



JTEKT North America Corporation

Terms and Conditions

July 1, 2015

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Terms and Conditions

These Terms and Conditions are between JTEKT North America Corporation and its Affiliates and Subsidiaries (Buyer), and each party or parties (individually, "Seller") providing Products to Buyer. Buyer hereby buys and Seller hereby sells those Products set forth in the Contract Document subject to the Terms and Conditions set forth below, together with such additional terms and conditions as may be specified in the Contract Document.

Part I – Definitions

"JTEKT North America Corporation and its Affiliates and Subsidiaries" shall include JTEKT North America Corporation, JTEKT Bearings North America LLC, JTEKT Automotive North America, Inc., JTEKT Automotive South Carolina, Inc., JTEKT Automotive Tennessee Vonore Co., JTEKT Automotive Tennessee Morristown, Inc., JTEKT Automotive Texas, L.P., JTEKT Sales Canada Inc., and JTEKT Bearings Canada, Inc.

"Contract Document" shall mean any document(s) used to supplement these Terms and Conditions and further define the purchasing relationship between the parties. This includes purchase orders.

"Products" or "Services" shall mean the items Seller sells and Buyer buys under the Contract Document.

"Recall" shall mean (i) a determination by a government agency or authority that a Product failed to meet legal, manufacturing, and/or safety requirements, or (ii) a decision by Buyer to voluntarily recall any Products due to a determination that such Products failed to meet legal, manufacturing, and/or safety requirements.

"Intellectual Property" shall mean for any party any patent, trade secret, trademark, service mark, copyright, mask work, or other intellectual property right of such party, whether electronic or written documents or property, and all sketches, drawings, blueprints, designs or renderings, process sheets, dimensional layouts, test and trial result data and similar data that is proprietary to such party and which is used, directly or indirectly, or otherwise made available to the other party for or in connection with the manufacture, supply, or production of any Products or Tooling.

"Tooling" shall mean prototype and production tools, dies, fixtures, jigs, gauges, molds, patterns, and related software.

"Technical Documents" shall include, but is not limited to, engineering drawings, non-public specifications, process information, and program information.

Part II – Instructions to Seller

- 1. Quantity Acceptable.** Buyer will accept only the quantity of Products as shown on the quantity column of this order or subsequent purchase orders in reference to this purchase order. Over shipments will be returned to Seller for credit and under shipments shall be made up by Seller according to Part III Section 2. Delivery.
- 2. Supplemental Clauses Applicable.** Supplemental terms and conditions of purchase referenced in the Contract Document, whether or not attached hereto, are hereby incorporated and made part of the Contract Document.
- 3. Purchase Order Number.** The purchase order number(s), including amendment designations, must appear on all invoices, packing lists, and bills of lading unless otherwise indicated in the Contract Document.
- 4. Packing List.** A packing list shall accompany each shipment of Products pursuant to the Contract Document.

5. **Bills of Lading.** Bills of Lading shall be mailed to the destination address shown on the face of the purchase order, or to the co-signee if so determined by Buyer, on the day the shipment is made.
6. **Invoice.** Invoices shall be mailed to the invoicing address shown on the face of the purchase order on the day shipment is made.
7. **Evaluated Receipt Settlement.** If the Evaluated Receipt Settlement is used for payment, payment will be calculated based on the date Products were received and according to the agreed upon purchase order price and terms. The packing list will act as the invoice. Invoices are not required and will not be accepted.

Part III – General Terms and Conditions

1. Acceptance.

- (A) Acceptance may be acknowledged by writing or the commencement of performance by Seller in accordance with the Contract Document. Commencement of performance shall be conclusive evidence of the Seller's approval and consent to the Terms and Conditions set forth herein.
- (B) If Seller proposes additional or different terms and conditions which relate to the description, quantity, price, or delivery schedule of Products, Seller's proposal will operate as a rejection of Buyer's offer. In all other cases, Seller's proposal will be deemed a material alteration of Buyer's Terms and Conditions, and Buyer's Terms and Conditions will be deemed accepted by Seller without Seller's additional or different terms.
- (C) Payment for delivered Products will not constitute acceptance thereof.

2. Delivery.

- (A) Time is of the essence in making all deliveries of Products to Buyer. If the acts or omissions of Seller result or are likely to result in a failure by Seller to meet the delivery requirements of Buyer, Seller agrees to select a premium freight option and ship the Products in issue to Buyer as quickly as possible, all at Seller's sole expense.
- (B) Buyer will not be liable for Seller's commitments or production arrangements in excess of the authorized amount set forth in the Purchase Order, or in advance of the time required under Buyer's delivery schedule. If Seller delivers Products in advance of Buyer's delivery schedule, Buyer may either:
 - (i) return such goods at Seller's expense for improper delivery,
 - (ii) withhold payment for such Goods until the scheduled delivery date, or
 - (iii) place such Products in storage for Seller's account until the scheduled delivery date.

3. **Inspection of Products and Services.** Buyer may inspect all Products ordered or Services rendered hereunder at all times and places, including during the period of manufacture. Buyer is not required to inspect Products delivered nor Services rendered, and no inspection or failure to inspect will reduce or alter Seller's obligations under the Contract Document or these Terms and Conditions.

4. Rejected or Nonconforming Products.

- (A) Buyer may reject any Products which do not meet the specifications set forth in the Contract Document. Buyer may return any such Products to Seller for reimbursement, credit, replacement, or correction as Buyer may direct, or Buyer may correct and/or replace such Products at Seller's cost. Any Products rejected by Buyer will be at Seller's risk and expense and Seller will not thereafter tender such Products for acceptance unless the former rejection or requirement of correction is disclosed. Seller will reimburse Buyer for any packaging, handling, and transportation costs Buyer incurs with respect to rejected Products.

(B) Neither Buyer's exercise of, nor its failure to exercise, any rights provided hereunder will limit the rights and remedies of Buyer under these Terms and Conditions for any breach by Seller caused by its tender of rejected or nonconforming Products.

5. Revocation of Acceptance. Buyer may revoke its acceptance of Products at any time, whether or not a substantial modification of the Products has been made, if a defect(s) in the Products which could not have been discovered during Buyer's normal inspection procedures or which is not normally discoverable until the Products are used, substantially impairs the value of Products to Buyer.

6. Changes.

(A) Buyer may, at any time, by written notice to Seller make changes within the general scope of the Contract Document. Changes may be made to drawings and specifications for Products supplied or manufactured by Seller. Additionally, changes may be made to matters of inspection, testing, quality, control, and other matters ancillary to the production of Products.

(B) If any change to drawings or specifications is made, Seller ensures that the then currently valid Technical Documents are available to all those responsible for performance under the Contract Document and that the Technical Documents rendered invalid due to modifications shall be removed.

(C) If changes will result in a material increase or decrease in the cost of and/or time for performance by Seller, Buyer and Seller will negotiate in good faith a reasonable allocation of such costs or other equitable adjustment of the relationship between the parties.

(D) Buyer may at any time make changes to these Terms and Conditions.

7. Good Faith. In performing these Terms and Conditions, the parties agree to at all times act in good faith towards each other. The parties further agree to negotiate in good faith all matters, issues, and/or provisions which arise under or are related to these Terms and Conditions that require the parties to reach a consensus, understanding, or agreement. In the event the parties cannot agree on the resolution after complete discussion and negotiation, and as a matter of last resort, it is agreed that the decision of Buyer, made in its sole discretion and in good faith on the basis of its best business judgment, will be final in reaching resolution, subject to Section 33 Dispute Resolution.

8. Payment. Buyer will pay the prices stipulated on the Contract Document for Products delivered and accepted and Services rendered and accepted, less deductions if any provided for herein, but only upon submission by Seller of an invoice, unless the Contract Document specifies otherwise. Buyer will pay for partial delivery if accepted by Buyer unless otherwise specified.

9. Setoff/Recoupment. In addition to any right of setoff or recoupment permitted by law, Buyer may set off and recoup against the accounts payable of Buyer to Seller, or any of its subsidiaries or affiliates, any amounts (including without limitation any costs or expenses of Buyer) for which the Buyer determines in good faith Seller or its subsidiaries or affiliates is liable to it under any Purchase Order or other agreements with Seller or its subsidiaries or affiliates. Buyer may do this without notice to Seller.

10. Price. The purchase price set forth in the Contract Document includes all applicable federal, state, and local taxes, tariffs, and duties. Except as otherwise specifically provided in the Contract Document, Seller shall be responsible for payment of any taxes, tariffs, and duties, and for all freight transportation, insurance, shipping, storage, handling, demurrage, and similar charges, all of which have been reflected in the purchase price..

11. Discounts. Cash discounts period shall commence with the date of actual receipt of the invoice or actual receipt of acceptable Products ordered herein, whichever is later.

12. Delay.

- (A) If at any time Seller has reason to believe that the delivery of any Products may not be made in strict conformity with applicable delivery schedules, Seller shall immediately notify Buyer, setting forth the cause for the anticipated delay. Any oral communication shall be immediately confirmed in writing by the parties. During the period of any delay, Seller shall use its best efforts to provide Buyer approved Products called for from other sources and reduce its deliveries of Products to Buyer by such quantities of substitute Products, all without cost or liability to Buyer.
- (B) In the event of a delay, Buyer shall have the right to immediately acquire substitute or replacement Products from one or more alternate sources. Buyer may elect to have the quantities of Products under the Contract Document with Seller reduced by the amount of alternative products acquired, provided notice is given in writing. Buyer will have no obligation to pay Seller for Products replaced because of delay.
- (C) *Force Majeure*. Buyer or Seller may delay delivery or acceptance due to forces beyond its reasonable control, such as acts of God, actions by any government authority (whether valid or invalid), fires, floods, natural disasters, riots, wars, etc. provided that written notice of such delay is given to the other party within ten (10) days of the occurrence of such event. In the event the projected force majeure expenses will cause financial hardship to either party, the parties agree to negotiate in good faith a reasonable allocation of expenses between them. If the delay lasts or there is reason to believe it will last more than thirty (30) days or proper written notice is not provided within ten (10) days, Buyer may immediately (i) adjust, suspend (in whole or in part), or modify the performance of Seller, or (ii) cancel or modify the Contract Document.
- (D) Neither Buyer's exercise of, nor its failure to exercise, any rights provided hereunder will limit the rights and remedies of Buyer under these Terms and Conditions for any breach by Seller caused by its delay.

13. Risk of Loss. The risk of loss shall pass from Seller to Buyer only upon delivery of Products to Buyer's place of business indicated in the Contract Document, unless the Contract Document states otherwise.

14. Export/Import.

- (A) Export licenses or authorizations necessary for the export of Products shall be the responsibility of Seller unless otherwise indicated in the Contract Document, in which event Seller shall provide such information as may be necessary to enable Buyer to obtain such licenses or authorizations. Seller shall undertake such necessary arrangements as necessary for Products to be covered by any duty referral or free trade zone programs of the country of import.
- (B) Credits or benefits resulting or arising from the Contract Document, including trade credits, export credits, or the refund of duties, taxes, or fees, shall belong to Buyer. Seller shall provide all information necessary, including written documentation and electronic transaction records, to permit Buyer to receive such benefits or credits, as well as to fulfill its customs related obligations, origin marking or labeling requirements, and local content origin requirements, if any.

15. Tooling.

- (A) "Buyer's Tooling" shall include all tooling furnished to Seller or paid for by Buyer or any of Buyer's customers in connection to the Contract Document. Buyer and/or its customers shall retain title to all of Buyer's Tooling. Such property shall be marked as Buyer's property and shall be kept at Seller's risk and shall therefore be replaced by Seller if lost, stolen, damaged, or destroyed.
- (B) Seller, at its expense, shall maintain Buyer's Tooling in good condition, including wear and tear, for the life of the tool, unless the Purchase Order specifies otherwise.
- (C) Buyer's Tooling shall be used exclusively in the production of Products required by the Contract Document and shall not be used for production outside the quantity and scope of the Contract Document.

- (D) Upon completion, cancellation, or termination of the Contract Document, or at the request of Buyer, Seller shall request disposition instructions for all of Buyer's Tooling and shall make such property immediately available to Buyer.
- (E) Nothing in this section shall be construed as imposing any obligations on Buyer to furnish any such property to Seller.

16. Compliance with Laws. Seller agrees to comply with all applicable federal, state, and local laws and executive orders and regulations pursuant thereto relating to the sale and delivery of Products. Seller represents for itself and its agents, employees, assigns, and subcontractors, that it has not and does not use child, slave, prisoner, or any other form of forced or involuntary labor in the manufacture or supply of Products under these Terms and Conditions. Seller therefore warrants that Products are supplied or manufactured in compliance with the Fair Labor Standards Act of 1938 and the Occupational Safety and Health Act of 1970 and any rules and regulations created by any governmental agency pursuant thereto. Seller shall comply with all provisions of the Dodd-Frank Act. Seller shall indemnify Buyer and its employees and agents from and against any claims, demands, or expenses (including attorney's and other professional fees) arising from or related to Seller's noncompliance or violation of any provision hereunder.

17. Continuous Improvement. Seller has an ongoing responsibility to perform under these Terms and Conditions in a manner which results in continuous improvement in Seller's provision of Products to Buyer. Seller shall participate in all quality improvement and other manufacturing programs and initiatives of Buyer.

18. Quality.

- (A) Seller will maintain an inspection and quality system acceptable to Buyer and that follows Buyer's Supplier Quality Assurance Manual. Products purchased hereunder shall be manufactured in conformity with any drawings, specifications, and other data which are part of the Contract Document and within any quality program of Buyer described in the Contract Document.
- (B) Seller acknowledges that Buyer may reduce its incoming inspection procedures in reliance upon Seller's maintenance of a quality system as required hereunder.

19. Product Warranty.

- (A) Seller warrants that Products shall:
 - (i) be fit and sufficient for the purpose intended,
 - (ii) be merchantable and free from all defects, including defects in material and workmanship, and if not of Buyer's detailed design, defects in design,
 - (iii) conform with all representations, descriptions, samples, drawings, plans, specifications, designs, and other data supplied by Seller or listed in the Contract Document, and
 - (iv) be free and clear of all liens and encumbrances.
- (B) The foregoing warranties are in addition to those available to Buyer by law and will run to Buyer's customers.
- (C) Buyer's review or approval of any samples, drawings, specifications, or other data developed by Seller in connection with the Contract Document will not limit Seller's responsibility under the warranties contained herein or alter the cost, rate of output, or delivery requirements of the Contract Document.
- (D) The parties intend to mutually negotiate and resolve a means of calculating the actual cost of any warranty claim with respect to Seller's warranties, including but not limited to costs to conform any non-conforming Products, to replace Products, and any costs related thereto, all in conformity with such cost settlement procedures Buyer has adopted. The parties agree to allocate such costs with respect to Seller's warranties in an effort to have each party bear its respective share of the costs. Notwithstanding the aforementioned or any other provision of these Terms and Conditions to the contrary, in resolving all matters arising under or related to Seller's warranties, in the event the parties after good faith negotiation or other compliance with applicable procedures cannot resolve any issue,

the decision of Buyer, made in good faith on the basis of its best business judgment, will be final in reaching a resolution.

20. Recall. In the event of a Recall the parties intend to negotiate in good faith to resolve the problem and complete the Recall. Seller will be responsible for all costs and damages resulting from such Recall, including costs of notification, costs of repair and/or replacement, penalties, fines and buy backs, as well as shipping, labor and administrative costs, based upon Buyer's allocation of responsibility for the Recall. This section will not limit Seller's responsibility under any other provision of these Terms and Conditions or the Contract Document.

21. Products Indemnification. To the fullest extent permitted by law, Seller shall indemnify, defend, and hold harmless Buyer, its officers, employees, agents, and assigns from and against all claims, damages, losses, expenses, and liabilities, including but not limited to attorney's fees, court costs, repair and replacement expenses, and other incidental and consequential damages arising out of or resulting from the actual or alleged breach of warranty or other terms contained in these Terms and Conditions and/or the Contract Document.

22. Patent Indemnification. To the fullest extent permitted by law, Seller shall indemnify, defend, and hold harmless Buyer, its officers, employees, agents, and assigns from and against all claims, damages, losses, expenses, and liabilities, including but not limited to attorney's fees, court costs, repair and replacement expenses, and other incidental and consequential damages, arising out of or resulting from the actual or alleged claim of infringement of any patent, trademark, design, copyright, or other intellectual property right in any country. Seller shall defend or settle at its own expense any action or claim of such infringement. Indemnification will not apply to Products which are manufactured solely in accordance with Buyer's detailed written specification. If the sale and/or use of Products is enjoined, Seller shall, at its own expense, either:

- (A) procure for Buyer the right to continue using Products,
- (B) replace Products with equivalent non-infringing Products,
- (C) modify Products so that they are no longer infringing, or
- (D) remove Products and refund the purchase price, including transportation, installation, removal, and other charges incidental thereto,

as mutually agreed upon between Buyer and Seller.

23. Intellectual Property.

- (A) *Buyer's Intellectual Property.* Buyer does not transfer to Seller any Intellectual Property of Buyer other than the limited right to use such Buyer's Intellectual Property strictly and solely in conjunction with Seller's manufacture, supply, and/or repair of any Products or Tooling. Nothing in this section shall be construed as Buyer giving a license to Seller for use of its Intellectual Property.
- (B) *Seller's Intellectual Property.* Except as otherwise stated in this section, Seller does not transfer to Buyer any Intellectual Property related to Products or incorporated in Buyers' property, other than the right to incorporate Products purchased from Seller in the end products made under the Contract document.
 - (i) Seller hereby grants to Buyer a non-exclusive, royalty-free, irrevocable license to repair, rebuild, and relocate Product.
 - (ii) If the Contract Document is terminated for reasons other than the default of Buyer, Seller grants to Buyer a non-exclusive right and license to use Seller's Intellectual Property, subject to Section 24 Proprietary Information, to obtain from alternative sources products similar to Productions under the Contract Document. There will be no fee for this license if Buyer terminates the Contract Document for Seller's default, or Seller terminates the Contract Document other than for Buyer's default. Otherwise, the parties will negotiate in good faith a reasonable fee for use of Seller's Intellectual Property.

24. Proprietary Information.

- (A) "Confidential Information" as used herein shall be defined as: All information concerning the ideas, goods, services, and processes of Buyer or Seller that such party treats as confidential and does not ordinarily make publicly available, including but not limited to all information concerning pricing, technical data or know-how, research, products, services, developments, ideas, inventions, processes, techniques, designs, forecasts, distribution, engineering, marketing, financial, merchandising, marketing, strategies, customer lists, customer data, personnel data, manuals, and/or sales information. Buyer and Seller shall each bind to its confidentiality obligations hereunder all of its respective employees, officers, advisors, consultants, members, and agents who may come into contact with or obtain access to the Confidential Information during the term of the Contract Document. Each party will use reasonable commercial efforts to mark or verbally identify as "CONFIDENTIAL" all Confidential Information. The failure to so mark or identify any Confidential Information shall not constitute a waiver of confidentiality with respect to any Confidential Information.
- (B) Confidential Information shall not include information that can be clearly demonstrated to be:
- (i) generally known or available to the public at the time of disclosure, through no act or omission on the part of the receiving party;
 - (ii) provided to the receiving party by a third party without any obligation of confidentiality;
 - (iii) already known by the receiving party at the time of disclosure under these Terms and Conditions as can be established by its written documentation;
 - (iv) independently developed by the receiving party without any violation of these Terms and Conditions; or
 - (v) which is approved for release by the party which owns the Confidential Information.
- (C) The parties each agree that during the period when Buyer and Seller are in a supplier – purchaser relationship, plus four years after the termination of the supplier - purchaser relationship:
- (i) the receiving party shall not disclose or communicate Confidential Information to any third party, and shall reasonably protect the Confidential Information with not less than the same degree of care which the receiving party uses to prevent the unauthorized use, dissemination or publication of its own most valuable confidential and proprietary information, which in any event shall be at least a reasonable standard of care;
 - (ii) each party shall permit access to the other's Confidential Information only to its employees or consultants who:
 - 1. reasonably require access to Confidential Information for purposes of evaluating or engaging in the supplier - purchaser relationship, and
 - 2. have undertaken a binding written obligation of confidentiality with respect to the confidential information of others entrusted to him or her, and
 - 3. have been apprised of these Terms and Conditions, and the receiving party's obligation to maintain the confidential status of Confidential Information and to restrict its use as provided by these Terms and Conditions.

25. Service. If Products are intended for the original equipment market, Seller will make replacement Products and components of Products available for sale to Buyer until fifteen (15) years or more after Buyer discontinues purchasing Products, unless the Contract Document specifies otherwise. The price during the first five (5) years after the last production order will not exceed the price in effect for the last production order. The price for the remaining years will be negotiated in good faith between Buyer and Seller. In all other respects, Seller shall sell and Buyer shall buy Products for the replacement market under the terms of the Contract Document and these Terms and Conditions.

26. Termination.

- (A) *Termination for Convenience.* Buyer may terminate the Contract Document, in whole or in part, for its convenience by giving prior written notice to Seller. Buyer shall pay Seller for all Products which are:

- (i) ready for shipment in accordance with the Contract Document's delivery schedule prior to Seller's receipt of the termination of notice,
 - (ii) conform to all requirements of the Contract Document, and
 - (iii) are free and clear of all encumbrances.
 - (iv) Buyer will not pay for any work done after Seller's receipt of notice of termination, or for any costs incurred by Seller's suppliers or subcontractors, including but not limited to loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, or general and administrative burden charges.
- (B) *Termination for Breach (Cause)*. Buyer may immediately terminate the Contract Document without any liability to Seller, in whole or in part, for cause in the event of a breach by Seller. "Breach" means:
- 1. Seller's failure to comply with any of these Terms and Conditions or terms of the Contract Document,
 - 2. Seller's failure to give Buyer, upon request, reasonable assurances of Seller's future performance when reasonable grounds for insecurity arise with respect to the performance of Seller,
 - 3. insolvency, bankruptcy, liquidation, or dissolution of Seller, or
 - 4. any other event which causes reasonable doubt as to Seller's ability to perform hereunder.
- (ii) Buyer may, upon written notice to Seller:
- 1. waive all or any part of the breach,
 - 2. agree in writing to any change in or modification of the Contract Document as Buyer in its judgment deems advisable,
 - 3. purchase goods in substitution for Products and charge Seller for any excess cost resulting therefrom,
 - 4. demand that Seller provide replacement Products in conformity with these Terms and Conditions, and/or
 - 5. exercise any other rights or remedies Buyer may have under applicable law.
- (C) *Obligations of Seller on Termination*. Upon receipt of notice of termination, Seller shall:
- (i) immediately terminate all work under the Contract Document,
 - (ii) take all actions reasonably necessary to protect any property of Buyer, and
 - (iii) transfer to Buyer raw materials, inventory, and such other materials which Seller produced or acquired in performing any purchase order.

27. Remedies. The rights and remedies provided Buyer in these Terms and Conditions will be cumulative and in addition to any other remedies provided by law or in equity. Buyer's waiver of breach of any provision hereof will not constitute a waiver of any other breach.

28. Advertising. Without Buyer's prior written consent, Seller shall not use or permit use of the words "JTEKT North America Corporation", "Koyo Bearings North America LLC", "Koyo", "JTEKT", "JTEKT Group", "Toyoda", or any similar word or trademark of any entity related to Buyer in the description or marketing of products produced by Seller. Nor shall Seller advertise or publish that Seller has contracted to furnish Products pursuant to these Terms and Conditions.

29. Access to Seller's Premises. Seller shall allow Buyer, with reasonable notice given, access to Seller's premises so that Buyer may inspect Seller's facilities to ensure compliance with standards set forth in these Terms and Conditions. Failure to comply or refusal of Buyer to inspect may subject all outstanding orders to cancellation.

30. Insurance.

- (A) Seller shall, at its own cost and expense, maintain and carry in full force and effect general liability, workers' compensation liability, and property damage (fire, casualty, and theft) insurance and such other business insurance as Buyer may direct in the Contract Document. Seller's insurance shall insure against any liability for loss, injury, damage, or claims caused by or arising out of or in connection with the operation of Seller's business including injury to or death of Seller's employees, agents, or any other persons and damage to or destruction of public or private property. Upon request of Buyer, Seller shall provide to Buyer proof of insurance.
- (B) To the extent Seller's employees, agents, or any other persons connected to Seller enter upon premises occupied by or under the control of Buyer or any of its customers or suppliers in the course of performance of the Contract Document, Seller will take reasonable steps to prevent any injury to persons or property arising out of acts or omissions of such persons. Except to the extent that any such injury or damage is due solely and directly to Buyer's negligence, Seller shall indemnify, defend, and hold harmless Buyer, its officers, employees, agents, and assigns from and against all claims, damages, losses, expenses, and liabilities, including but not limited to attorney's fees, court costs, arising out of any act or omission of Seller, its agents, employees or other persons connected to Seller.

31. Assignments; Subcontracts; Changes in Control. No part of the Contract Document shall be assigned or subcontracted without the prior written approval of Buyer. Seller must notify Buyer within 10 days if a change in control occurs. A change of control includes: (i) the sale, lease or exchange of a substantial portion of the Seller's assets used for the production of the Products; (ii) the sale or exchange of a controlling interest in the shares of Seller; or (iii) the execution of a voting or other agreement of control. Buyer may terminate the Contract Document, in whole or in part, without liability to Seller upon 30 days written notice to Seller if a change of control of Seller occurs. In the event of termination under this clause, Buyer will provide payment due for Products or Services delivered and accepted by Buyer.

32. Notice. Notices required under these Terms and Conditions must be in writing and, if given to Buyer, must be sent by either regular mail or by a nationally recognized overnight courier service. Notices may be sent by email but must still also be set by regular mail or a nationally recognized overnight courier service.

33. Dispute Resolution.

- (A) *Mediation.* Buyer and Seller will first endeavor to resolve through good faith negotiations any dispute arising under the Contract Document. If a dispute cannot be resolved through good faith negotiations within a reasonable time, either party may request non-binding mediation by a mediator approved by both parties, or absent that approval, by the National Center for Dispute Resolution.
- (B) *Arbitration.* If mediation fails to resolve the dispute within thirty (30) days after the first mediation session, either party may submit the dispute to binding arbitration by notice to the other party. The arbitration proceedings will be conducted in accordance with the rules of the National Center for Dispute Resolution or other rules approved by the parties and will be governed by the United States Arbitration Act 9 U.S.C. §§1-16 and this Section 33(B). The arbitration will be conducted at an agreed upon location or at a location selected by the arbitrator if the parties are unable to agree. 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. The arbitrator's award will be final and non-appealable absent fraud or manifest error. Judgment on the arbitrator's award may be entered in a court of proper jurisdiction. While arbitration proceedings are pending, the parties will continue to perform their obligations under the Contract Document without setoff for any matters being contested in the arbitration proceedings.

34. Compliance with Laws and Government Contracts.

- (A) Each party hereby represents and warrants that its performance under these Terms and Conditions and the Products that are the subject of a Contract Document will comply with all applicable laws including,

for all work performed within the United States and its territories, the Fair Labor Standards Act of 1938, as amended, and the Conflict Minerals provision (Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act).

- (B) If Buyer notifies Seller that a Contract Document is a covered sub-contract under a United States government contract, then the provisions of the following sections of the Federal Acquisition Regulations (48 C.F.R. Part 52) are incorporated herein by this reference, (i) 52.222-26 Equal Opportunity (APR 1954), (ii) 52.222-35 Equal Opportunity for Veterans (APR 1984), and (iii) 52.222-36 Affirmative Action for Workers with Disabilities (APR 1984).

- 35. No Requirements/Output Contract.** Buyer may purchase Products from other sources or reduce quantities acquired from Seller irrespective of the course of dealing between the parties. These Terms and Conditions shall not constitute a requirements or output contract unless specifically designated as such in a document signed by both parties.
- 36. Governing Law.** These Terms and Conditions and the rights and obligations of the parties hereunder shall be governed by the laws of the State of Michigan, including its provisions of the Uniform Commercial Code unless otherwise set forth herein, without regard to its conflict of laws rules.
- 37. Choice of Forum.** The parties agree that neither shall commence any litigation against the other except in a court located in the State of Michigan. Each party consents to jurisdiction over it by and exclusive venue in such a court.
- 38. Supremacy Clause.** In the event of any inconsistencies or ambiguities between these Terms and Conditions and the Contract Document, these Terms and Conditions shall control unless the Contract Document specifies otherwise.
- 39. Survival.** Any provisions of these Terms and Conditions which by their nature extend beyond the expiration, termination, or cancellation of these Terms and Conditions shall remain in full force and effect until fulfilled and/or performed and shall inure to the benefit of and be binding upon Seller and Buyer and their respective successors and assigns.
- 40. Battle of the Forms Not Applicable.** The parties have agreed and it is their intent that the battle of the forms section of §2-207 of the Uniform Commercial Code shall not apply to these Terms and Conditions or to any invoice or acceptance form of Seller relating to these Terms and Conditions.
- 41. Severability.** In the event any term, condition, or part of the Contract Document is held unlawful, that term, condition, or part will be deemed severed from this order and every other lawful provision will remain in full force and effect.
- 42. Entire Agreement.** These Terms and Conditions and the Contract Document attached hereto constitute the entire agreement between the parties, and supersede all prior and contemporaneous agreements, representations, and understandings of the parties.
- 43. Controlling Language.** The English version of these Terms and Conditions will apply in the event of any disagreement over any translation.

END