

# TERMS AND CONDITIONS

THIS ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

**1. ACCEPTANCE:** This order is Buyer's offer to purchase the goods or services ("the Products") described in this order. **Acceptance of this offer is limited to its terms.** This order consists only of the terms contained herein and in any documents or specifications expressly incorporated by reference. It does not constitute an acceptance by Buyer of the terms contained in any quotation, proposal or order confirmation furnished by Seller. For purposes of this order, the term Seller includes any seller of goods and/or seller/contractor providing services hereunder.

This order must be accepted in writing by Seller. If Seller does not accept this order in writing, any conduct by Seller which recognizes the existence of a contract pertaining to the subject matter of this order shall constitute acceptance by Seller of this order and all of its terms and conditions. Buyer objects to any terms proposed by Seller in accepting this offer which are in addition to or different from those contained in this offer.

**2. BLANKET ORDERS:** If this order is identified as a "blanket order", Buyer shall issue a "Vendor Release and Shipping Schedule" to Seller for specific part revisions, quantities and delivery dates for Products. Buyer shall have the right to cancel, adjust or reschedule the quantities of Products shown in such "Vendor Release and Shipping Schedule" except that it may not cancel, adjust or reschedule the Products shown as "Firm Obligations" on such "Vendor Release and Shipping Schedule."

**3. WARRANTY:** Seller warrants that it has good title to the Products, free and clear of all liens and security interests. Seller warrants the Products will conform to any drawings, specifications, statements of work, samples, and/or other descriptions and requirements relating to the Products furnished by Buyer as part of this order. Seller warrants that Products will be fit and sufficient for the purpose intended except to the extent that any defect in the products is due to Seller's conformance to any drawings, specifications, statements of work, samples, and/or other descriptions and requirements of Buyer. Seller also warrants that all Products supplied will be merchantable, of good material and workmanship, free from defect in design, manufacture and/or otherwise, and in compliance with all applicable statutes, regulations and standards. These warranties shall survive acceptance, test, acceptance of results, and payment for the Products and shall run to Buyer and its customers, end users and end customers. Buyer shall have all legally available remedies for breach of warranty. These remedies shall be in addition to any other remedies that may be available to Buyer by statute, contract, these terms, or otherwise for breach of warranty. In addition to such other remedies, which shall include the right to require Seller to reimburse Buyer for all payments it may be required to make to its customers, end users and end customers attributable to Seller's breach of warranty, Buyer may either return for credit or refund or require prompt correction or replacement of the defective or nonconforming Product or part thereof at Seller's expense.

Seller's warranty hereunder will be coterminous with the warranty terms as to time and/or mileage extended by Buyer to its customers, end users or end customers for the Products or end product employing any such Products as a part or component thereof. For the avoidance of doubt, Seller understands that the Products or end products employing any such Products as a part or component thereof may be subject to different warranty periods as may be provided by Buyer, Buyer's customers, end users or end customers. Consequently, Seller agrees that its warranty obligations under this Section 3, and in particular, under this paragraph of Section 3 will apply also to such different warranty periods.

Seller will cooperate with Buyer in various initiatives and programs Buyer might implement designed to improve quality, increase customer, or end user satisfaction, or reduce costs. Buyers and Seller's obligations to treat information received under any such warranty reduction program or initiative as confidential information are described in Section 10.

If Seller initiates such a program or initiative covering the Products, Seller will specify the extent, if at all, to which the terms of such a program or initiative take precedence over or modify the terms contained herein.

**4. QUALITY ASSURANCE:** Seller shall also supply initial samples and documentation per the Production Part Approval Process (PPAP) for Buyer's approval prior to the commencement of production runs by Seller. If Seller does not supply reports as required, Buyer may either reject the samples or inspect and test the samples itself and invoice Seller for such work at the rate of \$100.00 USD per hour unless otherwise at a rate agreed upon by the parties. After its initial qualification, Seller shall maintain its status as an acceptable vendor under Buyer's supplier quality systems requirements.

**5. PRICES:** The prices shown in this order shall remain firm throughout the term of this order unless authorized representative of Buyer has expressly agreed in writing to adjust the prices shown during the performance of this order. The prices shown include all charges by Seller for packing, reusable containers, and transportation to the place of delivery. The prices shown also include applicable federal, state, and local taxes except taxes which Seller is required by law to collect from Buyer. Seller shall show taxes which it is required by law to collect from Buyer separately on its invoices and shall not invoice any tax for which Buyer has furnished a valid exemption certificate. Seller represents that its prices charged for Products under this order are at least as low as the prices charge by Seller to buyers of the same kind as Buyer under conditions substantially similar to those specified in this order. The foregoing notwithstanding, Seller understands and agrees that it will be required during the term of the order to achieve annual price reductions for the Products through commercial and productivity give backs, including value added and value engineering give backs. The specific price reduction amounts will be negotiated for each program to which this order applies.

**6. SHIPPING AND DELIVERY:** Seller will comply with Buyer's "ship to" and "bill to" instructions as shown in this order or in the applicable "Vendor Release and Shipping Schedule." Seller will route its shipments in accordance with instructions of Buyer or its shipping agent. Title to and risk of loss of the Products shall pass to Buyer upon delivery of the Products in accordance with the shipping terms specified by Buyer. Seller understands that Buyer establishes its manufacturing schedules in reliance on Seller's timely performance of this order and that time is of the essence in Seller's performance. In the event of delays in timely performance attributable to Seller or its agents, Seller shall be responsible for all reasonable costs and expenses resulting from such delays, including all costs and expenses imposed on Buyer by its customers, end users and end customers. Additionally, Seller shall also bear the costs and expenses of expedited freight, which may be required to mitigate such Seller delays. Seller agrees to show the engineering revision level of the Products shipped on all shipping documents.

**7. INSPECTION:** Buyer and/or Buyer's customer shall have the right to review any designs, drawings or specifications prepared by Seller under this order and to inspect and test Products at Seller's premises prior to delivery to Buyer. Buyer shall make such inspections and tests so as not to delay the work under this order. Buyer shall also have the right to inspect Products at Buyer's plant within a reasonable time after delivery. Any review, inspection or test by Buyer under this section shall not relieve or excuse Seller from its obligations under this order. For the avoidance of doubt, Seller understands that the foregoing rights of inspection notwithstanding, Buyer and/or Buyer's customer do not have an affirmative obligation to inspect the Products and may choose not to inspect the Products. Buyer and/or Buyer's customer shall, and be entitled to rely on seller's full and accurate compliance with the order issued by Buyer, and on Seller's warranties arising by statute, contract, these terms or otherwise.

**8. CHANGES:** By giving written notice to Seller, Buyer may modify at any time the specifications, designs or drawings, samples or other description to which the Products are to conform, the methods of shipment and packaging of Products, or the place of delivery. If such modification affects the cost of, or the time required for the performance of any part of the work under this order, and if Seller makes a written claim for adjustment within thirty (30) days after receipt of the written notice of modifications, then Buyer shall make equitable adjustment to the terms of this order within a reasonable time. Only modifications for which Buyer submits a written notice to Seller shall become part of this order.

**9. INFORMATION:** If Buyer supplies drawings, data, designs, inventions, computer software or other technical information to Seller to facilitate the performance of this order, then such information shall remain Buyer's property

and Seller shall hold it in confidence and regard it as confidential information. Seller shall not reproduce, use or disclose such information to others for any purposes other than the performance of this order without Buyer's prior written consent. Seller shall not produce any part or product using such information without Seller's prior written consent. Seller may use Buyer's confidential information only for the production and supply of Products to Buyer. Seller shall have no right to use Buyer's marks, trademarks, or trade names except as authorized in writing by Buyer. Such information shall be returned to Buyer upon completion by Seller of its obligations under this order or upon demand, along with all copies Seller has made and all other documents in which such information has been incorporated.

Unless Buyer has entered into a separate written non-disclosure agreement with Seller, and such agreement is specifically incorporated by reference herein, any information which Seller may disclose to Buyer with respect to the design, manufacture, sale or use of the Products covered by this order shall be deemed to have been disclosed as part of the consideration for this order, and Buyer shall be free to use such information. Seller grants to Buyer a non exclusive, worldwide right and license to use Seller's intellectual property rights to obtain from alternate sources products and services similar to the products and services for use in vehicles and/or component parts covered by this order. There will be no fee for this license if (1) Buyer terminates this order for Seller's default, or (2) Seller terminates this order other than for Buyer's default. Otherwise, the parties will negotiate a reasonable fee for the Seller's intellectual property rights.

The parties expressly acknowledge that breach of this provision will result in irreparable harm to Buyer and cause Buyer to incur damages, loss and expense for which no adequate remedy at law exists. Buyer may petition a court of competent jurisdiction for injunctive and any other relief to which it may be entitled in law or at equity.

**10. BUYER'S PROPERTY:** All property used by Seller in connection with this order which Buyer owns and delivers to Seller, or pays Seller for, including, but not limited to, tools, dies, jigs, molds, patterns, fixtures and equipment and any replacement thereof, shall be and remain the property of Buyer. Buyer may remove or inspect such property at any time and buyer shall have free access to Seller's premises for such purposes. All property owned by Buyer shall be marked as Buyer's property and used only for performing Buyer's orders. Seller shall maintain and repair such property and return it to Buyer in its original condition, reasonable wear and tear excepted, at the request of the Buyer.

**11. INDEMNITY:** Seller shall defend, indemnify and hold Buyer, its successors and assigns, their principals, affiliates and subsidiaries, including their respective directors, officers, employees, agents and representatives, harmless from and against any and all liabilities, damages, losses, claims, demands, actions, costs or expenses (including actual fees for attorneys, experts and consultants, settlement costs and judgments), occasioned by, resulting from, or arising out of any claim, by whomsoever asserted and regardless of nature or kind, including without limitation, for personal injuries (including death) and damage to property, whether in tort or under contract, directly or indirectly, in whole or in part occasioned by, resulting from, or arising out of (a) any defect or alleged defect in the Products supplied by the Seller; (b) any noncompliance or alleged noncompliance by the Seller with any of its representations, warranties or obligations under an order; or (c) any negligence or fault, or alleged negligence or fault of the Seller in connection with the design, production, or manufacture of the Products.

Seller also shall indemnify Buyer, its successors, assigns, agents, customers and users of the Products against liability, damage or liability, including costs and expenses, including attorneys' fees, which may be incurred on account of any suit, claim, judgment or demand involving infringement or alleged infringement of any patent, copyright, industrial design, right or other intellectual property rights in the manufacture, use or disposition of the Products supplied under this order. If the Products delivered under this order are produced to a specification or design other than one provided by Buyer, it shall be a condition of this indemnity that Buyer shall notify Seller of any suit, claim or demand against it and shall permit Seller to defend or settle such suit, claim, judgment or demand. Seller shall promptly notify Buyer of any suspected claims of which it becomes aware.

**12. RELEASE OF INFORMATION AND ADVERTISING:** Seller and Buyer agree that this order is confidential business information. Neither of them, without the prior written consent of the other, shall make any news release or public announcement of this order or advertise or publish the fact that Buyer has placed this order with Seller.

**13. ASSIGNMENT:** Seller may assign this order or any of Seller's rights or duties under this order, including any assignment by operation of law, or subcontract the performance of any of its duties under this order, only with Buyer's prior written consent. The terms and conditions of this order shall bind any permitted successors or assigns of Seller.

**14. EXCUSABLE DELAYS:** Neither Seller nor Buyer shall be liable for damages for delay in or prevention of its performance of this order arising out of causes beyond its reasonable control including, but not limited to, acts of God or of the public enemy, acts of any Government in either its sovereign or contractual capacity, fires, floods, or freight embargoes. It shall be a condition of excuse under this section that the party seeking excuse notifies the other party in writing within ten (10) days after the beginning of any cause which may excuse performance under this section. If any material portion of Seller's performance under this order is excused under this section for a period exceeding thirty (30) days, Buyer shall have the right to terminate this order immediately upon written notice to Seller without further liability or obligation to Seller. For the avoidance of doubt, Seller understands and agrees that strikes, lockouts or other labor disputes shall not be considered events of excusable delay.

## 15. TERMINATION RIGHTS:

Buyer may terminate the performance of work under this order (or any part thereof) for cause upon written notice of termination to Seller if (a) Seller fails to cure any material failure to perform, discharge or fulfill its obligations under this order to the reasonable satisfaction of Buyer within ten (10) days after receipt of a written notice from Buyer that Buyer considers Seller to be in default under this order; or (b) Seller, without the prior written consent of Buyer, assigns or transfers all or part of its rights and obligations under this order to another person, either voluntarily or by operation of law; or (c) Buyer has reasonable grounds for insecurity about Seller's ability to continue to perform this order satisfactorily, including Seller's ability to maintain acceptable quality standards and delivery schedules, or a satisfactory financial condition.

In addition to the foregoing, Buyer may terminate the performance of work under this order (or any part thereof) for cause upon written notice to Seller if (a) Seller is unable, in the reasonable judgment of Buyer, to remain competitive in terms of price, technology, quality or other material terms of sale with other suppliers of such Products, and fails to re-establish its competitive position to the reasonable satisfaction of Buyer within ninety (90) days after Buyer notifies Seller of such issue, specifying the manner in which such Products have become uncompetitive.

**16. HAZARDOUS MATERIALS & RESTRICTED SUBSTANCES:** Seller shall notify Buyer of all "hazardous materials" (as that term is defined in applicable federal, state and local statutes) which are contained in the Products. Seller shall furnish Buyer with copies of all applicable "Material Safety Data Sheets" for Products no later than the initial shipment date under this order. Seller shall also comply with all laws, orders and regulations pertaining to the use, storage, transportation and disposal of restricted, toxic and hazardous materials.

For Products that are incorporated into Buyer's customers' products, Seller shall disclose restricted, toxic and hazardous materials information to Buyer upon request. Such disclosure shall include, but is not limited to, Seller's entry of parts information into the International Material Data System ("IMDS") and forwarding such information to Buyer (IMDS ID #2199). At a minimum, Seller shall disclose those materials listed on the IMDS International List of Reportable Substances.

**17. RECALL CAMPAIGNS:** Seller shall indemnify and hold Buyer harmless against all loss, liability, damage cost and expense incurred by Buyer or its customers or users of its Products if Buyer's products or other Products furnished hereunder or an end product employing any such Products as apart or component thereof or repairs, replaces or refunds the purchase price of such Products or end product. This indemnity shall apply only if the recall, repair, replacement or refund (a) is required pursuant to applicable statutes, laws or regulations; (b) is required pursuant to Buyer's contractual obligations to

its customers, end users or end customers; or (c) in Buyer's reasonable commercial judgment is necessary to preserve Buyer's commercial reputation as a supplier of reliable, high quality products.

If Seller's Products are not the sole cause of such action by Buyer, then Buyer shall apportion its costs, damages and expenses as it shall determine is reasonable and equitable.

Buyer shall use reasonable efforts to inform Seller promptly after Buyer learns of facts which may require a recall, or repair, replacement or refund pursuant to this section. Buyer shall have the right, without the consent of Seller, to report to any administrative or regulatory body any information which Buyer obtains indicating that the Products furnished by Seller either fail to conform to any standard required by law, or constitute or create of themselves or within the end product of which they are a part or component a situation requiring recall or notice as defined by the applicable law.

Seller shall prepare, maintain and file with the appropriate agency those records and reports relating to the manufacture, sale, use and characteristics of the Products furnished to Buyer under this order which may be required by any federal, state or local law or regulation concerning the manufacture, sale or use of the Products or the end products of which the Products may be a part or component. Seller shall provide Buyer with copies of such records at Buyer's request and shall give Buyer access to Seller's records that allow Buyer to confirm Seller's compliance with this section.

Seller shall comply with all Product Safety and Compliance Requirements contained in the SQSR manual, and on the Seller accessible website established by Buyer for supplier related requirements and related matters.

## 18. INSURANCE:

Seller shall at all times provide and maintain the following:

(a) Workers compensation insurance or approved self-insurance for statutory employees in the line of operation, and employee liability and/or umbrella insurance with limits of not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

(b) Commercial general liability including products/completed operations, and if necessary commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence and general aggregate. CGL insurance shall be written on ISO occurrence form CG 00 01 01 96 or equivalent, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under contract.

(c) Automobile liability, and if necessary commercial umbrella insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto, including owned, hired and non-owned autos. Coverage shall be written on ISO form CA 00 01 or equivalent and shall include coverage for liability assumed under contract.

Seller waives all rights against Buyer and its agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by the above insurance policies. Seller shall obtain endorsements to affect this waiver.

All insurance coverage required shall be at the sole cost and expense of Seller. All deductibles shall be assumed by, for the account of, and at the Seller's sole risk.

Seller shall furnish evidence of insurance satisfactory to Buyer and permit any authorized representative of Buyer to examine Seller's original insurance policies. If requested, all coverages shall be written with carriers of A.M. Best's ratings of no less than A- VIII, or as otherwise acceptable to Buyer. Should Seller at any time neglect or refuse to provide the insurance required herein, or should such insurance be cancelled, Buyer shall have the right to procure the same and the cost thereof shall be deducted from monies then due or thereafter to become due to Seller. Seller shall not commence work under this order until all of the insurance required herein shall have been obtained and evidenced to Buyer.

**19. GOVERNING LAW:** This order shall be governed by the law of the state of Michigan, including the Uniform Commercial Code, but excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods, and excluding Michigan law with respect to conflicts of law.

**20. EXPORT, TRADE CREDITS, OFFSET & COUNTER TRADE CREDITS:** To the extent permitted by law or Treaty, Seller shall assign to Buyer all such credits which arise from this order with the right to reassign such credits as determined by Buyer.

**21. CUSTOMS DOCUMENTATION:** Seller shall provide Buyer all necessary information and documentation of Seller relating to the Products supplied under this order and required to comply with applicable customs, product marking, country of origin, and other laws.

Seller shall hold Buyer harmless for any and all increased costs or customs duties or other penalties or damages incurred by Buyer as a result of deficient or erroneous documentation supplied by Seller for purposes of establishing the status of Products supplied under this order under the North American Free Trade Agreement and its implementing laws and regulations.

Buyer and its subsidiaries and affiliates shall be entitled to, and Seller hereby assigns to Buyer all duty and import drawback rights of Seller related to the Products. These rights include, without limitation, those rights developed by successorship and rights which may be acquired by Seller from its suppliers.

Seller agrees to inform Buyer of the existence of any such rights and upon request will supply such documents as may be required to obtain or assign such drawback rights.

**22. GOVERNMENT CONTRACTS:** If this order is placed in support of a government contract, Seller will comply with all applicable government requirements for government subcontractors, including but not limited to any applicable provisions of the Federal Acquisition Regulations (FAR).

**23. SETOFF:** In addition to any right of setoff or recoupment provided by law, Buyer may at any time and without notice deduct or setoff any amount due to or to become due to Seller and/or its affiliates/subsidiaries (related companies) from any amount due to Seller or its affiliates/subsidiaries against any claims that Buyer has or may have arising out of any other order, or transaction between Buyer and Seller.

**24. REMEDIES:** The remedies in the terms contained herein are cumulative and in addition to any other or further remedies provided by law or in equity. Resort by Buyer to any remedy, as provided in the terms contained herein or otherwise, will not be deemed an election of remedies or a waiver of any breach or remedy.

**25. ENTIRE AGREEMENT:** This order, including all documents incorporated by reference, contains the entire agreement between Buyer and Seller with regard to the purchase and sale of the Products sold under this order. This order supersedes any prior agreements or discussions (whether written or oral) between Buyer and Seller about the subject matter of this order. No amendment or modification to this order (other than a written notice of change issued by Buyer under Section 9) shall be valid unless made in writing and signed by a duly authorized representative of each of Buyer and Seller. Seller and Buyer may use electronic means, including computer-based telecommunications systems, to transmit this order. Seller's acknowledgment of this order, Buyer's "Vendor Release and Shipping Schedule," or other correspondence or information relating to the placing of this order or its performance. The terms and conditions contained in this order shall supersede any terms and conditions contained in any such electronic transmission.