



**Operating under the following Legal Entities:**

**Nexteer Automotive Corporation  
Nexteer Industria e Comercio de Sistemas Automotivos Ltda.  
Nexteer Automotive (Suzhou) Co., Ltd.  
Nexteer Lingyun Driveline (Wuhu) Co., Ltd.  
Nexteer Lingyun Driveline (Zhuozhou) Co., Ltd.  
Nexteer Automotive Systems (Liuzhou) Co., Ltd.  
Chongqing Nexteer Steering Systems Co., Ltd.  
PT Nexteer Automotive Indonesia  
Nexteer Automotive Poland sp. z o.o.  
Nexteer Automotive Japan LLC  
Nexteer Automotive Korea Limited  
Nexteer Automotive Luxembourg S.à r.l.  
Steeringmex S. de R.L. de C.V.  
Nexteer Automotive Mexico S. de R.L. de C.V.  
Nexteer Automotive India Private Limited  
Nexteer Automotive France SAS  
Nexteer Automotive Germany GmbH  
Nexteer Automotive Italy S.r.l.  
Nexteer Otomotiv Sanayi ve Ticaret Limited Sirketi  
Nexteer Automotive Australia Pty Ltd.**

# **General Terms and Conditions**

**[Effective October 1, 2015]**

**[These T&Cs apply when referenced by Buyer's purchase order or other documentation]**

# GENERAL TERMS AND CONDITIONS

Effective October 1, 2015

## 1. CONTRACT

### 1.1 OFFER, ACCEPTANCE AND EXCLUSIVE TERMS.

These General Terms and Conditions, and any applicable country specific addendum (collectively, these "T&C(s)"), together with the purchase order (the "Purchase Order"), shall be deemed an offer by Buyer for the purchase of goods (the "Goods") and/or services ("Services") identified on the Purchase Order. Seller accepts these T&Cs and Purchase Order by doing any of the following: (a) accepting or acknowledging the Purchase Order in writing; (b) commencing any work under the Purchase Order; (c) shipping Goods and/or performing Services; or (d) any other conduct that recognizes the existence of a contract with respect to the subject matter covered by the Purchase Order. Upon Seller's acceptance, these T&Cs and Purchase Order, along with the documents referenced below, become the "Contract". **The Contract is limited to and conditional upon Seller's acceptance of these T&Cs exclusively.** The Contract does not constitute an acceptance of any offer or proposal made by Seller. Any reference in the Contract to any offer or proposal made by Seller is solely to incorporate the description or specifications of Goods and Services in the prior proposal, but only to the extent that the description or specifications do not conflict with the description and specifications in the Contract. Any additional or different terms proposed by Seller, whether in a quotation, invoice, acknowledgement or otherwise, are expressly rejected by Buyer and are not part of the Contract, but shall not operate as a rejection if Seller accepts the Contract as provided herein, in which case Seller will be deemed to have accepted the Contract in its entirety without any additional or different terms whatsoever. This Contract can be modified only by a written amendment issued by Buyer. Each release, requisition, work order, shipping instruction, specification and other document, whether expressed in written form, by electronic data interchange or other tangible format, relating to the Goods and/or Services to be provided by Seller pursuant to this Contract are incorporated into, and a part of, this Contract.

### 1.2 REQUIREMENTS CONTRACT AND DURATION.

Unless otherwise expressly stated in the Purchase Order or Contract, if no other quantity is stated on the face of the Purchase Order or if the quantity is blank or states the quantity as zero, "blanket," "see releases," "as scheduled," "as directed," "subject to Buyer's production releases" or similar terms, then Seller will supply Buyer's requirements for Goods in such quantities as identified by Buyer as firm orders in material authorization releases, manifests, broadcasts or similar releases that are transmitted to Seller during the term of the Purchase Order, and Seller will supply all such Goods on such dates and times, at the price and on the other terms specified in the Purchase Order. This Contract will commence upon Seller's acceptance under 1.1 above. Subject to Buyer's termination rights, the Contract is binding on the parties for the length of the applicable Original Equipment Manufacturer ("OEM") vehicle program production life (including model refreshes as determined by applicable OEM customer), and both Buyer and Seller acknowledge the risk of the vehicle program production life being cancelled or extended by the OEM. Unless specifically waived in writing by an authorized representative of Buyer, Seller's obligations with respect to service and replacement parts, as stated in Section 18 below, will always survive the termination or expiration of the Contract, and specifically, the termination or expiration of the Purchase Order.

## 2. SHIPPING, BILLING AND PRICE

2.1 Shipping. Seller will (a) properly pack, mark and ship Goods as instructed by Buyer or any carriers and in accordance with any applicable laws or regulations, (b) route shipments as Buyer instructs, (c) not charge for costs relating to handling, packaging, storage or transportation (including duties, taxes, fees, etc.) unless otherwise expressly stated in this Contract, (d) provide packing slips with each shipment that identify Buyer's contract and release number and the date of the shipment, and (e) promptly forward the original bill of lading or

other shipping receipt with respect to each shipment as Buyer instructs. Seller will include on bills of lading or other shipping receipts the correct classification identification of the Goods shipped as Buyer or the carrier requires. The marks on each package and identification of the Goods on packing slips, bills of lading and invoices must enable Buyer to easily identify the Goods.

2.2 Billing. Seller will (a) accept payment based upon Buyer's Evaluated Receipt Record/Self-Billed Invoice unless Buyer requests that Seller issue and deliver an invoice, and (b) accept payment by electronic funds transfer, unless Buyer expressly agrees to another method of payment. Payment terms established by this Contract are from the date the Buyer takes ownership of the Goods as represented by the title transfer term reflected on the face of the Purchase Order or, in the case of Services, the date that Buyer receives Seller's proper invoice following completion of the Services. In addition to its other rights and remedies, Buyer may withhold payment for any Goods or Services until Buyer receives evidence, in such form and detail as Buyer requires, of the absence of any liens, encumbrances and claims on such Goods or Services.

2.3 Taxes. Unless otherwise stated in this Contract, the price includes all applicable federal, state, provincial, and local taxes other than sales, value added, or similar turnover taxes or charges. Seller will separately invoice Buyer for any sales, value added, or similar turnover taxes or charges that Seller is required by law to collect from Buyer. Seller will provide Buyer with all information and documentation that is required under the applicable law in order to enable Buyer to recover any sales, value added, or similar turnover taxes or charges. Seller's invoices shall also be in the appropriate form as required by applicable law to enable Buyer to deduct payments for income tax purposes.

2.4 Withholding of Taxes by Buyer. If Buyer is required by law to make any deduction or withholding from any sum otherwise payable to Seller under this Contract, Buyer shall be entitled to deduct or withhold such amount and effect payment thereof to the applicable tax authority. Buyer will, upon request from Seller, provide Seller official tax receipts or other evidence issued by the applicable tax authorities sufficient to establish that any taxes which are withheld have been paid.

2.5 Delivery Schedules. Deliveries will be made in the quantities, on the dates, and at the times specified by Buyer in this Contract or any subsequent releases or instructions Buyer issues under this Contract. Time is of the essence with respect to all delivery schedules Buyer establishes. Buyer is not obligated to accept early deliveries, late deliveries, partial deliveries or excess deliveries. Seller bears the risk of loss of all Goods delivered in advance of the delivery date specified in Buyer's delivery schedules. If the requirements of Buyer's customers or market, economic or other conditions require changes in delivery schedules, Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments without entitling Seller to a price adjustment or other compensation.

2.6 Premium Shipments. If Seller fails to meet Buyer's delivery schedules using the method of transportation originally specified by Buyer and, as a result, Buyer requires Seller to ship the Goods using a premium (more expeditious) method of transportation, Seller will ship the Goods as expeditiously as possible. Seller will pay, and be responsible for, all costs and damages caused by Seller's failure to meet Buyer's delivery schedules (including the entire cost of such premium shipment), unless Buyer's actions caused Seller's failure to meet Buyer's delivery schedule(s).

2.7 Volume Forecasts. Buyer or its customer may provide Seller with estimates, forecasts or projections of its future anticipated volume or quantity requirements for Goods. Seller acknowledges that any such estimates, forecasts or projections are provided for informational purposes only and are subject to change from time to time, with or without notice to Seller, and shall not be binding upon Buyer. Unless otherwise expressly stated in this Contract, Buyer makes no representation, promise, warranty, guaranty or commitment of any kind or nature, express or implied, to Seller with respect to the quantity of Goods Buyer will purchase from Seller.

2.8 Safety Stock. Six months before any of Seller's labor contracts expire and as soon as Seller anticipates or learns of any impending strike, labor dispute, work stoppage or other disruption at Seller's facilities that might

affect the delivery of Goods to Buyer, Seller will produce (and locate in an area that will not be affected by any such disruption) a finished inventory of Goods in quantities sufficient to ensure the supply of Goods to Buyer for at least thirty (30) days after such disruption commences.

2.9 Price. The price shall be the price set forth in the Purchase Order. Unless otherwise stated, the purchase price: (i) is a firm fixed price for the duration of the Contract and not subject to increase for any reason, including increased raw material costs, increased labor or other manufacturing costs, increased development costs, or changes in volumes or program length from those estimated or expected.

2.9.1 Price Competitiveness. Seller warrants and guarantees that it will, at all times, remain competitive in price, quality, performance and fulfillment of its obligations. If Seller is determined by the Buyer not to be competitive, especially on pricing, Buyer shall be entitled to re-source any or all parts to a more competitive source.

### **3. SPECIFICATION, DESIGN AND SCOPE CHANGES**

Buyer may at any time require Seller to implement changes to the specifications or design of the Goods, process or to the scope of any Services or work covered by this Contract, including work related to inspection, testing or quality control. While Buyer will endeavor to discuss any such changes with Seller as early as practical, Seller will promptly implement such changes. In the event that the change results in an increase in Seller's costs or requires Seller to have additional time for performance, Buyer will equitably determine an adjustment in price or time for performance resulting from such changes. In order to assist in the determination of any equitable adjustment in price or the time for performance, Seller will, as requested, promptly provide information to Buyer, including, without limitation, documentation of changes in Seller's cost of production and the time to implement such changes. In the event of any disagreement arising out of such changes, Buyer and Seller will work to resolve the disagreement in good faith, provided, however, that Seller will continue performing under this Contract, including the manufacture and delivery of Goods and performance of Services and prompt implementation of changes required by Buyer, while Buyer and Seller resolve any disagreement arising out of such changes. Seller shall not make any changes to specifications, designs, materials, processes or procedures, packing, marking, shipping, price, date or place of delivery, or changes in the place of performance of Seller's obligations under this Contract, except at Buyer's written instruction or with Buyer's prior written authorization, and all costs related to such change shall be borne by Seller.

### **4. QUALITY AND INSPECTION**

Seller will participate in Buyer's supplier quality and development program(s) and comply with and meet all engineering release and validation requirements and procedures, including the full requirements of Buyer's production part approval processes, as specified by Buyer from time to time. Seller will permit Buyer and its representatives and consultants to enter Seller's facilities at reasonable times to inspect such facilities and any Goods, inventories, work-in-process, materials, machinery, equipment, tooling, fixtures, gauges and other items and processes related to Seller's performance of this Contract. No such inspection by Buyer will constitute acceptance by Buyer of any raw materials, components, work-in-process or finished Goods.

### **5. DEFECTIVE GOODS**

Buyer is not required to perform incoming inspections of any Goods, and Seller waives any right to require Buyer to conduct any such inspections. Seller will not substitute any goods or services for the Goods covered by this Contract unless Buyer consents in writing. If Buyer rejects any Goods as defective, Buyer may, in addition to all of its other rights and remedies hereunder or at law: (a) reduce the quantities of Goods ordered under this Contract by the quantity of defective Goods, (b) require Seller to replace the defective Goods, and/or (c) exercise any other applicable rights or remedies. If Seller fails to inform Buyer in writing of the manner in which Seller desires that Buyer dispose of defective Goods within forty-eight (48) hours of notice of Buyer's rejection of defective Goods (or such shorter period as is reasonable under the circumstances), Buyer will be entitled to

dispose of the defective Goods without liability to Seller, provided, however, that in any event Buyer may elect to arrange for the shipment of any defective Goods back to Seller at Seller's expense. Seller will bear all risk of loss with respect to all defective Goods and will promptly pay or reimburse all costs incurred by Buyer to return, store or dispose any defective Goods. Buyer's payment for any defective Goods will not constitute acceptance by Buyer or limit or impair Buyer's right to exercise any rights or remedies, or relieve Seller of responsibility for the defective Goods.

## **6. FORCE MAJEURE**

If Seller is unable to produce, sell or deliver any Goods or perform any Services covered by this Contract, or Buyer is unable to accept delivery, buy or use any Goods or Services covered by this Contract, as a result of an event or occurrence beyond the reasonable control of the affected party and without such party's fault or negligence, then any delay or failure to perform under this Contract that results from such event or occurrence will be excused for only so long as such event or occurrence continues, provided, however, that the affected party gives written notice of each such delay (including the anticipated duration of the delay) to the other party as soon as possible after the event or occurrence (but in no event more than seventy-two (72) hours thereafter). Such events and occurrences may include, by way of example and not limitation, natural disasters, fires, floods, windstorms, severe weather, explosions, riots, wars, sabotage and power failures. However, Seller's inability to perform as a result of or delays caused by, Seller's insolvency or lack of financial resources will not excuse Seller's performance under the Contract. The change in cost or availability of materials or components based on market conditions, Seller or supplier actions, or contract disputes or any labor strike or other labor disruption applicable to Seller or any of its subcontractors or suppliers will not excuse Seller's performance under the Contract (under theories of force majeure, commercial impracticability or otherwise), and Seller assumes these risks. During any delay or failure to perform by Seller, Buyer may (i) purchase substitute goods or services from other available sources, in which case the quantities under this Contract will be reduced by the quantities of such substitute goods or services, without liability to Seller, and Seller will reimburse Buyer for any additional costs to Buyer of obtaining the substitute goods or services compared to the prices set forth in this Contract and/or (ii) have Seller provide substitute goods or services from other available sources in quantities and at times Buyer requests and at the prices set forth in this Contract. If Seller fails to provide adequate assurances that any delay will not exceed thirty (30) days within forty-eight (48) hours of Buyer's request for such assurances, or if any delay lasts more than thirty (30) days, Buyer may terminate this Contract without any liability to Seller whatsoever.

## **7. WARRANTY**

**7.1 General.** Seller warrants and guarantees to Buyer, its successors, assigns and customers, for the duration set forth in Section 7.2, that the Goods and Services covered by this Contract will (a) be new; (b) be free from all liens, claims and encumbrances whatsoever; (c) conform to the then current release/revision level (based on date Buyer's release is issued to Seller) of Buyer's applicable specifications and drawings, (d) conform to all samples, descriptions, brochures, standards and manuals furnished by Seller or Buyer, (e) be merchantable, (f) be of good material and workmanship, (g) be free from defect, and (h) be selected, designed (to the extent designed by Seller), manufactured and assembled by Seller based upon Buyer's stated use and be fit and sufficient for the particular purposes intended by Buyer and any customer of Buyer. Buyer's approval of any design, drawing, material, process or specifications will not relieve Seller of these warranties. The foregoing warranties are in addition to those available to Buyer by law. If requested by Buyer, Seller will enter into a separate agreement for the administration or processing of warranty chargebacks for nonconforming Goods.

**7.2 Warranty Period.** In the case of Goods supplied for use as, or incorporation into, parts, components or systems for automotive vehicles or other finished products, the period for each of the foregoing warranties will commence upon receipt of the Goods (or Services) by Buyer and, except as provided in Section 7.4 or as otherwise expressly agreed in writing by an authorized employee of Buyer, end forty-eight (48) months following the date the vehicle or other finished product on which such parts, components or systems are installed is first sold and delivered or otherwise utilized for consumer or commercial purposes, provided, however, that if Buyer

offers and provides a longer warranty to its customers with respect to any such parts, components or systems, then such longer warranty period will apply to the Goods and Services. In the case of Goods and Services supplied for other uses, the period for each of the foregoing warranties will be that provided by applicable law unless otherwise expressly agreed in writing by an authorized employee of Buyer.

**7.3 Remedies and Damages.** If any Goods or Services are determined (including by use of statistical analysis or other sampling methodology) to fail to conform to the warranties set forth in this Contract, Seller shall reimburse Buyer for all direct, incidental or consequential damages (including reasonable attorney and professional fees), losses, costs, expenses and fees caused by such nonconforming Goods or Services. Such costs and damages may include, without limitation, costs, expenses and losses of Buyer and/or its customers arising from (i) inspection, sorting, repair or replacement of any nonconforming Goods or Services or any system or component that incorporates such nonconforming Goods or Services, (ii) production interruptions or slowdowns, (iii) offlining of vehicles or component systems, and (iv) field service campaigns and other corrective service actions, including, without limitation, the amounts paid to distributors and/or dealers for materials and replacement parts (including reasonable markup to recover administrative costs or other capital expenses) and the labor costs to perform such work.

**7.4 Recalls.** Notwithstanding the expiration of the warranty period set forth in Section 7.2, if Buyer and/or the manufacturer of the vehicles (or other finished product) on which the Goods or Services, or any parts, components or systems incorporating the Goods or Services, are installed, voluntarily or pursuant to a government mandate, makes an offer to owners of such vehicles to provide remedial action to address a defect that relates to motor vehicle safety or the failure of the vehicle to comply with any applicable law, safety standard or guideline (a so-called "recall"), Seller will nonetheless be liable for costs and damages associated with the conduct of such recall to the extent that such recall is based upon a determination by Buyer or Buyer's customer (including by use of statistical analysis or other sampling methodology) that the Goods or Services fail to conform to the warranties set forth in this Contract.

## **8. INGREDIENTS AND HAZARDOUS MATERIALS**

If Buyer requests, Seller will promptly furnish to Buyer, in such form and detail as Buyer directs: (a) a list of all ingredients in the Goods, (b) the amount of all ingredients, and (c) information concerning any changes in or additions to the ingredients. Prior to, and together with, the shipment of the Goods, Seller will furnish to Buyer and all carriers sufficient written warning and notice (including appropriate labels on the Goods, containers and packing) of any hazardous material that is an ingredient or a part of any of the Goods, together with all special handling instructions, safety measures and precautions as may be necessary to comply with applicable law, to inform Buyer and all carriers of any applicable legal requirements and to best allow Buyer and all carriers to prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the Goods, containers and packing. Upon Buyer's request, Seller will certify to Buyer in writing the origin of any ingredients or materials in the Goods. Seller will promptly provide, in writing, any information regarding the Goods requested by Buyer so that Buyer may comply in a timely manner with reporting requirements under applicable law with respect to consumer protection, "conflict minerals" or similar materials or ingredients, if any.

## **9. INSOLVENCY OF SELLER**

In any of the following or any similar events Buyer may immediately terminate this Contract without any liability to Seller whatsoever: (a) insolvency or financial difficulties of Seller, (b) filing of a voluntary petition in bankruptcy by Seller, (c) filing of any involuntary petition in bankruptcy against Seller, (d) appointment of a receiver or trustee for Seller, (e) execution of an assignment for the benefit of creditors by Seller, or (f) Seller needs accommodations from Buyer, financial or otherwise, to meet its obligations under this Contract. Seller will reimburse Buyer for all costs Buyer incurs in connection with any of the foregoing whether or not this Contract is terminated, including, but not limited to, all attorney or other professional fees.

## 10. TERMINATION FOR BREACH

Buyer may terminate all or any part of this Contract without any liability to Seller whatsoever if Seller (a) repudiates, breaches, or threatens to breach any of the terms of this Contract, including Seller's warranties, (b) fails to perform or threatens not to perform Services or deliver Goods in accordance with this Contract or (c) fails to assure timely and proper completion of Services or delivery of Goods.

## 11. TERMINATION FOR CONVENIENCE

In addition to any other rights of Buyer to terminate this Contract, Buyer may immediately terminate all or any part of this Contract, at any time and for any reason, by notifying Seller in writing. Upon such termination, Buyer may, at its option, purchase from Seller any or all raw materials, work-in-process and finished Goods inventory related to the Goods under this Contract which conform to the Contract and are useable and in a merchantable condition. The purchase price for such finished Goods, raw materials and work-in-process, and Seller's sole and exclusive recovery from Buyer (without regard to the legal theory which is the basis for any claim by Seller) on account of such termination, will be (a) the contract price for all Goods or Services that have been completed in accordance with this Contract as of termination date and delivered and accepted by Buyer and not previously paid for, plus (b) the actual costs of work-in-process and raw materials incurred by Seller in furnishing the Goods or Services under this Contract to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting principles to the terminated portion of this Contract less (c) the reasonable value or cost (whichever is higher) of any Goods or materials used or sold by Seller. In no event will Buyer be required to pay for finished Goods, work-in-process or raw materials which Seller fabricates or procures in amounts that exceed those Buyer authorizes in delivery releases nor will Buyer be required to pay for any Goods or materials that are in Seller's standard stock or that are readily marketable. Payments made under this Section will not exceed the aggregate price for finished Goods that would be produced by Seller under delivery or release schedules outstanding at the date of termination. Within sixty (60) days after the effective date of termination, Seller will submit a comprehensive termination claim to Buyer, with sufficient supporting data to permit an audit by Buyer, and will thereafter promptly furnish any supplemental and supporting information Buyer requests.

## 12. TECHNICAL INFORMATION AND INTELLECTUAL PROPERTY

12.1 Information Disclosed by Seller. Seller will create, maintain, update, and provide to Buyer, in compliance with Buyer's drafting and math data standards, all technical information about the Goods and their manufacture and the Services which is reasonably necessary or requested by Buyer in connection with its use of the Goods and Services, including, without limitation, the engineering validation and qualification of the Goods and Services for automotive production and other applications and compliance with any legal or regulatory requirements. Such technical information will not be subject to any use or disclosure restrictions, except as provided in Section 12.2 2 below.

12.2 Waiver of Claims. Seller agrees not to assert any claim (other than a claim for patent infringement) against Buyer, Buyer's customers or their respective suppliers with respect to any technical information that Seller shall have disclosed, or may hereafter disclose, in connection with the Goods or Services covered by this Contract.

12.3 Repair and Rebuild. Seller authorizes Buyer, its affiliates, agents and subcontractors, and Buyer's customers and their subcontractors to repair, reconstruct or rebuild the Goods delivered under this Contract without payment of any royalty or other compensation to Seller.

12.4 Software and Written Works. Seller grants to Buyer a permanent, paid-up license to use, repair, modify and sell any operating software incorporated in the Goods in conjunction with the use or sale of the Goods. In addition, all works of authorship, including without limitation, software, computer programs and databases (including object code, micro code, source code and data structures), and all enhancements, modifications and updates thereof and all other written work products or materials, which are created in the course of performing

this Contract, separately or as part of any Goods and components, are “works made for hire” and the sole property of Buyer. To the extent that such works of authorship do not qualify under applicable law as works made for hire, Seller hereby assigns to Buyer all right, title and interest in any intellectual property rights in such works of authorship. If such assignment is not possible under any applicable law, Seller hereby grants an exclusive, royalty-free license to Buyer with respect to such works of authorship.

12.5 Development, Engineering And Consulting Services. Engineering, consulting or development services (“Development Services”) funded under this Contract that result in any idea, invention, concept, discovery, work of authorship, patent, copyright, trademark, trade secret, know-how or other intellectual property (“IP”) shall be the sole property of Buyer. Seller agrees to assign all right, title and interest in and to IP that results from Development Services (“Developed IP”) to Buyer. Seller shall notify Buyer of the existence of Developed IP and assist Buyer in every reasonable way to perfect its right, title and interest in Developed IP, such as by executing and delivering all additional documents reasonably requested by Buyer in order to perfect, register, and/or enforce the same, and Buyer shall reimburse Seller for reasonable costs incurred by Seller in providing such assistance.

12.6 Buyer’s Intellectual Property. Buyer remains the owner of any Buyer Information (as defined in 17.6 below) and any drawings, models, patterns, tools, dies, jigs, specifications or other documents (collectively “Buyer’s IP”) that Buyer provides to Seller. Without Buyer’s written consent, Buyer’s IP may not be used for the Seller’s own purposes or for any other purpose or made available to third parties and may be used only for the purpose of the delivery of Goods and Services to Buyer. Buyer may request at any time that Buyer’s IP be returned. Seller shall not, without first obtaining the written consent of Buyer, in any manner publish Buyer’s name or otherwise indicate that Seller has furnished or contracted Goods or Services to Buyer.

12.7 Production Rights. Buyer does not grant or convey to Seller and Buyer reserves all rights to use tooling, drawings, designs, patterns or materials or other information belonging to Buyer or supplied by or on behalf of Buyer in the production, manufacture or design of Goods for third parties or for the manufacture or production of larger quantities than those specified. This, however, does not preclude Seller from producing, manufacturing or designing Goods for anyone other than Buyer if such Goods are not of Buyer’s design or specifications and if tooling is owned by Seller.

12.8 License. Seller grants to Buyer and Buyer accepts, a non-exclusive, irrevocable, worldwide license, including the right to sublicense to others in connection with providing the Goods to Buyer or the customer, under: (i) patents, industrial designs, technical information, know-how, processes of manufacture and other intellectual property, owned or controlled by Seller or its affiliates, that relate to the Goods, to make, have made, repair, reconstruct, rebuild, relocate, use, sell and import the Goods, and (ii) any works of authorship fixed in any tangible medium of expression (including drawings, prints, manuals and specifications) furnished by Seller in the course of Seller’s activity under this Contract, to reproduce, distribute and display such works and to prepare derivative works based thereon (all items in clauses (i) and (ii) above, collectively, “Seller’s Intellectual Property”, and such license in respect thereof, the “License”). Seller acknowledges and understands that the License shall be effective from the first date of delivery of the Goods under this Contract and extend for so long as Buyer provides content including Goods to the customer. Except as provided below, Buyer agrees to pay to Seller a reasonable royalty for the License, and Seller acknowledges that: (x) until the end of the second Model Year (as defined below) after the first date of delivery of the Goods under this Contract, such reasonable royalty shall be deemed to be included in the prices paid by Buyer to Seller under this Contract, and thereafter the License shall be deemed to be royalty free and fully paid-up; and (y) in the event that, prior to the end of the second Model Year after the first date of delivery of the Goods under this Contract, Buyer wishes to fully enjoy the rights of the License to obtain the supply of the Goods from any third party, Buyer agrees to pay an additional amount (as established by Buyer) for such reasonable royalty, for a period from the date of obtaining such supply from such third party until the end of the second Model Year after the first date of delivery of the Goods under this Contract, and thereafter the License shall be royalty free and fully paid-up. Buyer and Seller acknowledge and agree that the License granted and accepted under this Section 12.8 shall be royalty free and fully paid-up to Buyer in the event that this Contract is terminated by Buyer pursuant to Sections 9, 10 or 24, or



in the event that Seller for any reason is unable to satisfy the quality, quantity, delivery or related requirements of Buyer for the Goods under this Order. The License is intended to be subject to 11 USC Section 365(n), as an executory agreement under which Buyer has license rights to Seller's Intellectual Property, and is supplementary to any other rights of Buyer under this Contract and any other agreement with Seller. For the purposes of this Section 12.8, "Model Year" means the full or partial model year established by the original equipment manufacturer of the vehicle into which the Goods are incorporated. In addition, the requirements of Buyer's customer's terms and conditions relative to Seller's technical information and intellectual property are incorporated into these T&Cs.

### **13. INDEMNIFICATION**

13.1 Infringement. Seller will defend, hold harmless and indemnify Buyer and its customers, and their respective successors and assigns, against any claims of infringement (including patent, trademark, copyright, moral, industrial design or other proprietary rights, or misuse or misappropriation of trade secret) and resulting damages and expenses (including, without limitation, attorney and other professional fees and disbursements) relating to the Goods or Services covered by this Contract, including any claims in circumstances where Seller has provided only part of the Goods or Services. Seller waives any claim against Buyer that any such infringement arose out of compliance with Buyer's specifications. If Seller is obligated to indemnify under this Section, then Buyer may, at its option, participate in the defense of any claim with its own counsel, at Seller's expense. Seller shall have the right to settle or compromise any suit, claim or proceeding at its discretion, provided that the terms of the settlement or compromise provide for the unconditional release of Buyer, and the settlement or compromise requires the payment of monetary damages only. Seller shall not settle, without Buyer's prior written consent, any suit, claim or proceeding which imposes upon Buyer any obligation, or in any way prejudices the rights of Buyer, other than as set forth herein. Any other settlement or compromise requires prior written approval from Buyer.

13.2 Activities on Buyer's Premises. Seller will defend, hold harmless, and indemnify Buyer from and against any liability, claims, demands, damages, costs or expenses (including, without limitation, reasonable attorney and other professional fees and disbursements) arising from or in connection with the performance of any service or work by Seller or its employees, agents, representatives and subcontractors on Buyer's or Buyer's customer's premises or the use of the property of Buyer or any customer of Buyer, except to the extent such liability arises out of the negligence or willful misconduct of Buyer or Buyer's customer. If Seller is obligated to indemnify under this Section, then Buyer may, at its option, participate in the defense of any claim with its own counsel, at Seller's expense.

13.3 General. Seller will defend, hold harmless, and indemnify Buyer and Buyer's customer from and against any and all claims, liability, damages, recall and other costs and expenses (including, without limitation, attorney and other professional fees and disbursements) arising from or in connection with any breach of warranty made by Seller or other obligation by Seller under these T&Cs or other defect or unsafe condition with respect to any Good or Service supplied by Seller. If Seller is obligated to indemnify under this Section, then Buyer may, at its option, participate in the defense of any claim with its own counsel, at Seller's expense.

### **14. COMPLIANCE WITH LAWS**

Seller, and any Goods or Services supplied by Seller, will comply with all applicable laws, rules, regulations, orders, conventions, ordinances and standards of the country(ies) of origin and destination or that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval, performance and/or certification of the Goods or Services, including, but not limited to, those relating to environmental matters, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety. Neither Seller nor any of its subcontractors will utilize slave, prisoner or any other form of forced or involuntary labor in the supply of Goods or Services under this Contract. Upon Buyer's request, Seller will certify in writing its compliance with the foregoing. Seller will defend, hold harmless and indemnify Buyer from and against any liability, claims, demands, damages or expenses (including reasonable attorney or

other professional fees and disbursements) arising from or relating to Seller's noncompliance with this Section.

## 15. INSURANCE

Seller will obtain and maintain, with carriers reasonably acceptable to Buyer, no less than the insurance coverage listed below along with any additional amounts and coverage as may be reasonably requested by Buyer or (to the extent directed by Buyer) customer(s), in each case naming Buyer and its affiliates (as applicable) as "loss payee(s)" and "additional insured(s)". With respect to any such insurance coverage, Seller will furnish to Buyer either a certificate evidencing satisfaction of all the insurance requirements under this Contract or certified copies of all insurance policies within ten (10) days of Buyer's request. The certificate must provide that Buyer will receive thirty (30) days prior written notice from the insurer of any termination or reduction in the amount or scope of coverage. The furnishing of certificates of insurance and purchase of insurance will not limit or release Seller from Seller's obligations or liabilities under this Contract. Minimum coverage is as follows:

<u>COVERAGE</u>	<u>LIMITS OF LIABILITY</u>
Workers compensation	Statutory
Employer's liability	US\$500,000 / each accident, disease, policy limit, disease each employee
Commercial general liability insurance, including contractual liability coverage	US\$5,000,000 / each occurrence, general aggregate, products & completed operations aggregate
Commercial automobile liability Insurance covering all owned, hired and non-owned vehicles	US\$1,000,000 / each occurrence, combined single limit
Property insurance	Replacement value
Business interruption / extra expense insurance	US\$5,000,000 / each occurrence

## 16. SELLER'S EQUIPMENT

Seller, at its expense, will furnish, keep in good condition, and replace when necessary all of its machinery and equipment, including related tooling, jigs, dies, gauges, fixtures, molds, patterns, fixtures and other accessories, required for the production of Goods covered by this Contract (collectively, "Seller's Equipment"). Seller will insure Seller's Equipment with fire and extended coverage insurance for its full replacement value. Seller grants Buyer an irrevocable option to take possession of, and title to, all or part of Seller's Equipment that is specially designed or outfitted for the production of the Goods or provision of Services covered by this Contract. In the event Buyer exercises its option, Buyer will, within 45 days following delivery of such Seller's Equipment to Buyer, pay to Seller the lower of (i) the net book value of such Seller's Equipment (i.e., actual cost less amortization) or (ii) then current fair market value of such Seller's Equipment, in each case less any amounts that Buyer has previously paid to Seller on account of such Seller's Equipment. The foregoing option will not apply to the extent that Seller's Equipment is used to produce goods that are the standard stock of Seller and are then being sold by Seller to other customers. Buyer's right to exercise the foregoing option is not conditioned on Seller's breach or Buyer's termination of this Contract or upon payment of any other amounts due under this Contract.

## 17. BUYER'S PROPERTY AND INFORMATION

17.1 Acquisition of Tooling and Materials. To the extent that this Contract covers Buyer's purchase of, or reimbursement to Seller for, any tooling, jigs, dies, gauges, fixtures, molds, patterns, equipment, supplies, materials and other items (collectively, "Tooling and Materials") to be used in connection with Seller's actual or anticipated supply of Goods to Buyer, Seller will acquire such Tooling and Materials and Buyer shall pay to or reimburse Seller the lower of (i) the amount specified in this Contract for such Tooling and Materials or (ii) Seller's actual out-of-pocket cost to acquire the Tooling or Materials from an unrelated third party or, if the Tooling and Materials are constructed or fabricated by Seller or any affiliate of Seller, the actual direct costs for materials, labor and overhead associated with such construction and fabrication. Seller shall assign to Buyer any contract rights or claims in which Seller has an interest with respect to such Tooling and Materials. Seller shall establish a reasonable accounting system that readily enables the identification of Seller's costs as described above. 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 such Tooling and Materials. Upon Seller's acquisition of such Tooling and Materials, title thereto shall vest immediately in Buyer and such Tooling and Materials shall be held as "Buyer's Property" by Seller in accordance with this Section 17.1 – 17.5.

17.2 Bailment of Buyer's Property. All Tooling and Materials which Buyer furnishes, either directly or indirectly, to Seller or which Buyer buys, or is obligated to buy from, or gives reimbursement to, Seller in whole or in part (collectively, "Buyer's Property") will be and remain the property of Buyer and be held by Seller on a bailment basis. Title to all replacement parts, additions, improvements and accessories purchased by Seller will vest in Buyer immediately upon attachment to or incorporation into Buyer's Property. When permitted by law, Seller waives any lien or other rights that Seller might otherwise have on or in any of Buyer's Property for work performed on, or utilizing, such property or otherwise.

17.3 Seller's Duties with Respect to Buyer's Property. While Buyer's Property is in Seller's possession and until Seller delivers Buyer's Property back to Buyer, Seller bears the risk of loss, theft and damage to Buyer's Property. Seller will at all times: (a) regularly inspect, maintain in good condition, and repair Buyer's Property at Seller's own expense, (b) use Buyer's Property only for the performance of this Contract, (c) deem Buyer's Property to be personal property, (d) conspicuously mark Buyer's Property as the property of Buyer and maintain such markings, (e) not commingle Buyer's Property with the property of Seller or with that of a third person, (f) not move Buyer's Property from Seller's applicable shipping location (as shown by the shipping address of Seller) without prior written approval from an authorized employee of Buyer, and (g) use Buyer's Property in compliance with Buyer's or the manufacturer's instructions and in compliance with all federal, state and local laws, ordinances and regulations. Buyer will have the right to enter Seller's premises at all reasonable times to inspect Buyer's Property and Seller's records with respect thereto. Seller will not sell, lend, rent, encumber, pledge, lease, transfer or otherwise dispose of Buyer's Property. Furthermore, Seller will not assert, or permit any person claiming an interest through Seller to assert, any claims of ownership to or any other interest in Buyer's Property. Seller will be responsible for replacing or repairing, in Buyer's sole discretion, Buyer's Property if it is stolen, damaged or destroyed regardless of cause or fault.

17.4 Return of Buyer's Property. Seller agrees that Buyer has the right, at any time and from time to time, with or without reason and without payment of any kind, to retake possession of or request the return of Buyer's Property. Without further notice or court hearings, which rights, if any, are hereby waived, Buyer or its designee(s) will have the right to enter Seller's premises and take possession of any and all of Buyer's Property. Upon Buyer's request and in accordance with Buyer's instructions, Buyer's Property will be immediately released to Buyer or delivered to Buyer by Seller, either (i) Ex Works (Incoterms 2010) at Seller's plant properly packed and marked in accordance with the requirements of the carrier selected by Buyer to transport such Buyer's Property or (ii) to any location Buyer designates, in which event Buyer will pay Seller the reasonable costs of delivering Buyer's Property to the location Buyer designates. If Seller does not release and deliver any Buyer's Property in accordance with this Section 17.4, Buyer may obtain an immediate writ of possession without notice and without the posting of any bond and/or enter Seller's premises, with or without legal process, and take immediate possession of Buyer's Property.

**17.5 Disclaimer of Warranties.** Seller acknowledges and agrees that (i) Buyer is not the manufacturer of Buyer's Property nor the manufacturer's agent nor a dealer therein, (ii) Buyer is bailing Buyer's Property to Seller for Seller's benefit, (iii) Seller is satisfied that Buyer's Property is suitable and fit for its purposes, and (iv) BUYER HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF BUYER'S PROPERTY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. Buyer will not be liable to Seller for any loss, damage, injury or expense of any kind or nature caused, directly or indirectly, by Buyer's Property, including, without limitation, the use or maintenance thereof, or the repair, service or adjustment thereof, or by any interruption of service or for any loss of business whatsoever or howsoever caused, including, without limitation, any loss of anticipatory damages, profits or any other indirect, special or consequential damages and/or personal injury or death.

**17.6 Use of Buyer's Information.** Seller will (i) keep all Buyer's Information (as defined below) confidential and disclose it only to Seller's employees who need to know such Buyer's Information in order for Seller to supply Goods and Services to Buyer under this Contract and (ii) use the Buyer's Information solely for the purpose of supplying Goods and Services to Buyer and will not share it with any third parties without Buyer's prior written consent. Goods manufactured and Services provided based on Buyer's Information may not be used for Seller's own use or sold by Seller to third parties without prior express written consent from an authorized employee of Buyer. "Buyer's Information" means all information provided to Seller by Buyer or its representatives or subcontractors in connection with the business, programs, Goods and Services covered by this Contract, including, without limitation, pricing and other terms of this Contract, specifications, data, formulas, compositions, designs, sketches, photographs, samples, prototypes, test vehicles, manufacturing, packaging or shipping methods and processes and computer software and programs (including object code and source code). Buyer's Information also includes any materials or information that contain, or are based on, any Buyer's Information, whether prepared by Buyer, Seller or any other person. Seller agrees to cause its employees, contractors, officers, directors, agents and representatives to be bound by and comply with the foregoing restrictions regarding the use of Buyer's Information.

**17.7 Consigned Material.** If Buyer consignees material to Seller, all of the following provisions shall apply: (i) Seller agrees to maintain perpetual inventory records and to retain the records for one (1) year plus the current year, (ii) Seller agrees to confirm in writing consigned inventory and scrap by part number on a monthly basis, (iii) Seller agrees to provide an annual certified letter of physical inventory when Buyer conducts their annual physical inventory, or allow Buyer's employees to visit the site and audit the inventory count, (iv) Seller agrees to verify the seal is intact on those sealed truckloads if a seal number is indicated on the Buyer shipping document, (v) Seller agrees to verify the accuracy of the material identification and relies that Seller has received this from Buyer's plant. Each bill of lading must be checked completely at time of receipt and Buyer's production control notified immediately of any discrepancy. Seller will correct information on bill of lading, sign, date, and fax or e-mail copy to production control, (vi) Seller agrees to segregate Buyer's material and provide adequate protection and insurance for loss or damaged Buyer material, (vii) Seller agrees to return all defective or damaged parts to Buyer, (viii) if Seller is determined to be at fault for scrap or loss of inventory, Buyer's purchasing department will charge back the Seller, (ix) Seller will fax or e-mail to Buyer's material control consignment analyst copies of shipping paperwork when shipping or receiving parts from other Seller locations, (x) Seller agrees to allow Buyer's scheduling and finance representatives the right to audit inventories and inventory records upon request, (xi) Seller agrees to ship material directly to Buyer's customer if the physical flow warrants.

## **18. SERVICE AND REPLACEMENT PARTS**

During the term of this Contract, Seller will sell to Buyer Goods and Services necessary to fulfill Buyer's service and replacement parts requirements at the then current production price(s) under this Contract. If the Goods are systems or modules, Seller will sell the components or parts that comprise the system or module at price(s) that will not, in the aggregate, exceed the price of the system or module less assembly costs. Unless the Contract has been terminated by Buyer, Seller will also sell Goods and Services to Buyer to fulfill Buyer's

and its customers' service and replacement parts requirements during the fifteen (15) year period following the end of production for the vehicle program for which Seller's Goods or Services are used by Buyer (the "Post-Production Period"), and this Contract will automatically remain in effect during the entire Post-Production Period. During the initial five (5) years of the Post-Production Period, the price(s) for such Goods and Services will be the production price(s) which were in effect at the commencement of the Post-Production Period. For the remainder of the Post-Production Period, the price(s) for such service Goods and Services will be as reasonably agreed to in writing by the parties. If requested by Buyer, Seller will also make service literature and other materials available at no additional charge to support Buyer's service activities.

## **19. REMEDIES AND INJUNCTIVE RELIEF**

The rights and remedies reserved to Buyer in this Contract are cumulative with, and in addition to, all other or further remedies provided in law or equity. Seller will reimburse Buyer for any direct, indirect, incidental, consequential or other damages (including lost profits) caused or required by Seller's breach of this Contract. To the extent that this Contract is for the supply of Goods or Services for production of, use as, or fabrication into, parts, components or systems, Seller acknowledges and agrees that money damages would not be a sufficient remedy for any actual, anticipatory or threatened breach of this Contract by Seller with respect to its delivery of Goods and Services to Buyer and that, in addition to all other rights and remedies which Buyer may have, Buyer shall be entitled to specific performance and injunctive or other equitable relief to enforce this Contract, without any requirement of a bond or other security to be provided by Buyer.

## **20. CUSTOMS AND EXPORT CONTROLS**

20.1 Credits and Refunds. Transferable credits or benefits associated with or arising from Goods or Services purchased under this Contract, including trade credits, export credits or rights to the refund of duties, taxes or fees, belong to Buyer. Seller will, at its expense, provide all information necessary (including written documentation and electronic transaction records in Buyer-approved formats) to permit Buyer to receive these benefits, credits, or rights. Seller will furthermore, at its expense, provide Buyer with all information, documentation, and electronic transaction records relating to the Goods and Services necessary for Buyer to fulfill any customs -related obligations, origin marking or labeling requirements and certification or local content reporting requirements, to enable Buyer to claim preferential duty treatment for Goods and Services eligible under applicable trade preference regimes, and to make all arrangements that are necessary for the Goods and Services to be covered by any duty deferral or free trade zone program(s) of the country of import. Seller will, at its expense, provide Buyer or Buyer's nominated service provider with export documentation to enable the Goods and Services to be exported, and obtain all export licenses or authorizations necessary for the export of the Goods and Services unless otherwise indicated in this Contract, in which event Seller will provide all information as may be necessary to enable Buyer to obtain such licensees or authorization(s).

20.2 Customs-Trade Partnership Against Terrorism. To the extent any Good or Service covered by this Contract are to be imported into the United States of America, Seller shall comply with all applicable recommendations or requirements of the Bureau of Customs and Border Protection's Customs-Trade Partnership Against Terrorism ("C-TPAT") initiative. Upon request, Seller shall certify in writing its compliance with the C-TPAT initiative.

## **21. BUYER'S RECOVERY RIGHT**

With respect to any monetary obligations of Seller or Seller's affiliates to Buyer or Buyer's affiliates, including, without limitation, direct and indirect losses, costs and damages resulting from Seller's failure to timely delivery Goods or Services, the failure of any Goods or Service to conform to applicable warranties or other breach by Seller of this Contract, in addition to any right of setoff or recoupment provided by law, Buyer may at any time, as applicable, recover, recoup or setoff such amounts by deducting such amounts from any sums that are, or will become, owing, due or payable to Seller or Seller's affiliates by Buyer or Buyer's affiliates.

## **22. NO ADVERTISING**

Seller will not, in any manner, advertise or publish that Seller has contracted to furnish Buyer the Goods or Services covered by this Contract or use any trademarks or trade names of Buyer in Seller's Goods, advertising or promotional materials without Buyer's prior written consent.

## **23. NO IMPLIED WAIVER**

The failure of either party at any time to require performance by the other party of any provision of this Contract will not affect the right to require such performance at any later time, nor will the waiver by either party of a breach of any provision of this Contract constitute a waiver of any succeeding breach of the same or any other provision. No failure or delay in exercising any right or remedy will operate as a waiver thereof nor will any single or partial exercise thereof preclude other or further exercise thereof. No course of dealing or course of performance may be used to evidence a waiver or limitation of Seller's obligations under this Contract.

## **24. ASSIGNMENT AND CHANGE IN CONTROL**

Buyer may assign its rights and obligations under this Contract without Seller's prior written consent. Seller may not assign or delegate its rights or obligations under this Contract without prior written consent from an authorized employee of Buyer. In the event of any approved assignment (including without limitation subcontract), sale or delegation authorized by Buyer, Seller retains all responsibility for the Goods and Services, including all related warranties and indemnification obligations stated in these T&Cs, unless otherwise expressly agreed in writing by Buyer. In addition, Buyer may terminate this Contract on sixty (60) days' advanced notice to Seller, without any liability to Seller whatsoever, if Seller (i) sells, or offers to sell, a material portion of its assets or (ii) sells or exchanges, or offers to sell or exchange, or causes to be sold or exchanged, a sufficient amount of its stock or other equity interests that effects a change in the control of Seller or (iii) executes, or otherwise becomes subject to, a voting or other agreement or trust that effects a change in the control of Seller.

## **25. RELATIONSHIP OF PARTIES**

Seller and Buyer are independent contracting parties. Nothing in this Contract makes either party the agent or legal representative of the other for any purpose whatsoever, nor grants either party any authority to assume or create any obligation on behalf of or in the name of the other party.

## **26. GOVERNING LAW AND JURISDICTION**

**26.1 U.S. Contracts.** If any of the following apply: (i) this Contract is issued by Buyer from a location within the United States of America or its territories (as shown by the issuing address of Buyer), (ii) this Contract is issued, in whole or part, for Goods or Services to be shipped to a Buyer location within the United States of America or its territories (as shown by the ship to or receiving address of Buyer) or (iii) Seller's applicable shipping location is within the United States of America or its territories (as shown by the shipping address of Seller), then: (a) this Contract is to be construed according to the laws of the United States of America and the State of Michigan, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any choice-of-law provisions that would require application of any other law, and (b) with respect to any action, litigation or proceeding of any kind whatsoever arising out of, or in connection with, this Contract, each party irrevocably submits to the exclusive jurisdiction of and venue in the United States District Court for the Eastern District of Michigan or in any state court of Michigan sitting in Oakland County, Michigan, and specifically waives any and all objections to such jurisdiction and venue.

**26.2 Non-U.S. Contracts.** In all cases not covered by Section 26.1 above, (a) this Contract is to be construed according to the laws of the country (and state or province, if applicable) of Buyer's location as shown by the issuing address of Buyer as set forth in this Contract, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any choice-of-law provisions that would require application

of any other law; (b) any legal or equitable action or proceedings by Buyer against Seller arising out of, or in connection with, this Contract may be brought by Buyer in the court having jurisdiction over Seller or, at Buyer's option, in the court having jurisdiction over Buyer's location as shown by the issuing address of Buyer, in which event Seller consents to such jurisdiction and venue, including service of process in accordance with applicable procedures; and (c) any legal or equitable actions or proceedings by Seller against Buyer arising out of, or in connection with, this Contract may be brought by Seller only in the court(s) having jurisdiction over Buyer's location as shown by the issuing address of Buyer.

## **27. SEVERABILITY**

If any provision of this Contract is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such provision will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of this Contract will remain in full force and effect.

## **28. RIGHT TO AUDIT AND INSPECT**

Seller grants Buyer access to Seller's premises and all Seller's relevant books, records, income statements, balance sheets, cash flow statements, payroll data, receipts and other related supporting data, including Seller's administrative and accounting policies, guidelines, practices and procedures, in order to (i) substantiate any charges and other matters under this Contract and (ii) assess Seller's ongoing ability to perform its obligations under the Contract. Seller will maintain and preserve all such documents for a period of four (4) years following final payment under this Contract. Seller will provide Buyer with reasonable access to its facilities and otherwise cooperate and facilitate any such audits by Buyer. Any such audit or inspection conducted by Buyer or its representatives will not constitute acceptance of any Goods or Service (whether in progress or finished), relieve Seller of any liability under this Contract or prejudice any rights or remedies available to Buyer.

## **29. TRANSITION**

Following expiration or termination of the Contract for any reason and notwithstanding any claimed or actual breach of any obligation by Buyer, Seller will cooperate in the transition of supply to an alternate supplier, including the following, which will collectively be referred to as "Transition Support:"

29.1 Seller will continue production and delivery of all Goods and Services as ordered by Buyer, at the prices, and other terms stated in the purchase order, without premium or other condition, during the entire period reasonably needed by Buyer to complete the transition to the alternate supplier(s), such that Seller's action or inaction causes no interruption in Buyer's ability to obtain Goods or Services as needed;

29.2 At no cost to Buyer, Seller will promptly provide all requested information and documentation regarding, and access to, Seller's manufacturing process, including on-site inspections, bill-of-material data, tooling and process detail and samples of Goods and components; and

29.3 Seller will provide overtime production of Goods and Services, storage and/or management of extra inventory of Goods, extraordinary packaging and transportation and other special services as expressly requested by Buyer in writing. If the transition occurs for reasons other than Buyer's termination of Seller for Seller's breach, Buyer will, at the end of the transition period, pay the reasonable, actual cost of the assistance under this Section 29.3, provided that Seller has advised Buyer in writing prior to incurring such amounts of its estimate of such costs. If the parties disagree on the cost of Transition Support, Buyer will pay the agreed portion to Seller, and Seller will accept the agreed portion without prejudice to Seller's right to seek to recover any disputed amounts.

### **30. ENTIRE AGREEMENT, MODIFICATIONS, AND BUYER'S WEBSITE**

This Contract, together with the attachments, exhibits, supplements or other terms of Buyer specifically referenced in this Contract, constitutes the entire agreement between Seller and Buyer with respect to the matters contained in this Contract and supersedes all prior oral or written representations and agreements. This Contract may only be modified by a written contract amendment issued by Buyer. Notwithstanding anything to the contrary contained herein, Buyer explicitly reserves, and this Contract will not constitute a waiver or release of, any rights and claims against Seller arising out of, or relating to, any fraud or duress in connection with the formation of this Contract or any breach or anticipatory breach of any previously existing contract between Buyer and Seller (whether or not such previously existing contract related to the same or similar goods or subject matter as this Contract). All payments by Buyer to Seller under this Contract are without prejudice to Buyer's claims, rights, or remedies.

Buyer may modify Purchase Order terms and conditions from time-to-time by posting revised Purchase Order terms and conditions to Buyer's internet website (or such other website as may be directed through links available on such website) as specified on the face of the Purchase Order ("Buyer's Website") at <http://www.nexteer.com/doing-business-with-nexteer-2/>, prior to the date when any modified terms and conditions become effective. Such revised Purchase Order terms and conditions shall apply to all purchase order revisions/amendments/alterations and new Purchase Orders issued on or after the effective date thereof. Seller shall be responsible to review Buyer's Website periodically. In the event of any inconsistency between the Purchase Order and Buyer's Website, the terms of the Purchase Order shall prevail, unless the requirements specified on Buyer's Website expressly provide otherwise.

### **31. TRANSLATIONS**

Buyer may provide various translated versions of these T&Cs for informational purposes only. However, the English language version of these T&Cs will apply in the event of any disagreement over the meaning or construction of any translated version of these T&Cs.

### **32. WAIVER OF JURY TRIAL**

BUYER AND SELLER ACKNOWLEDGE THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH OF BUYER AND SELLER, AFTER CONSULTING (OR HAVING THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO ANY CONTRACT OR OTHER DOCUMENT PERTAINING TO ANY CONTRACT.

### **33. CLAIMS BY SELLER**

Any legal action or arbitration proceedings by Seller under any Contract must be commenced no later than one (1) year after the breach or other event giving rise to Seller's claim occurs, or Seller becomes aware of the existence (or facts and circumstances giving rise to the existence) of such claim, whichever occurs first.

### **34. BATTLE OF THE FORMS NOT APPLICABLE**

The parties have agreed and it is their intent the battle of the forms Section 2-207 of the Uniform Commercial Code shall not apply to these T&Cs or to any invoice or acceptance form of Seller relating to these T&Cs. It is the parties' intent these T&Cs shall exclusively control the relationship of the parties, and in the event of any inconsistency between any invoice or acceptance form sent by Seller to Buyer and these T&Cs, these T&Cs shall control.