

[Futuris Automotive]**NON-PRODUCTION GENERAL
PURCHASE TERMS AND CONDITIONS**

1. Obligation to Supply

- (a) For each Supply Contract, the Supplier agrees to supply the Goods and/or Services specified in relevant Purchase Order in accordance with the delivery and/or other requirements specified in that Purchase Order to the location(s) specified in that Purchase Order.
- (b) In consideration of the above, the Customer must pay to the Supplier the Price.
- (c) Each Supply Contract is separate and independent of any other supply arrangement between the Customer and Supplier, including other Supply Contracts.

2. Price, Amounts Payable

The Price of the Goods and/or Services in a Supply Contract will be firm, and will not be subject to any variations without the Customer's prior written approval. The Price is inclusive of all costs and expenses of the Supplier (whether foreseen or unforeseen) in complying with the terms of each Supply Contract and Delivering the Goods and/or Services, including all costs of packaging, freight, insurance, duties and taxes (whether payable in respect of the supply of Goods or otherwise).

3. Invoicing and Payment

- (a) On Delivery under a Supply Contract (or such later time as is specified in that Supply Contract), the Supplier will provide a formal written invoice, which specifies:
 - (i) the number or reference of the Purchase Order, and (in the case of Goods) any reference numbers attaching to the Goods;
 - (ii) the Price; and
 - (iii) any other details or information required by the applicable Supply Contract.
- (b) By providing an invoice to the Customer, the Supplier warrants to the Customer that:
 - (i) the Goods and/or Services referred to in the invoice comply with the requirements of the relevant Supply Contract; and

- (ii) in the case of Goods, the Customer acquires full and unencumbered title to those Goods.

- (c) The Customer will pay the amount in a duly-provided invoice within thirty two (32) days of the end of the calendar month in which that invoice was provided to the Customer. The Supplier agrees that making a payment will not be construed as evidence, or an admission, that the relevant Goods and/or Services have been supplied in accordance with the relevant Supply Contract, but is payment on account only.
- (d) The Customer may dispute the amount of the invoice. Where the Customer disputes an invoice, it will not be in breach of its obligations under paragraph 3(c) if it pays the undisputed portion of that invoice within the period specified in that paragraph and gives the Supplier written notice of the nature of that dispute.

4. Packaging of Goods

- (a) All Goods must be adequately packed to avoid damage during transit, Delivery, loading or unloading, having regard to the road and climatic conditions through which those Goods will pass while being transported, and the mode of transportation. Packages and/or loose pieces must be clearly marked, and must otherwise conform to any packaging requirements of the Customer that are specified in the Purchase Order that applies to them. The Supplier must label all packages in accordance with the requirements of all relevant laws.
- (b) Two copies of a bill of lading quoting a reference number denoting the particular Purchase Order and part numbers of the Goods (if any) must be sent with all Goods, one copy enclosed with the Goods, the remaining copy attached in an envelope on the outside of the crate or package.

5. Dangerous Goods

All Goods which are dangerous or hazardous Goods must be clearly marked with all or accompanied by documentation and/or information required by any relevant legislation and must be accompanied by the appropriate manifest and emergency procedure guide.

6. Delivery

- (a) For each Supply Contract, Goods and any Services related to those Goods must be Delivered:

- (i) free of carriage and handling charges to the Delivery Location; and
 - (ii) on the Delivery Date specified in the applicable Purchase Order,
 - (iii) unless otherwise agreed by the Customer and the Supplier in writing.
- (b) The Supplier will be accountable for any additional freight charges in respect of Goods arising from the Supplier's failure to follow delivery, transportation and scheduling instructions specified in the applicable Supply Contract.
- (c) The Delivery of Goods by Supplier shall not be deemed effective until those Goods have been accepted by Customer in accordance with paragraph 10.

7. Compliance with Laws, Policies

- (a) The Supplier must:
- (i) comply with all statutes, regulations, by-laws, orders, awards, and proclamations;
 - (ii) comply with the requirements of persons acting under statutory powers enabling them to give directions with respect to the Delivery of Goods and/or Services; and
 - (iii) obtain all certificates, licences, consents, permits and approvals,

that are applicable to the sale, supply and Delivery of the applicable Goods and/or Services or the carrying out of any activity by the Supplier in relation to the Delivery of those Goods and/or Services, whether directly or indirectly, whether in the jurisdiction in which the Goods are manufactured or acquired by the Supplier, in the jurisdiction in which the Supplier resides or operates, or in the jurisdiction in which the Goods and Services are Delivered.

- (b) To the extent that the Supplier or its employees, agents or contractors require access to the Customer's premises or property in order to fulfil obligations under a Supply Contract, it will comply with all policies and procedures of the Customer that are applicable to such premises or property and will indemnify the Customer (and its related bodies corporate) for any damage, loss, expense, fine, penalty or other claim which is caused or contributed by the acts or omissions of the Supplier, its employees, agents or contractors at the Customer's premises or property.

- (c) The Supplier is not entitled to any additional payment from the Customer in respect of any costs, fees or charges incurred as a result of compliance with this paragraph.

8. Title and Risk

- (a) Subject to paragraph 10 and paragraph 8(b), title to, and property and risk in, Goods will pass to the Customer upon acceptance of those Goods by the Customer.
- (b) Without prejudicing any right of rejection in paragraph 10, where any part payment for Goods is made by the Customer, title to and property in the partially-completed Goods and any materials and parts used in their manufacture or supply passes to the Customer, but risk in such partially-completed Goods, materials and/or parts, remains with the Supplier until acceptance of completed Goods by the Customer.

9. Time

Time is of the essence in the performance of each Supply Contract by the Supplier. In the case of Delivery of particular Goods and/or Services, the failure by the Supplier to perform any of its obligations under the applicable Supply Contract on or before the time specified in that Supply Contract gives the Customer the right, in addition to any other right, to require the Supplier to do whatever is necessary to expedite the Delivery of those Goods and/or Services to arrive on or as close to the Delivery Date as possible, at the Supplier's expense, including the payment of premium freight charges.

10. Inspection, Acceptance or Rejection

- (a) The Customer may require the Supplier to provide evidence acceptable to the Customer that Goods are in accordance with the applicable Supply Contract, and the Supplier must provide such evidence within the time prescribed in the request. The Customer's failure to inspect Goods supplied will not constitute an acceptance of those Goods, or a waiver of its rights under this paragraph 10.
- (b) Goods will be deemed to have been accepted on the earlier of the Supplier receiving a written notice of acceptance of the Goods from the Customer or when, after the lapse of 30 days from date on which the bill of lading supplied to the Customer with the Goods under paragraph 4(b) is signed by the Customer, the Customer retains those Goods without notifying the Supplier that the Goods have been rejected.

- (c) Even though acceptance and payment may have been made for particular Goods, or deliverable(s) from the provision of Services, prior to Delivery, if, upon inspection those Goods or deliverables fail to meet any requirements of the relevant Supply Contract, (in the opinion of the Customer), the Customer may:
- (i) require the Supplier to make good the loss, damage or defect in the Goods or deliverable(s) to the Customer within 5 Business Days at no cost to the Customer; or
 - (ii) reject the Goods or such deliverable(s).
- (d) The Customer reserves the right, even after it has paid for particular Goods to make a claim against the Supplier on account of any such Goods ordered which do not comply with the relevant Supply Contract or are defective or damaged.
- (e) If there is a deficiency in the quantity of Goods Delivered, the Customer has the right to:
- (i) notify the Supplier within 5 business days of Delivery and the Supplier must promptly and at its own cost Deliver the remaining amount of the Goods to the Customer; or
 - (ii) require the Supplier to credit the Customer for the amount of the deficiency; or
 - (iii) reject the Goods.
- (f) If the Goods Delivered are in excess of the quantities stated in the applicable Supply Contract, then the Customer may:
- (i) accept all of the Goods Delivered and pay the Supplier for the excess Goods at a rate calculated by reference to the Price; or
 - (ii) accept the quantity of Goods as stated in the Contract and reject those Goods that are in excess of that quantity; or
 - (iii) reject all of the Goods.
- (g) If the Customer rejects some or all Goods pursuant to paragraphs 10(e) and 10(f), the risk and costs of disposal or return to the Supplier will be to the Supplier's account. Nothing in this paragraph is to be taken to imply an obligation on the Customer to return the Goods.
- (h) If the Supplier has committed a substantial breach of any of the terms of a particular Supply Contract, the Customer may reject the Goods and/or Services purportedly

Delivered under that Supply Contract, or cancel that Supply Contract by written notice to the Supplier.

- (i) The Customer may return any Goods that have been incorrectly ordered by the Customer and must pay all freight costs and handling charges associated with affecting the return of such Goods and such payment will be in full satisfaction of the Supplier's entitlements and any liability of the Customer in respect of those Goods, and the applicable Supply Contract. In no circumstances will the Supplier be entitled to any indirect or consequential loss arising from such conduct, including loss of profit or loss of opportunity and the Supplier hereby waives any such rights.

11. Customer's Right to Alternative Supply

- (a) Without limiting paragraphs 9 or 10, if the Supplier fails to Deliver particular Goods and/or Services by the specified Delivery Date, or Delivers Goods or Services which (in the sole discretion of the Customer) do not comply with any requirements of the relevant Supply Contract, the Customer may purchase replacement goods, or acquire equivalent services (as the case may be) from a third party and charge the Supplier with the difference (if any) between the cost of such replacement goods, or equivalent services, and the Price specified in that Supply Contract.
- (b) The Customer may at any time call for proposals or tenders for, or acquire Goods or Services similar or identical to the Goods or Services in any other way from any person, and the Customer will not be liable in any circumstances to make any payment to the Supplier in respect of loss of prospective profits or any other claim of the Supplier.

12. No Substitution

The Supplier must not vary the specification, design, shape, configuration or characteristics of the Goods without the written consent of the Customer and must not supply substitute or equivalent Goods without the written consent of the Customer.

13. Supplier's Warranties

- (a) The Supplier warrants that the Goods:
 - (i) are new (unless otherwise specified);
 - (ii) correspond with the description in these Terms and Conditions and/or the applicable Supply Contract;

- (iii) comply with any specifications or samples;
 - (iv) are free from defects in materials, workmanship and design;
 - (v) are of merchantable quality;
 - (vi) are fit for the Customer's purpose or if the Customer's purpose is not known, for the purpose for which the Goods are commonly used; and
 - (vii) are, and will be upon Delivery and payment by the Customer, free and clear of all liens, encumbrances, reservations of title and other restrictions whatsoever.
- (b) The Supplier warrants that the manufacture, sale or use of the Goods does not and will not infringe any patent, copyright, trademark or trade secret or any other industrial or intellectual property right conferred on any person by any law.
 - (c) The Supplier warrants that the benefits of any warranties in respect of the Goods provided by the manufacturer of the Goods will be obtained for the Customer as well as any other warranties the Customer may specifically request.
 - (d) The Supplier warrants that it has a good and marketable title to the Goods.
 - (e) The Supplier warrants that Services will be provided by personnel who are suitably trained or qualified to provide such Services and that Services will be performed to the standard reasonably expected of a service provider providing similar services in similar circumstances.
 - (f) The Supplier acknowledges that the Customer enters into each Supply Contract in reliance upon the warranties contained in this paragraph.
 - (g) The Customer's entry into a Supply Contract does not exclude or in any way limit other warranties provided in these Terms and Conditions or by law. All usual and trade warranties must be obtained for the Goods as well as any warranties which the Customer may specifically request.

14. Indemnity and Liability

- (a) To the maximum extent permitted by law, the Customer will not be liable for any injury, damage or loss sustained by the Supplier or its employees or agents while on the Customer's premises or at any place of Delivery or elsewhere and the Supplier must indemnify the Customer

against any claim, cost or demands in regard to such injury, damage or loss arising out of or incidental to the performance of any Supply Contract.

- (b) The Supplier must, without limitation, indemnify the Customer for any loss, damage, expense, claim or liability suffered or incurred by the Customer, whether consequential or otherwise, as a result of the negligence of the Supplier or the breach by the Supplier of:
 - (i) any of the warranties contained in paragraph 13; or
 - (ii) any other requirements of these Terms and Conditions, whether in respect of a particular Supply Contract or otherwise.

15. Insurance

The Supplier must effect and maintain at its cost adequate insurance satisfactory to the Customer including, without limitation, public liability, workers' compensation (including common law liability), automotive, freight liability, and product damage insurance and any other insurances requested by the Customer, all upon such terms and for such amount as are reasonable in the circumstances and approved by the Customer. The Customer may require, and the Supplier must provide evidence of, proof of such insurance prior to making any payment under any, or a particular, Supply Contract.

16. Intellectual Property

All Intellectual Property Rights vest in the Customer and the Supplier agrees to assign or transfer to the Customer all such Intellectual Property Rights. Subject to that assignment or transfer, the Supplier will hold all Intellectual property Rights on trust for the Customer.

17. Confidential Information

- (a) All Confidential Information provided by the Customer in respect of the supply of any Goods under a Supply Contract, will remain the property of the Customer. The Supplier must maintain in strict confidence all Confidential Information. The Supplier must limit disclosure of any Confidential Information of the Customer only to its employees and agents who are required to have access to it for the performance of a given Supply Contract and must ensure it is only used for the purpose of that Supply Contract.
- (b) The Supplier must not without the prior written consent of the Customer disclose to any third party the fact that it supplies

Goods to, or has any relationship with, the Customer.

- (c) The obligations of confidentiality imposed under this paragraph 17 will survive the termination or completion of each and every Supply Contract.

18. Termination

The Customer may, at its discretion, terminate or suspend a Supply Contract or any unfulfilled part of a Supply Contract. In the event of termination or suspension, the Customer will not be liable for any loss (including consequential or special loss), damages, costs or expenses howsoever arising from such cancellation or suspension. The liability of the Customer to the Supplier will be expressly limited to payment for Goods and/or Services duly Delivered to the Customer and the Supplier hereby waives any other claims against the Customer arising from such circumstances.

19. Liens

The Supplier must not claim any liens, attachments, charges or similar claims in connection with the Goods and must defend and indemnify the Customer against any and all liens, attachments, charges or other similar claims arising out of or in connection with any Supply Contract.

20. Entire Contract

- (a) In respect of a given Supply Contract, the terms of that Supply Contract constitute the entire agreement applicable to the supply of Goods and/or Services to which that Supply Contract applies, and may not be modified except by written agreement of the parties. Without limiting the previous sentence, the terms and conditions of purchase as outlined in that Supply Contract prevail in the event of conflict with any terms of the Supplier provided at any time, and are not subject to change by reason of any written or verbal statements by the Supplier, or by any terms stated in the Supplier's acceptance of any Purchase Order unless those terms are accepted in writing by the Customer.
- (b) No waiver of a breach of any provision of a Supply Contract, will have any effect unless it is in writing. Any such waiver will not constitute a precedent or a waiver of any succeeding or other breach of the same or any provision of that Supply Contract.

21. Set Off

The Customer may deduct from moneys certified for payment or otherwise due to the Supplier

any money due or payable or claimed to be due or payable from the Supplier to the Customer under or for breach of any Supply Contract.

22. Subcontracting and Assignment by Supplier

- (a) The Supplier must not assign or subcontract its rights or obligations in relation to any Supply Contract, without the prior written consent of the Customer.
- (b) The Customer's consent to the Supplier subcontracting its rights or obligations does not relieve the Supplier of any of its obligations under a Supply Contract, or by virtue of these Terms and Conditions, or in law.
- (c) The Customer may assign all or part of its rights under a Supply Contract without the consent of the Supplier. The Supplier agrees that the Customer may assign, novate, transfer or otherwise dispose of or deal with all or any part of its rights or obligations under a Supply Contract to any related corporation of the Customer and consents to any such assignment, novation, transfer or other disposition, and the Supplier further agrees to execute such documentation as is necessary to effect such assignment, novation, transfer or other disposition.

23. Force Majeure

- (a) If a Force Majeure Event affecting a party precludes that party (**Precluded Party**) partially or wholly from complying with its obligations under a Supply Contract, then:
- (i) as soon as reasonably practicable after that Force Majeure Event arises, the Precluded Party must notify the other party of the Force Majeure Event, and:
- A. which obligations the Precluded Party is precluded from performing (**Affected Obligations**);
- B. the extent to which the Force Majeure Event precludes the Precluded Party from performing the Affected Obligations (**Precluded Extent**); and
- C. the expected duration of the delay arising directly out of the Force Majeure Event; and
- (ii) the Precluded Party's obligation to perform the Affected Obligations will, to the Precluded Extent, be suspended for the duration of the actual delay arising directly out of the Force Majeure Event (**Actual Delay**); and

- (iii) the other party's obligations to perform any obligations dependent on the Affected Obligations will be suspended until the Precluded Party resumes performance.
- (b) The Precluded Party must:
- (i) take all proper precautions and due care to avoid the Actual Delay and or failure to carry out its obligations;
 - (ii) attempt to mitigate the Actual Delay or failure to carry out its obligations; and
 - (iii) use all reasonable endeavours to minimise any loss to the other party, and upon notification in accordance with subparagraph (a), the parties must consult on a basis on which to adjust their interests in a mutually satisfactory manner.
- (c) Each party must bear any costs, losses and expenses which it incurs arising from the Force Majeure Event and the operation of this paragraph.

24. Governing Law

The law governing each Supply Contract, its (or their) interpretation, any agreement to refer a dispute to dispute resolution and the conduct of any dispute, is the law of the state to which Goods are delivered to Customer and the parties hereby agree to submit to the non-exclusive jurisdiction of the courts of that jurisdiction in respect of all matters or disputes arising under any Supply Contract or these Terms and Conditions.

25. Defined Terms & Interpretation

In these Terms and Conditions, except where the context otherwise requires:

- (a) **Business Day** means any day on which commercial banks operating in the United States of America are open for business.
 - (b) **Confidential Information** means all information relating to the business, finances, operations, customers, suppliers, know-how and trade secrets of the Customer, and any information that the Supplier knows (or ought reasonably to know) is confidential, but excludes information in the public domain (other than information which enters the public domain as a result of a breach of any Supply Contract by the Supplier).
 - (c) **Customer** means Futuris Automotive (US) Inc, or, if otherwise indicated on the
- Purchase Orders, one of its subsidiaries or affiliates.
- (d) **Delivery** in respect of a given Supply Contract means:
 - (i) in respect of Goods, the packaging, transporting and unloading of Goods at the Delivery Location, in accordance with the delivery requirements specified in the applicable Purchase Order, and the Supplier has otherwise done everything required to be done under these Terms and Conditions before or upon delivery; and
 - (ii) in respect to Services, the supply of the required Services at the times and in the manner specified in the applicable Purchase Order,
 and 'Delivered' and 'Delivering' will have a corresponding meaning.
 - (e) **Delivery Date** for the purposes of a given Supply Contract, means the date(s), specified in the corresponding Purchase Order, by which Goods or Services ordered by the Customer must be Delivered to or at the Delivery Location.
 - (f) **Delivery Location** in respect of a given Supply Contract, means the location(s) specified in the corresponding Purchase Order.
 - (g) **Force Majeure Event** in respect of a party, means an event beyond the reasonable control of that party, which has not been caused by its conduct or negligence, including (without limitation) acts of God, actions of any government authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, court orders or injunctions and industrial action (other than industrial action arising from a dispute between the Supplier and its employees).
 - (h) **Goods** in respect of a given Supply Contract, means those goods or software specified or described in the Purchase Order applicable to that Supply Contract.
 - (i) **Intellectual Property Rights** means all intellectual property and proprietary rights (whether registered or unregistered) created by the Supplier in the Supplier's performance of the Supply Contract, or otherwise arising out of the Supply Contract.
 - (j) **Price** in respect of a given Supply Contract, means the amount payable for Goods and/or Services supplied under these Terms and Conditions, which is specified in the corresponding Purchase Order.

- (k) **Purchase Order** means an order issued by the Customer, in a form approved by the Customer from time to time, which specifies the goods and/or services that the Customer requests the Supplier to supply, the required date by, and the location to which, those goods are to be delivered, the requirements for such delivery (if any) and the amount(s) payable by the Customer for such goods.
- (l) **Services** in respect of a given Supply Contract, means the services specified or described in the Purchase Order applicable to that Supply Contract.
- (m) **Supplier** means the person or entity named in the applicable Purchase Order as the supplier of the Goods and/or Services required by the Customer.
- (n) **Supply Contract** means a contract between the Customer and Supplier, formed when the Supplier accepts a particular Purchase Order, in writing, verbally or by conduct, under which the Supply agrees to supply the Goods or perform the Services specified in that Purchase Order, in accordance with the terms specified in that Purchase Order (if any) and these Terms and Conditions.
- (o) headings are for ease of reference only and do not affect the meaning of this agreement;
- (p) the singular includes the plural and vice versa and words importing a gender include other genders;
- (q) other grammatical forms of defined words or expressions have corresponding meanings;
- (r) a reference to a clause or paragraph is a reference to a clause or paragraph of these Terms and Conditions;
- (s) a reference to a document or agreement, including this agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (t) a reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed;
- (u) a reference to a party includes its executors, administrators, successors and permitted assigns;
- (v) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies; and
- (w) rules of construction will not apply to the disadvantage of a party merely because that party was responsible for the preparation of this agreement, or any part of it.