

## [ Futuris Automotive Interiors ]

### PRODUCTION GENERAL TERMS AND CONDITIONS FOR SUPPLY

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#### 1. The Terms & Conditions that apply

- (a) The contract between us, Futuris Automotive Interiors (Australia) Pty Limited (Buyer), and you, the Seller, comprises these Terms and Conditions, any Special Conditions attached to these Terms and Conditions, the Request for Quote (RFQ), Delivery Schedules and the Letter of Nomination sent to you confirming your appointment.
- (b) The contract between the Buyer and the Seller is formed when the Buyer sends to the Seller the Letter of Nomination.
- (c) Any terms and conditions proposed by the Seller will not be accepted by the Buyer, are expressly rejected by the Buyer, and have no legal or other effect with respect to the contract between the Buyer and the Seller. Any modifications to these Terms and Conditions will only be made in accordance with paragraph 27 below.

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#### 2. Shipping & Packaging

Seller agrees:

- (a) to properly pack, mark and ship goods in accordance with the requirements of the Buyer and applicable law;
- (b) to use those third-party carriers that provide the lowest transportation cost, provided that such carrier must also provide a commercially reasonable level of service;
- (c) to route shipments in accordance with instructions from the Buyer;
- (d) to make no charge for handling, packaging, storage, the transportation of goods, protective packaging material, delivering parts to various plants in special racks/different container types or re-assignment of any kind of containers unless otherwise stated in the order;
- (e) that the Purchase Order Number (which will be identified on the Delivery Schedules) appear on all packing slips, bills of lading, packages, invoices and other correspondence in respect thereof;
- (f) to identify, package and deliver goods in accordance with the Buyer's specifications in line with requirements of the production system; and
- (g) to promptly forward the original bill of lading or other shipping receipt for each

shipment in accordance with the Buyer's instructions.

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#### 3. Invoicing & Payment

- (a) The Seller agrees to invoice the Buyer in accordance with the payment terms detailed in the Letter of Nomination.
- (b) The Buyer agrees to pay all invoices within the trading terms detailed in the Letter of Nomination, subject to the Buyer receiving a valid invoice and the Buyer receiving the goods or services.
- (c) The Seller agrees to accept payment by electronic transfer of funds.
- (d) The Buyer may withhold payment pending receipt of evidence, in such form and detail as the Buyer may direct, of the absence of any liens, encumbrances and claims on the goods or services under the order.
- (e) The Buyer is entitled to set-off any amounts owed to it by Seller against any amounts owed to Seller under this contract or otherwise.

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#### 4. Delivery Schedules

- (a) Deliveries shall be made both in quantities and at times specified by the Buyer. The Buyer shall not be required to make payment for goods delivered to Buyer which are in excess of quantities specified in the Buyer's Delivery Schedules.
- (b) The Buyer may for operational reasons change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which shall entitle the Seller to a modification of the price for goods or services covered by the order. For orders of goods where quantities and/or delivery schedules are not specified, Seller shall deliver goods in such quantities and times as the Buyer may direct.
- (c) The Delivery Schedules are not a commitment by the Buyer to purchase the quantities specified in the Deliver Schedules. The Buyer makes no representation, warranty or commitment of any kind regarding any volume projection.

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#### 5. Acceptance

The Buyer shall not be bound to accept or pay for the goods or work if the goods or work do not conform to the specifications, drawings, samples or descriptions provided by the Buyer or any alteration, amendment or adjustment thereto authorised in writing by the Buyer.

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#### 6. Rejection

Notwithstanding acceptance of delivery of any or all goods comprised in the order or payment,

the Buyer, after inspection, may reject goods by notification to the Seller of defects or deficiencies. The Buyer may return goods to the Seller at the Seller's cost and risk or may rework goods at Seller's cost in all things. The Buyer may, when rejecting and returning goods or reworking goods, debit the Seller with all costs of transit and packaging charged to the Buyer for delivery of rejected goods.

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## 7. Quality and Buyer Requirements

- (a) The Seller agrees to participate in Buyer's supplier quality and development program(s) and to comply with all quality requirements and procedures specified by the Buyer, including those applicable to the Seller as set out in the Buyer's Global Supplier Management Manual (as amended).
- (b) In addition, the Buyer will have the right to enter the Seller's facility at reasonable times to inspect the facility, goods, materials and any property of the Buyer covered by the order. The Buyer's inspection of the goods, whether during manufacture, prior to delivery or within a reasonable time after delivery, will not constitute acceptance of any work-in-process or finished goods.

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## 8. Force Majeure

Any delay or failure of either party to perform its obligations hereunder will be excused, if, and to the extent that, it is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labour problems (including lockouts, strikes, and slowdowns), inability to obtain power, material, labour equipment or transportation, or court injunction or order; provided that written notice of such delay (including the anticipated duration of the delay) will be given by the affected party to the other party without undue delay. During the period of such delay or failure to perform by the Seller, the Buyer, at its option, may purchase goods from other sources and reduce the quantities of goods ordered from the Seller, without liability to the Seller, or have the Seller provide the goods from other sources in quantities and at times requested by the Buyer, and at the price set forth in this order. If requested by the Buyer, the Seller must, without undue delay provide adequate assurances that the delay will not exceed thirty (30) days. If the Seller does not provide adequate assurance that the delay will cease within thirty (30) days, the Buyer may immediately terminate the order without liability.

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## 9. Insolvency

The Buyer may immediately terminate any or all orders without liability to the Seller in any of the following or any other comparable events:

- (a) the Seller is unable to pay its debts as and when they fall due;
- (b) a liquidator, receiver, receiver and manager, administrator, mortgagee in possession, trustee in bankruptcy or any other external insolvency administrator is appointed to the undertaking and/or material assets of the Seller;
- (c) an application is made, or a step is taken, by any creditor of the Seller, to appoint to the undertaking and/or material assets of the Seller any of the persons listed in paragraph 9(b);
- (d) the Seller executes, or proposes the execution of, an assignment for the benefit of its creditors.

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## 10. Termination for Breach or Non-performance

The Buyer may terminate any or all orders, without liability to the Seller, if the Seller:

- (a) repudiates or breaches any terms of the order, including the Seller's warranties;
- (b) fails to perform services or deliver goods as specified by the Buyer in the Letter of Nomination;
- (c) fails to make progress so as to endanger timely and proper completion of services or delivery of goods.

Should any of the foregoing occur, the Buyer will notify the Seller of such non-performance or breach and provide the Seller with a commercially reasonable period of time under the circumstances to remedy the non-performance or breach (in no event more than ten (10) days). Should the Seller fail to remedy the non-performance or breach within the specified time period, the Buyer may terminate the order without liability.

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## 11. Termination at Buyer's Option

In addition to any other rights of the Buyer to terminate an order and this contract, the Buyer may for operational reasons, at its option, immediately terminate all or any part of an order or this contract, at any time and for any reason, by giving written notice to the Seller. Upon such termination, the Buyer shall pay to the Seller the following amounts without duplication:

- (a) The order price for all goods or services which have been completed in accordance with the order and not previously paid for; and

- (b) With respect to any goods or services which have not been completed the actual costs of work-in-process and raw materials incurred by the Seller in furnishing the goods or services under the order to the extent such costs are reasonable in amount and are properly allocated or apportionable under generally accepted accounting principles to the terminated portion of the order; less, however the reasonable value or cost (whichever is higher) of any goods or materials used or sold by Seller with the Buyer's written consent, and the cost of any damaged or destroyed goods or material.

The Buyer will make no payments for finished goods, work-in-process or raw materials fabricated or procured by the Seller in amounts in excess of those authorised in the Delivery Schedules nor for any undelivered goods which are in the Seller's standard stock or which are readily marketable. Payments made under this paragraph 11 shall not exceed the aggregate price payable by the Buyer for finished goods, which would be produced by the Seller under delivery or release schedules outstanding at the date of termination. Except as provided in this paragraph 11, the Buyer shall not:

- (c) be liable for finished goods, that would be produced by the Seller under delivery or release schedules outstanding at the date of termination;
- (d) be liable for and shall not be required to make payments to the Seller, directly or on account of claims by the Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, and general and administrative burden charges from termination of the order.

Within sixty (60) days from the effective date of termination, the Seller shall submit a comprehensive termination claim to the Buyer, with sufficient supporting data to permit the Buyer's audit, and shall thereafter promptly furnish such supplement and supporting information as the Buyer shall request. The Buyer or its agents, shall have the right to audit and examine all books, records, facilities, work, material, inventories and other items relating to any termination claim of the Seller.

## 12. Licence to use Works, Materials

### 12.1 Meaning of 'Intellectual Property'

In this paragraph, a reference to **Intellectual Property** includes all rights conferred under statute, common law and equity in and in relation to inventions, patents, designs, know-how, trade marks, trade secrets, trade names, logos and get-up, circuit layouts, confidential information and copyright.

### 12.2 Buyer materials, directions re branding

- (a) The Seller agrees that all Intellectual Property in any tooling, works, software, documents and/or information provided to the Seller for the purposes of this contract (**Buyer Materials**) is owned either by the Buyer or its customers, and that the Seller is granted a licence to use the Buyer Materials only in the production and supply of the goods that are the subject of this contract. The Seller may not manufacture, sell, supply or otherwise dispose to a third party any goods made by, or on behalf of, the Seller using any Buyer Materials, without the express written permission of the Buyer.
- (b) The Seller will comply with any reasonable direction issued by the Buyer in relation to the Intellectual Property or Buyer Materials.

### 12.3 Licence to Use Seller Materials

- (a) Subject to paragraph 12.4, the Buyer agrees that the Seller owns the Intellectual Property in the tooling, works, software, documents and/or information that is applied towards, and/or provided by, the Seller to the Buyer for the purposes of supplying goods that are the subject of this contract and/or fulfilling its obligations under this contract, but excluding tooling, works, software, documents and/or information created at the request of the Buyer (**Seller Materials**).
- (b) Subject to paragraphs 12.5 and 12.6(c), the Seller grants to the Buyer a non-exclusive, perpetual, royalty-free, worldwide licence to make, have made, use, have used, sell and import manufactures, compositions, machines and processes that are the subject of the Seller Materials. For the avoidance of doubt, such licence includes a right for the Buyer to sublicense the use of Seller Materials to its customers and other suppliers. For the purposes of this paragraph 12, a reference to 'use' (when used as a verb) includes the application, reproduction, adaptation, communication and transmission of particular Seller Materials, as well as the development and production of derivative works from such Seller Materials, and the words 'use' (when used as a noun) will have a corresponding meaning.

### 12.4 Developed Materials

- (a) Subject to paragraph 12.4(b), the Seller agrees that if, as part of this contract, the Seller develops any tooling, works, software, documents, and/or samples at the request of the Buyer (**Developed Materials**), all Intellectual Property subsisting in such Developed Materials will be assigned to the Buyer, and the Seller will do all things, including the execution of agreements and procurement of consents or approvals, necessary to give effect to this paragraph.

- (b) The Buyer agrees that, notwithstanding paragraph 12.4(a), the Seller retains all Intellectual Property in pre-existing Seller Materials that may have been used or applied in the development of Developed Materials (Background Materials), but grants to the Buyer a non-exclusive, perpetual, irrevocable, royalty-free, worldwide licence to use such Background Materials in order to use and exploit all Intellectual Property subsisting in the Developed Materials.
- (c) All rights are reserved in connection with Developed Materials and such Developed Materials, or any substantial portion or description thereof, may not be reproduced, distributed, communicated or transmitted in any form without the Buyer's prior written authority.

#### 12.5 Embedded Software

- (a) For the purposes of this paragraph 12.5, Embedded Software is software that is embedded in goods supplied by the Seller, which performs or manages operating or other functions of those goods, and includes documentation in relation to such software.
- (b) The licence specified in paragraph 12.3(b) does not apply to Embedded Software, but the Seller grants to the Buyer a perpetual, royalty-free, worldwide licence to use, repair or rectify, modify and/or supply all Embedded Software, which forms part of the goods supplied by Seller, in conjunction with the Buyer's use, sale, supply or other disposal of those goods.

#### 12.6 Level One and Level Two Materials

- (a) For the purposes of this paragraph 12.6:
- (i) 'Level One Materials' are Seller Materials that:
- A. define in general terms the geometric and functional attributes of the goods being supplied under this contract as they interface with the Buyer's products and/or products of its customers;
  - B. demonstrate conformance with the Buyer's specifications prescribed by the Buyer for the goods being supplied under this contract; and
  - C. describe how such goods interact with the systems and environments of the vehicle(s) being manufactured by the Buyer or its customers,

and include, for the avoidance of doubt, the Seller Materials setting out the details listed in subparagraphs A., B. and C. above in respect of components of such goods, and

materials that the Buyer or its customers require to support their engineering release systems, package and installation drawings with functional requirements; and

- (ii) 'Level Two Materials' are Seller Materials that include more detailed design and manufacturing information, such as 'Failure Mode and Effects Analyses' (including Design Failure Mode and Effects Analysis and Process Failure Mode and Effects Analysis), Design Verification Plans and Reports (including test specifications, test reports and test data), P-Diagrams and Control Plans.

- (b) The parties agree that the Buyer may, in addition to the rights granted to it under paragraph 12.3(b), utilise Level One Materials without any restriction.
- (c) The parties agree that the licence specified in paragraph 12.3(b) does not apply to Level Two Materials, but the Seller grants to the Buyer a right to use, and to permit its customers to use, Level Two Materials for internal purposes, including the integration of goods supplied by the Seller under this contract into vehicle(s) being manufactured by the Buyer or its customers. Should the Buyer require additional rights in respect of Level Two Materials, either of its own motion or to fulfil a request from, or obligation to, its customers, the parties will negotiate in good faith the terms of an appropriate licence for such additional rights.
- (d) The Seller must provide all Level One Materials requested by the Buyer from time to time, and will grant (or provide) to the Buyer reasonable access (including the delivery of reference copies) to Level Two Materials that are in the Seller's possession, custody or power.

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### 13. Intellectual Property Infringement

The Seller agrees:

- (a) to protect, defend, hold harmless and indemnify the Buyer, its officers, directors, employees, agents, affiliates, successors and customers (including its customers' customers) from and against any and all claims, demands, suits, allegations, judgments, actions, liabilities losses, damages, costs and expenses (including reasonable attorney's fees) arising out of any suit, claim or action for actual or alleged direct or contributory infringement of, or inducement to infringe, any patent, trademark, copyright or mask work right by reason of the manufacture, use or sale of the goods or services ordered, including infringement arising out of compliance with specifications furnished by the Buyer, or for actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from the Seller's actions; and

- (b) to waive any claim against Buyer including any hold harmless or similar claim, in any way related to a claim asserted against the Seller or the Buyer for patent, trademark, copyright or mask work rights infringement or the like, including claims arising out of compliance with specifications furnished by the Buyer.

## 14. Recalls and other Field Service Actions

### 14.1 Non-Conforming Product

A good or goods supplied under this contract will be considered a **Non-Conforming Product** if it or they are found, either by the Buyer, its customer(s) or a third party, to be defective in anyway, not to be fit for purpose, or not to conform to the specification for that good (or those goods) prescribed by the Buyer for this contract, and/or to legislative standards or requirements applicable from time to time, and /or to be in breach of a warranty detailed in paragraph 28.1.

### 14.2 Cooperation

If it is discovered that a good or goods is (or are) a Non-Conforming Product before or after it has been installed in a vehicle, system or subsystem and possession has passed to the Buyer's customer (or its customer), the Buyer or the Seller (as appropriate) will notify the other that a good or goods is (or are) a Non-Conforming Product, as soon as practicable after its discovery. The Buyer and the Seller will cooperate fully with each other to identify the cause of the non-conformity and to develop a plan for the prompt remediation of it.

### 14.3 Types of Field Service Action

A **Field Service Action** is a recall or other service action by the Buyer or by the Buyer's customer, that customer's dealers or other authorised repair facilities arising in connection with the supply of Non-Conforming Product. The Seller acknowledges and agrees that a Field Service Action may be initiated in order to comply with a requirement of any government or regulatory authority (whether or not the requirement is mandatory) or on its own for customer satisfaction or other reason, and that its obligations under this paragraph 14 will be the same irrespective of the circumstances in which such Field Service Action is initiated.

### 14.4 Field Service Action

- (a) If the Buyer, its customer, that customer's dealers or other authorised repair facilities determine that a Field Service Action is necessary or appropriate to remedy a Non-Conforming Product the Buyer will notify the Seller. The Buyer will provide this notice prior to starting the Field Service Action if it is reasonable and practicable to do so. In its notice the Buyer will provide the reasons for the conduct of that Field Service Action, and will provide

information to the Seller during any Field Service Action.

- (b) The Seller acknowledges and agrees that:
- (i) the Buyer, where it initiates the Field Service Action; or
  - (ii) the Buyer's customer, where it, its dealers or authorised repair facilities, initiate the Field Service Action,

the Buyer will have the right to determine all aspects and conduct of the Field Service Action, and the Seller must comply with all directions issued by the Buyer (whether of its own motion, or in order to comply with directions issued by its customer).

### 14.5 Seller liability for costs

The Seller is liable for all costs and expenses of a Field Service Action (including management time) to remedy the non-conformity of the Non-Conforming Product (or Products), including if more efficient to do so, the replacement of the Non-Conforming Product. The Seller must also reimburse the Buyer for all losses, damages, costs and/or expenses incurred by the Buyer (including, without limitation, liability to the Buyer's customers, and/or amounts payable to the Buyer's customer in order to fulfil the Buyer's obligations to that customer in the event of a Field Service Action, irrespective of who initiated that Field Service Action).

### 14.6 Adjustment of Seller primarily responsible

Once the Field Service Action has been initiated, the Buyer and the Seller will negotiate diligently and in good faith on the extent to which the Seller's financial responsibility under paragraph 14.5 for the Field Service Action may be adjusted, if at all, taking into account the relative degree of fault of each of them and, if applicable, any third parties.

### 14.7 Interim Field Service Action debt recovery

The Buyer may invoice the Seller from time to time during any Field Service Action period, in accordance with the Seller's primary or adjusted responsibility, for the **Actual Recall Costs**. The amount of such invoice will be due within thirty days of the date of that invoice. For the purposes of this paragraph, **Actual Recall Costs** means the costs of parts and labour actually incurred by the Buyer in order to undertake the Field Service Action.

### 14.8 Final Field Service Action debt recovery

Once the Seller's share of the Actual Recall Costs incurred by the Buyer as a result of a Field Service Action has been determined the Buyer will:

- (a) if the amounts paid by Seller under paragraph 14.7 exceed the Seller's share of

those Actual Recall Costs, pay to the Seller the difference between those amounts paid and its share of Actual Recall Costs; or

- (b) if the Seller's share of those Actual Recall Costs exceed the amounts already paid by the Seller under paragraph 14.7, in its sole discretions, (i) set-off against any outstanding or future invoices issued by the Seller (whether under this Contract or otherwise) all or any part of the difference between the Seller's share of those Actual Recall Costs and the amounts already paid by the Seller under paragraph 14.7 and/or (ii) invoice the Seller for all or any part of the difference between the Seller's share of those Actual Recall Costs and the amounts already paid by the Seller under paragraph 14.7.

#### 14.9 No admission of liability

Neither the Buyer nor the Seller will be deemed to have admitted that the amount of any interim Field Service Action debt recovery under paragraph 14.7 is the amount for which the Seller may ultimately be liable under paragraph 14.5. The parties agree that, unless the Seller disputes a specific calculation of Actual Recall Costs, and/or the determination as to its responsibility for those costs, within seven (7) days of being notified by the Buyer of such calculation and/or determination, the Seller will be deemed to have accepted such calculation and/or determination. The Buyer's rights under this paragraph are in addition to any other rights that it may have to recover from the Seller for Non-Conforming Products.

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### 15. Documentation and Tools, etc.

Without limiting its rights under paragraph 12:

- (a) all tools, gauges, jigs and other equipment; and
- (b) all drawings, specifications, works, models and other papers or documents (**Technical Documentation**), whether in electronic or tangible form,

which have been developed, purchased or manufactured by the Seller for the purposes of this Contract, and for which Buyer has paid, will be the sole property of the Buyer, and the Seller must deliver to the Buyer such tools, gauges, jigs, equipment, and Technical Documents within three business days of the Buyer's request, and the Seller must do all such things as are necessary to give effect to this paragraph.

To the extent that an order or this contract requires the Seller to procure, develop and/or manufacture tooling, payment for tooling will be made in accordance with terms specified in the Letter of Nomination, at which time such tooling will become the property of the Buyer, who will then arrange Insurance coverage at Buyer's expense.

Tooling shall be permanently marked with details of ownership in accordance with Buyer's instructions. Each separate section of tooling must be so identified.

The Seller must maintain the tooling, without cost to the Buyer, through its productive life. Notwithstanding the previous sentence, the Seller agrees that, in respect of tooling for the manufacture of goods to be applied in the manufacture of a Production Vehicle (as defined in paragraph 28.2(b)), it must maintain such tooling throughout the period of original equipment production for that vehicle and for a period of ten (10) years after the end of original equipment production for that Production Vehicle.

On completion or cancellation of the order, the Seller shall, when required to do so, deliver to the Buyer all finished and unfinished work relevant to the order or this contract and all such tools, gauges, jigs and other equipment and all drawings, CD's and specifications and other papers paid or to be paid for as aforesaid.

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### 16. Advertising

The Seller shall not, without first obtaining the written consent of the Buyer, in any manner advertise or publish the fact that the Seller has contracted to furnish the Buyer the goods or services herein ordered, or use any trademarks or trade names of the Buyer in the Seller's advertising or promotional materials. In the event of the Seller's breach of this provision, the Buyer shall have the right to terminate the undelivered portion of any goods or services covered by the order and shall not be required to make further payments except for conforming goods delivered or services rendered prior to termination.

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### 17. Compliance with Laws

The Seller, and any goods supplied by the Seller, shall comply with all applicable laws, rules, regulations, orders, conventions, ordinances standards of the country of destination or which relate to the manufacture, labelling, transportation, importation, licensing, approval or certification of the goods, including those relating to environmental matters, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety. Stamp duty, if any, is payable by the Seller. At the Buyer's request the Seller shall certify in writing its compliance with any or all of the foregoing.

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### 18. No Implied Waiver

The failure of either party at any time to require performance by the other party of any provision of the order shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of either party of a breach of any provision of this order constitute a waiver or any succeeding breach of the same or any other provision.

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## 19. Relationship of Parties

The Seller and the Buyer are independent contracting parties and nothing in this contract shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf or in the name of the other.

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## 20. Law and Jurisdiction

This contract shall be constructed in accordance with the laws of the state from which the Letter of Nomination is issued as shown by the address of the Buyer on that letter, and any disputes or controversies arising under this contract may be brought only before the federal or state court(s) having jurisdiction for that location. The provisions of the United Nations Convention on Contracts for the International Sales of Goods, however, shall not apply to this contract or any transactions hereunder.

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## 21. Restrictions on use of Tooling, Data, etc.

The Seller, without having first obtained the approval of the Buyer in writing, shall not use in the manufacture of goods for any third party any of the dies, tools, gauges, fixtures, drawings and/or specifications which are paid for by the Buyer or are supplied to the Seller by the Buyer in connection with the manufacture and sale by the Seller to the Buyer of the goods covered by the order. This restriction applies even though the Seller ceases to make the goods for the Buyer.

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## 22. Assignment

The Seller may not assign the benefit or delegate the obligations under this contract without the Buyer's prior written consent. The Buyer may assign the benefit or delegate the obligations under this contract at its discretion.

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## 23. Right to Audit

Where a firm or fixed price has not been established, the Seller's records relating to charges are to be made available, if required, for audit by the Buyer. The Buyer and its customers (or their respective representatives) reserve the right to audit the manufacturing process and systems employed by the Seller at a mutually agreed time.

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## 24. Imported Content

In accordance with customer's (the vehicle manufacturer) or legislated requirements, the Seller shall inform the Buyer or other parties as directed, and at intervals as requested of the nature and value of imported content within a product as well as duties paid on imported materials.

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## 25. Product Changes

After approval of Production Part Samples by the Buyer, the Seller shall make no changes to such goods(s) or service(s) which affect:

- (a) functional operation;
- (b) interchangeability;
- (c) life;
- (d) clearance;
- (e) installation;
- (f) materials,

unless submitted to and approved by the Buyer, prior to introduction of such change. In such instances, the Seller must provide supporting documentation that items (a) through (f) are not adversely affected by any such changes submitted for consideration.

In the event of non-compliance with the above the Buyer reserves the right to:

- (g) direct that such changes are rescinded;
- (h) reject shipments incorporating such changes;
- (i) transfer Warranty and associated costs resulting from such changes, to the Seller;
- (j) terminate any or all orders and this contract.

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## 26. Severability

If any term of this order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term(s) shall be deemed deleted but only to the extent necessary to comply with such statute, law, regulation, ordinance, order or rule and the remaining provisions of this order shall remain in full force and effect.

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## 27. Entire Agreement

The contract (as defined in paragraph 1(a)) constitutes the entire agreement between the Seller and the Buyer with respect to the matter contained herein and supersedes all prior oral or written representations and agreements. An order or this contract may only be modified by a purchase order amendment issued by the Buyer.

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## 28. Warranty

### 28.1 Seller's warranty regarding Products

The Seller warrants that during the Warranty Period (which is defined in either paragraph 28.2, 28.3 or 28.4), the products supplied in respect to this contract (Product) will:

- (a) conform in all respects to the drawings, specifications, statements of work, samples and other descriptions and requirements applicable to the Products that have been issued, provided or approved by the Buyer;
- (b) comply with all relevant regulations in force in all countries where the Products or vehicles equipped with the Products are to be sold;
- (c) be merchantable;
- (d) to the extent that the Seller has been engaged by the Buyer to undertake responsibility (wholly or partially) in respect of the design of the Products, be free of defects in design (even if the design has been approved by the Buyer and/or its customer);
- (e) be free of defects in materials and workmanship; and
- (f) will be suitable for their intended use by the Buyer, and its customer (if any), including the specified performance in the component, system, subsystem and vehicle location specified by the Buyer and the environment in which the Products are, or may reasonably be expected, to perform.

#### 28.2 Warranty Period for Products used in Production Vehicles

- (a) The Seller agrees that for Products installed or used in a Production Vehicle, the Warranty Period begins on the date those Products are delivered to the Buyer and expires on the date that is the later of:
  - A. when the New Vehicle Warranty ends; or
  - B. the period, mandated by statute or regulation in the place(s) in which the vehicle, in which such Product is installed, is supplied, expires; or
- (b) For the purposes of this paragraph 28.2:
  - (i) a **Production Vehicle** is a vehicle currently being produced by the customer of the Buyer to whom the relevant Products are being on-supplied;
  - (ii) the parties agree that the warranty given in respect of Products under this Section 28 applies even if such Products are dealer-installed accessories on new vehicles; and
  - (iii) the **New Vehicle Warranty** is the basic warranty offered by the customer of the Buyer to whom the relevant Products are being on-supplied. The New Vehicle Warranty covers the specific vehicle, its components and parts,

plus any extended warranty coverage provided by the customer of the Buyer to its end customer at no charge. The New Vehicle Warranty does not include any optional extended warranty that may be purchased separately by that end customer.

#### 28.3 Warranty Period for service and replacement parts

For Products supplied by the Seller to be installed, used or sold as service or replacement parts, the Warranty Period begins on the date those Products are delivered to the Buyer and expires on the date that is the later of:

- (a) the date on which the period of warranty, offered by the customer of the Buyer for such Products, ends;
- (b) the date on which the period remaining under the applicable New Vehicle Warranty covering such Products ends; or
- (c) the date on which any longer or broader statutory or regulatory requirement, applying in the place where the vehicle in which such Products are installed, used or sold, ends.

#### 28.4 Warranty Period for Used Vehicle Accessories

For Products supplied by the Seller to be installed, used or sold as accessories for used vehicles, the Warranty Period begins on the date those Products are delivered to the Buyer and expires on the date that it the later of:

- (a) the date on which the period of warranty, offered by the customer of the Buyer for such Products, ends; or
- (b) the date on which any longer or broader statutory or regulatory requirement, applying in the place where the vehicle in which such Products are installed, used or sold, ends.

#### 28.5 Variation of Warranty Period

The Seller acknowledges that a customer of the Buyer may, subsequent to the date of the Letter of Nomination, vary the New Vehicle Warranty, or any other warranty offered by that customer in respect of the Products, and agrees that, in respect of Products supplied to the Buyer for on-supply to a customer of the Buyer, references in this contract to the Warranty Period will be references to the Warranty Period as varied to accord with that customer's variation of the New Vehicle Warranty or other warranty (as the case may be).

#### 28.6 Seller liability arising from warranty breach

The Seller agrees that where it supplies a Product to the Buyer that breaches any of the warranties in paragraph 28.1, the Seller shall



protect, defend, hold harmless and indemnify the Buyer, its officers, directors, employees, agents, affiliates, successors and customers (including its customers' customers) from and against any and all claims, demands, suits, allegations, judgments, actions, liabilities, losses, damages, costs and expenses (including reasonable attorney's fees) arising out of such breach. The Seller's responsibility or liability to the Buyer will include:

- (a) at the election of the Buyer, providing a replacement Product or repairing the Product that is the subject of the breach, at the cost of the Seller; and/or
- (b) the payment, as a debt due to the Buyer, of the Buyer's costs of parts and labour and charges actually incurred in effecting any repairs of damage, or replacement of parts, caused as a result of the installation or use of the Product that is the subject of the breach.

Nothing in this clause will operate as a release or waiver by the Buyer of any other rights available to it under contract, tort or statute arising from the Seller's breach of warranty under paragraph 28.1.

#### **28.7 Long Term Durability Requirement**

If an order issued by the Buyer in respect of particular Products includes long-term durability specifications for such Products (for example, a requirement that Products meet specifications for ten (10) years), the Products must conform to those specifications, and those specifications will be considered as an addition to the obligations of the Seller under this paragraph and paragraph 14.

#### **28.8 Seller's warranty regarding operations**

The Seller warrants that, on each occasion it delivers Products under this contract or an order:

- (a) it has complied with all of the requirements set forth in the contract; and
- (b) those Products are supplied to the Buyer free from all encumbrances, liens and other charges.