue in effect. Delivery defaults are not subject to the seven-day cure period.

(b) In the event of a termination for cause under this section: (i) Supplier shall immediately stop all work under the Agreement in question and shall immediately cause any of its suppliers or subcontractors to cease work, unless otherwise directed by Buyer (Buyer may elect to have Supplier continue production on Contract Products or work in progress ("WIP") subject to Buyer's obligation to purchase such conforming Contract Products under the terms of the Agreement in question), (ii) Buyer will have no liability to Supplier unless Buyer directs Supplier to continue work, and then only for such resulting conforming Contract Products delivered and sold to Buyer, (iii) Buyer may also acquire replacement Contract Products (or parts of replacement Contract Products) elsewhere on such terms or in such manner as Buyer deems appropriate, and Supplier will be liable for any excess cost or other expenses incurred by Buyer.

17.2. Termination for Convenience. Buyer may cancel all or any part of any Agreement at Buyer's convenience by giving Supplier written notice of the termination. Buyer's liability for any termination for convenience is limited to: (i) conforming Contract Products already delivered to Buyer as of the date of termination, and (ii) payment for WIP, limited to the costs of raw material and labor incurred for outstanding Orders and Releases whose delivery date is within the lesser of: the Firm Zone agreed by the parties for the Contract Products in question; or six weeks from the date of termination. However, Buyer may elect to have Supplier continue production on WIP subject to Buyer's obligation to purchase such conforming Contract Products under the terms of the Agreement in question. In no event will Buyer's liability for a termination for convenience exceed the price of related and outstanding Contract Products under the Agreement in question.

17.3. Cancellation or Termination by Supplier. Supplier may terminate or cancel any Agreement (in whole or in part), only for non-payment by Buyer of the purchase price for Contract Products in accordance with such Agreement, and then only if: (i) the amounts are material and more than sixty (60) days past due; and (ii) Supplier first provides Buyer written notice specifying: amounts past due (including relevant Order and

## General Terms and Conditions of Purchase

invoice numbers and dates), and Supplier's intent to terminate if the past due amount is not paid; and (iii) Buyer, within thirty (30) days of Supplier's notice, does not either: (1) pay the past due amounts, or (2) notify Supplier that Buyer disputes the amounts claimed to be unpaid. Provided the foregoing conditions are met, Supplier may terminate an Agreement by providing written notice to Buyer. Supplier may not terminate any Agreement (in whole or in part) for any reason except as permitted herein. Supplier may not suspend any performance under any Agreement for any reason.

### **XVIII. Audit**

18.1 General. Upon Buyer's request, Supplier shall deliver to Buyer data, records and other materials to evidence testing, inspection, supplier and sub-supplier diversity, Conflict Minerals use and controls, and compliance with law, including anti-bribery and anti-corruption laws and quality assurance actions. Buyer has the right to conduct onsite audits of Supplier, Contract Products, and compliance with law, including: (i) inspecting Contract Products and WIP, (ii) conducting compliance audits, quality control measures and tests at Supplier's or its sub-supplier's premises, and (iii) any Supplier-claimed tool expenses or costs. Without cost to Buyer, Supplier shall provide facilities and assistance for Buyer audits, inspections, and tests. Buyer shall not be liable for any reduction in value of samples used, nor shall any Contract Products rejected be submitted to Buyer. Buyer's audit or inspection, or the failure to audit or inspect, does not constitute acceptance of any Contract Products, does not remove responsibility from Supplier for compliance with the terms of any Agreement, and does not relieve Supplier of any of its responsibilities or warranties. Likewise, Buyer's audit, test or approval of any design, drawing, material, process (including Supplier's quality management systems ("QMS")) or specifications will not limit or waive Buyer's rights under this provision or any Agreement. Nothing in any Agreement releases Supplier from the obligation of testing, inspection and quality control. For preproduction inspections, Supplier will provide a written response with proposals for corrective action within fifteen (15) days of any notice from Buyer concerning an unsatisfactory condition identified by Buyer.

18.2 Financial Audit. Buyer or Buyer's designee may, at any time, review the financial condition of Supplier and its Affiliates, and Supplier will fully cooperate in such review including promptly providing copies of, or access to, requested documents, including financial records and statements, forecasts, business plans, banking contacts and loan documents, and will make its financial managers available for discussions during business hours. Buyer and/or its designee will keep confidential any nonpublic information about Supplier obtained in a financial review and use such information only for purposes of the review, except as needed to enforce any Agreement. Supplier agrees that if Supplier experiences any delivery or operational problems, Buyer may designate one or more representatives to be present in Supplier's applicable facility to observe Supplier's operations.

### **XIX. Insurance**

19. Supplier shall, for the duration of the supply relationship and for a reasonable time period thereafter, maintain reasonable insurance with worldwide coverage for risks arising from the supply relationship (including, without limitation, business liability insurance, expanded product liability insurance including coverage for costs of installation and removal, inspection and sorting costs, and motor vehicle recall costs). Upon Customer's demand therefore, Supplier shall provide Customer with proof of insurance coverage.

### **XX. Miscellaneous**

20.1 Delivery and Performance. Location for deliveries and performances is the place or places specified by Buyer or approved in writing by Buyer.

20.2 Conflicts. In the event of any conflict between these Terms and any incorporated documents or an Agreement, unless the parties agree otherwise in writing, the various components of the agreements shall be given the following precedence (in descending order): (i) a YPSA, (ii) an Order; (iii) a project or supply agreement; (iv) a master purchase agreement, if any; (v) these Terms; (vi) a Quality Assurance Agreement; (vii) a Logistics Agreement; and (viii) a Buyer Policy.

20.3 Exit Plan. In case of termination or expiration of an Agreement, in whole or in part, the parties will work together in good faith to promptly develop an exit plan for the manufacturing by Supplier and purchase by Buyer, under the terms of the Agreement. At Buyer's request, Supplier will produce a safety stock of Contract Products under the terms hereof, including price, to support Buyer's requirements for a transition period not to exceed six (6) months from the applicable termination date.

20.4 No Assignment. Supplier is not entitled to assign any obligation under the Agreement without the Signed Writing of Buyer. Should Supplier assign a claim against Buyer to a third party or to have such claim collected by a third party, the third party takes the claim subject to any and all defenses and rights of Buyer against Supplier.

(a) Sub-Suppliers. Supplier is responsible for the management of any sub-suppliers and will be liable for their performance, including but not limited to, sub-suppliers' errors, acts or omissions, negligent or otherwise, whether or not Buyer directed or recommended the sub-supplier.

(b) Third Party Manufacturers. Upon notice to Supplier, Buyer has the right to assign to a third party manufacturer Buyer's obligation to purchase Contract Products covered by any Agreement. Buyer will receive any benefit from Supplier for the volume of Contract Products purchased by Buyer's third party manufacturers, including calculations for volume discount pricing or rebates that may be achieved based on Buyer's spend with Supplier. Supplier agrees to provide the same terms and conditions as set forth in any Agreement related to prices and Lead Time to such third party manufacturer. In the event of assignment to a third party manufacturer, Buyer reserves the right at any time to revert the purchase back to Buyer or assign the purchase to an alternative third party manufacturer. In the event the third party manufacturer fails to comply with the agreed payment terms, Supplier will provide written notification to the third party manufacturer, with a copy to Buy-

## General Terms and Conditions of Purchase

er, requesting immediate payment. Buyer will use commercially reasonable means to assist in brokering a resolution of any such claim, but Buyer will not be required to take any action that would materially impair its ability to meet delivery and quality requirements for Final Products.

20.5. Taxes. Applicable sales, use, federal, state, or local taxes shall be itemized separately on all invoices. Supplier agrees to accept a valid tax exemption certificate or other appropriate evidence in lieu of tax payment. Buyer is not responsible for taxes arising from Supplier's business activity, payroll, income or assets. Unless otherwise specified, prices for Contract Products include all applicable duties and taxes. If Buyer is required to pay any taxes that are Supplier's responsibility, Supplier shall reimburse Buyer for such taxes within ten (10) days of notice, and shall indemnify (pursuant to Section 9.4 Indemnification), defend, and hold Buyer harmless against all claims arising out of Buyer's payment of such taxes.

20.6. Directed Suppliers. A "Directed Supplier" is a Supplier that was directed, suggested or otherwise specified by a Directing Customer. If Supplier is a Directed Supplier: (i) Buyer shall pay Supplier for Contract Products only following and to the extent of Buyer's actual receipt of payment from a Customer that directs, suggests or otherwise specifies a supplier for use by Buyer ("Directing Customer") for Buyer's products in which Contract Products are incorporated; (ii) any lengthening of any payment terms by the Directing Customer shall automatically lengthen the payment terms to Supplier by like amount; (iii) within three (3) business days of any change in price, specifications or other terms negotiated or proposed between Supplier and the Directing Customer, Supplier shall notify Buyer in writing and shall immediately adjust its invoices to reflect any price reduction, provided however that no increase in price shall be binding on Buyer without Buyer's written consent and a commitment by the Directing Customer to pay Buyer a proportionately increased price for Buyer's products sold to the Directing Customer which incorporate Contract Products.

20.7. Arbitration. All disputes arising under or in connection with this Agreement or any Order or any other document pertaining to any Order shall be finally settled by arbitration in Charlotte, North Carolina, before a single arbitrator appointed by the American Arbitration Association ("AAA") which arbitration shall be conducted in English and under AAA's commercial arbitration rules then in effect at the time of the Agreement provided, however, that discovery shall be permitted in accordance with the United States Federal Rules of Civil Procedure. The decision of the arbitrator shall be final and binding upon Buyer and Supplier, shall not be appealable, and judgment on the award rendered may be entered in any court of competent jurisdiction. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages. Each party will bear equally the costs and expenses of AAA and of the arbitrator. Each party will bear its own costs and expenses. The failure by one party to pay its share of arbitration fees constitutes a waiver of such party's claim or defense in the arbitration. All arbitration proceedings shall be confidential, except to the extent that disclosure is necessary to enforce an arbitration award in a court of competent jurisdiction. The arbitrator will issue a written opinion setting forth the basis for the arbitrator's decision, which may include an award of legal fees and costs. Notwithstanding anything to the contrary, either party shall have the right, without waiving any remedy under the Order, to seek from any court of competent jurisdiction (i) equitable relief and (ii) any interim or provisional relief that is necessary to protect the rights or property of such party.

20.8. Governing Law and Venue. The Agreement will be construed and governed in accordance with the laws of the State of the Buyer's principal location. The provisions of the United Nations Convention on Agreements for the International Sale of Goods, and any conflict-of-law provisions that would require application of another choice of law, are excluded. Subject to the arbitration provisions of Section 20.7, Supplier consents to the exclusive jurisdiction of the appropriate federal or state court of the Buyer's principal location, for any legal or equitable action or proceeding arising out of, or in connection with, the Contract Products or the Agreement.

20.9. Course of Performance. Neither course of performance, course of dealing, or usage of trade may be used to vary the terms of any Agreement.

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

20.11. Claims by Supplier. Any action or proceeding by Supplier under any Agreement must be commenced no later than one (1) year after the alleged breach or other event giving rise to Supplier's claim occurs without regard to the date the breach is discovered. Any Supplier action not brought within that one year time period shall be barred, without regard to any other limitations period set forth by law or statute.

20.12. Severability. If any term herein is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, the term will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with applicable law. The remaining provisions of an applicable Agreement will remain in full force and effect. For example, Section 17.2 does not apply to contracts described under UCC 2-306.

20.13. Construction. The word "including," as used herein, means "including, without limitation," and terms defined in the singular include the plural and vice versa. The paragraphs and other headings herein are for convenience of reference only and shall not affect the construction or interpretation of any particular provision. The English language version of these Terms shall be controlling in all respects and shall prevail in case of any inconsistencies with translated versions, if any.

## General Terms and Conditions of Purchase

20.14. Entire Agreement. The Agreement to which these Terms are attached or incorporated, to include any documents incorporated therein by reference, sets forth the full and complete agreement of the parties regarding Contract Products and supersedes any and all prior or contemporaneous proposals, agreements, understandings, representations, statements, or courses of conduct between the parties regarding Contract Products made prior to the effective date of the applicable Agreement, excluding non-disclosure/confidentiality, bailment, or development agreements previously entered into by the parties. Where a website is incorporated by reference into these Terms, or any Agreement, the most recently updated version of that website will govern Supplier's performance, and Supplier agrees to regularly check those websites to ensure Supplier's compliance with the current version.

20.15. Survival. Any provision of an Agreement, which by its nature is intended to survive termination, cancellation, completion or expiration of an Agreement (e.g., Spare and Replacement Parts, Warranty, Remedies, Indemnification, Dispute Resolution), shall continue as a valid and enforceable obligation of the parties, notwithstanding such termination, cancellation, completion or expiration.

20.16. No Implied Waiver and Amendments. The failure of either party to require performance by the other party of any provision will not affect the right to require performance at any later time, NOR WILL THE WAIVER BY EITHER PARTY OF ANY BREACH CONSTITUTE A WAIVER OF ANY LATER BREACH. No amendment to an Agreement shall be binding unless it is contained in a Signed Writing.

20.17. Signatures in Counterpart. Agreements may be executed in counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute one and the same agreement. A facsimile or attachment to an e-mail shall suffice as an original.

20.18. Notices. All notices, demands and requests or other documents to be given hereunder shall be in writing and shall be deemed to have been given for all purposes (a) upon personal delivery, (b) one (1) day after being sent, when sent by professional overnight courier service from and to locations within the continental United States, (c) five (5) days after posting when sent by registered or certified mail, addressed as set forth below or (d) when sent, if sent by facsimile, provided that the receipt of successful facsimile transmission is received by the sender and, in each case, addressed to the party at the addresses provided by the parties to the other in accordance with this provision.

20.19 Electronic Communications and Electronic Signatures. Supplier shall comply with any method of electronic communication/payment processing specified by Buyer, including electronic funds transfer, pay-on-receipt processes/systems, advanced shipping notifications ("ASN"), Order/Release transmission and acknowledgement processes, Releases, electronic signature, and electronic communication systems, including the use of electronic data interchange portals. The foregoing systems and processes may give a means to accept and acknowledge Orders and/or Releases, but this is not exclusive: Acceptance is still permitted by any means permitted by law or agreement (e.g., Section 2.1). E-mails shall not, under any circumstances, constitute a Signed Writing.