

# GLOBAL TERMS FOR PRODUCTION PARTS AND NON-PRODUCTION GOODS AND SERVICES

Of

APCB Automotive Plastic Components Berlin  
GmbH & Co. KG

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## GENERAL

These terms and conditions, together with all documents issued by APCB Automotive Plastic Components Berlin GmbH & Co. KG and its Affiliated Companies as defined by Section 15 of the German Stock Corporation Act (AktG) (together "APCB") and specifically referenced herein, whether in written or electronic form, including, but not limited to APCB's Supplier Manual ("Supplier Manual") and applicable APCB Regional Addendums ("Regional Addendums), as those documents may be amended from time to time, comprise the APCB Global Terms for Production Parts and Non-Production Goods and Services (hereafter the "Terms and Conditions"). The Terms and Conditions are issued on behalf of APCB as the "Buyer" and will apply to all production and non-production purchase orders, scheduling agreements, blanket purchase orders, tooling purchase orders, prototype purchase orders and other agreements, individually and collectively, ("Purchase Order(s)") issued to the Seller for production and non-production goods and services ("Goods"). The Terms and Conditions together with the Purchase Orders and, to the extent consistent therewith, terms memorialized in applicable Pre-Sourcing Nomination Letters, Target Agreements, Sourcing Involvement Letters or Award Letters signed by an authorized APCB representative ("Early Sourcing Documents"), represent the entire agreement between the parties in connection with Seller's sale of Goods to Buyer hereunder. The current version of the Supplier Manual and Regional Addendums can be found on our Supplier Portal located at <http://www.apc-berlin.com/>. Follow the links for Suppliers.

### 1. AGREEMENT AND ACCEPTANCE

(a) The Terms and Conditions, together with the Purchase Order and, to the extent consistent therewith, the Early Sourcing Documents, constitute the parties' contractual agreement and supersede any previous oral or written representations, including but not limited to provisions in Seller's quotations, proposals, acknowledgments or other documents. No course of dealing or usage of trade shall be applicable unless expressly incorporated in a Purchase Order or the Terms and Conditions Buyer may modify the Terms and Conditions with respect to future Purchase Orders by posting revised terms and conditions on our Supplier Portal located at [www.APCB.com/suppliers](http://www.APCB.com/suppliers) and such revised Terms and Conditions shall apply to all Purchase Orders issued by Buyer thereafter.

(b) Seller's written acknowledgment, commencement of work on the Goods, or shipment of such Goods, whichever occurs first, shall be deemed an effective mode of acceptance of the Purchase Order and these Terms and Conditions. By accepting a Purchase Order, Seller acknowledges having actual knowledge of the text of documents referenced in these Terms and Conditions including, but not limited to, the Supplier Manual and Regional Addendums. Any proposal for additional or different terms or any attempt by Seller to vary in any way any of the terms of this offer is hereby objected to and rejected. Any such proposal shall not operate as a rejection of this offer unless the

variances are in the terms of the description, quantity, price or delivery schedule of the Goods, but shall be deemed a material alteration. Accordingly, this offer shall be deemed accepted by Seller without such additional or different terms. If the Purchase Order and these Terms and Conditions shall be deemed an acceptance of a prior offer by Seller, the acceptance is expressly made conditional on assent to the additional or different terms and such acceptance is limited to the express terms set forth in the Purchase Order and these Terms and Conditions. Additional or different terms or any attempt by Seller to vary in any way any of the terms of the Purchase Order or these Terms and Conditions shall be deemed material and are objected to and rejected.

## **2. MODIFICATIONS**

(a) Buyer shall have the right to demand any changes, additions or alterations in the quantities, destination(s), specifications, drawings, manufacture, design or delivery schedules related to Seller's supply of the Goods. If any such changes affect Seller's costs or timing, Supplier shall inform Buyer immediately and substantiate by documentation any increase or reduction in costs or delay of delivery. The Parties shall then agree in written form on a reasonable adjustment of the Purchase Order.

(b) Seller will not make any change to the design, manufacturing process, manufacturing location(s), raw materials purchased component parts, packaging, marking, shipping methods and/or the date or place of delivery of the Goods unless done pursuant to Buyer's instructions or with Buyer's prior written approval.

## **3. SUPPLIER QUALITY AND DEVELOPMENT; SAMPLES; PPAP; PARTS IDENTIFICATION; IMDS; AND EDI**

(a) Seller will conform to the Buyer's quality control standards and inspection systems, as specified in the Supplier Manual, as well as related standards and systems (including without limitation, Buyer and Buyer's customer's quality control policies, TS 16949, QS 9000 and ISO 9000). Seller will participate in any supplier quality and development programs of Buyer and Buyer's customers that apply to the Goods described in a Purchase Order.

(b) Seller agrees to meet the full requirements of industry Production Part Approval Processes ("PPAP") as specified by Buyer and Buyer's customers and agrees to present this information to Buyer upon request and at the level requested.

(c) Sellers providing Goods under a Purchase Order shall be required to successfully enter all required bill of material and material composition data into the International Material Data System ("IMDS") or into a Buyer approved alternative system prior to prototype submission, initial PPAP and PPAPs for subsequent design changes. Failure to successfully submit all information required by IMDS will prevent the Seller from receiving PPAP approval.

(d) Seller agrees to meet the full requirements of the Buyer's AIAG Electronic Data Interchange ("EDI") standards and Buyer's Proprietary Direct Data Link ("DDL") Requirements as specified in the Supplier Manual.

#### **4. BUYER'S PROPERTY**

The right, title and interest to all Goods, materials, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment, designs, drawings, specifications, spare parts, trial parts, ancillary products, dunnage, racks, containers, items owned by Buyer and other items furnished by Buyer to Seller for use in manufacturing the Goods, or for which Seller is paid or otherwise reimbursed by Buyer, shall be and remain the property of Buyer ("Buyer's Property"). Seller shall bear the risk of loss and damage to Buyer's Property. Seller will (a) properly house and maintain Buyer's Property on Seller's premises; (b) not use Buyer's Property for any purpose other than for performance under the Purchase Order;

(c) prominently mark Buyer's Property as property of Buyer; (d) refrain from commingling Buyer's Property with the property of Seller or with that of a third party; (e) adequately insure the Buyer's Property against loss or damage, including, but not limited to, maintaining full fire and extended insurance coverage for replacement value and naming Buyer as an additional insured on such policies; (f) take reasonable steps to ensure that Buyer's Property does not become subject to any liens or other claims; and, (g) not move Buyer's Property to another location whether owned by Seller or a third party, without the prior written consent of Buyer. In the case of an emergency, Seller may move Buyer's Property provided that Seller gives Buyer notice that Buyer's Property has been moved and the identifies the new location of Buyer's Property as soon as practicable. Buyer will have the right to enter Seller's premises at reasonable times to inspect Buyer's Property and Seller's records pertaining thereto. Seller hereby agrees to indemnify, defend and hold Buyer harmless from and against any loss, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings, including court costs and legal expenses in connection with any breach by Seller of the aforementioned obligations. Seller will assign to Buyer any claims Seller has against third parties with respect to Buyer's Property. Upon written request, Seller, at its expense, shall immediately deliver the Buyer's Property at Buyer's option, Ex Works (Seller's facility loaded), FCA (Port or Carrier), CIP (port of entry) or DDU/DDP (Buyer's Premises)(per INCOTERMS 2000), and in all cases properly packed and marked in accordance with the requirements of the carrier and Buyer. Seller will cooperate with Buyer's removal of Buyer's Property from Seller's premises. Unless otherwise agreed to in writing by Buyer, Seller, at its own expense, shall keep Buyer's Property in good condition and repair, including repair necessitated by wear and tear and other usage by Seller.

## 5. SELLER'S PROPERTY

Seller, at its expense, shall furnish, keep in good working condition capable of producing Goods meeting all applicable specifications and warranties, and replace when necessary, all machinery, equipment, tools, dies, jigs, fixtures, gauges, dies, molds, patterns, software, purchased component parts, intellectual property and other items that are not Buyer's Property and that are necessary for the production of Goods ("Seller's Property"). Seller will insure Seller's Property with full fire and extended insurance coverage for its replacement value. If Seller uses Seller's Property to produce goods or services similar to Goods for other customers, including aftermarket customers, such goods or services will not incorporate or utilize any of Buyer's intellectual property, including, but

not limited to, logos, trademarks, patents, trade names, part numbers, trade dress, know-how or industrial design rights.

## 6. CONTRACT DURATION, QUANTITIES, RELEASES, DELIVERY DATES AND TITLE TRANSFER

(a) Subject to Buyer's termination rights, and unless otherwise stated in the Purchase Order, the agreement formed by a Purchase Order is binding on the parties for one year from the date the Purchase Order is transmitted to Seller or, if an issuance date is stated on the Purchase Order, one year from that date. Subject to Buyer's termination rights, and unless otherwise stated in the Purchase Order, the Purchase Order will automatically renew for successive one-year periods after the initial term unless Seller provides written notice at least 180 days prior to the end of the then current term of its desire that the Purchase Order not be renewed. Upon receipt of Seller's written notice of non-renewal, Buyer shall have the option to extend the Purchase Order for an additional 180 days beyond the term by giving notice of such extension to Seller ("Extended Term") no later than 30 days prior to the end of the term of the Purchase Order. If Buyer requests an Extended Term, the Purchase Order will terminate at the end of the Extended Term. Upon the expiration of any Purchase Order term or any Extended Term, Seller shall cooperate with Buyer and provide all reasonably requested support and information required by Buyer to facilitate Buyer's sourcing of the Goods to a replacement supplier.

(b) The Buyer may provide Seller with estimates, forecasts or projections ("Estimates") of its future volume or quantity requirements for the Goods. These Estimates are not a commitment by the Buyer to purchase the quantities specified in the Estimate. Seller acknowledges that Estimates, like any other forward looking assumption, are based on a number of economic and business factors, variables and assumptions, some or all of which may change over time, and may or may not be accurate at the time they were made or later.

(c) If delivery dates are not specified in a Purchase Order, Seller will procure materials and fabricate, assemble, and ship Goods or provide services only as authorized in releases issued to Seller by Buyer. The quantities indicated shall be shipped on the day(s) and time(s) specified by the Buyer. Schedule requirements may include shipping on any Saturday, Sunday, local/international holiday and/or other Seller downtime. Raw material purchase authorization and fabrication authorization are included in Buyer's planning (830) releases or specified on the Purchase Order for non EDI Buyer plants.

(d) Buyer is not obligated to accept and may return over shipments, early deliveries, late deliveries, and partial deliveries to Seller at Seller's risk and expense, including, but not limited to, all packing, handling, sorting, and transportation related costs. Buyer, at any time may change or temporarily suspend shipping schedules specified in a Purchase Order or release or other written instructions issued by Buyer pursuant to this Section, neither of which entitles Seller to modify the price for Goods covered by a Purchase Order.

(e) Unless otherwise agreed, delivery times specified are the times of delivery of the Goods at Buyer's designated place of delivery or destination. If delivery is not timely made, Buyer may, in addition to its other rights and remedies, direct Seller to make expedited routing at Seller's expense. Time and quantity are of the essence in any Purchase Order.

## **7. PACKING, MARKING, SHIPPING AND CUSTOMS**

(a) Seller will package, label, mark and ship the Goods in accordance with all applicable packaging standards of Buyer as specified in the Supplier Manual and, as appropriate, the carrier transporting such Goods and/or the law of the country of destination. Seller will reimburse Buyer for all expenses incurred by Buyer as a result of any improper packaging, marking, routing, or shipping of the Goods.

(b) Buyer may require shipment of any of the Goods by a more expeditious method of transportation if Seller fails to meet the shipping requirements of a Purchase Order and Seller will bear the cost of such transportation unless such failure is due to an Excusable Delay as specified in Section 22. It is the Seller's responsibility to comply with shipping to the current routing instructions provided by the Buyer or Buyer's agent. Seller shall pay any costs incurred by Buyer, including costs charged by Buyer's customers to Buyer as a result of Seller's failure to comply with shipping or delivery requirements.

(c) Seller will comply with all applicable customs related laws and governmental agency rules and regulations related to the import and export of the Goods, including, but not limited to, those related to documentation and invoicing, free trade agreements, country of origin marking or labeling, local content requirements, dumping and cargo security. Any and all benefits and credits resulting from Seller's performance under a Purchase Order with Buyer, including, but not limited to, trade credits, export credits, customs drawbacks, rebates of taxes and fees will belong to the Buyer unless otherwise stated in the Purchase Order or prohibited by applicable law. A complete description of Buyer's customs related requirements can be found in Buyer's Supplier Manual.

## **8. INSPECTION**

Buyer will inspect incoming Goods by comparing delivery notes with goods labels, checking the quantity of the goods and external transportation damage which is clearly visible on the packing. Buyer will not carry out any further going incoming inspection. Buyer will inform Seller in written form of any deficiency of Goods once the deficiency has been discovered by Buyer in the ordinary course of its business. Buyer's acceptance of the Goods shall not, under any circumstance, be deemed a waiver with respect to breach of Seller's warranties.

## **9. INVOICES, PAYMENT**

(a) Seller will operate in accordance with all applicable payment guidelines provided by Buyer, as referenced in the Supplier Manual, which cover both invoiced items and those handled by Buyer's Evaluated Receipt System ("ERS"). Additionally, any action by Seller for nonpayment of Goods under any Purchase Order must be commenced within one (1) year after the Goods are delivered to Buyer, regardless of Seller's lack of knowledge of the nonpayment or other event giving rise to such action.

(b) Unless otherwise indicated on the face of the Purchase Order, Buyer's Standard Payment Terms will apply to all payments due for Goods pursuant to a Purchase Order. Buyer's Standard Payment Terms are available on our Supplier Portal located at [www.APCB.com/suppliers](http://www.APCB.com/suppliers).

(c) Unless a Purchase Order specifically states otherwise, all payments for Goods shall be made in the local currency of the Seller's manufacturing location for the Goods or in the case of services, in the local currency of Buyer's location that receives the services.



## 10. SERVICE AND REPLACEMENT PARTS

(a) At Buyer's request, Seller will sell to Buyer, or Buyer's designee, the Goods representing production parts or components necessary to fulfill Buyer's current and past model service and replacement requirements for such Goods at the prices specified in the Purchase Order plus any actual cost differential for packaging. If Buyer requires parts that are components of larger assemblies that together comprise the Goods ("Subcomponents"), Seller will sell such Subcomponents to Buyer at prices determined as follows: (i) with respect to any Subcomponents purchased by Seller, the price shall be the actual price paid by Seller to the manufacturer or distributor of such Subcomponent, plus any actual cost differential for packaging; and, (ii) with respect to Subcomponents manufactured or assembled by Seller, the price shall be such that the total price of all Subcomponents which comprise the Goods does not exceed the price of the Goods specified in the Purchase Order, less assembly costs, plus any actual cost differential for packaging. In no instance, however, shall the price of any individual Subcomponent exceed Seller's actual cost to manufacture and/or assemble such Subcomponent plus any actual cost differential for packaging.

(b) At Buyer's request during the fifteen (15) year period after Buyer completes its current model purchases of the Goods, Seller will sell to Buyer or Buyer's designee Goods and Subcomponents necessary to fulfill Buyer's past model service and replacement requirements and other requirements at the prices determined in accordance with Section 10(a) above. During the fifteenth year of such period, Buyer and Seller will, at Buyer's request, negotiate in good faith with regard to Seller's continued supply of Goods and Subcomponents hereunder.

## 11. WARRANTY

(a) Seller expressly warrants and guarantees to Buyer, Buyer's successors, assigns and customers, and the users of Buyer's products, that all Goods delivered to Buyer will, during the Warranty Period defined below: (i) conform to the specifications, standards, drawings, instructions, advertisements, statements on containers or labels, descriptions and samples; (ii) be free from defects in material and workmanship and shall be new and of the highest quality; (iii) be free and clear of any liens, encumbrances and any actual or claimed patent, copyright or trademark infringement; (iv) be merchantable, safe and fit for the Buyer's intended purposes, which purposes have been communicated to Seller; (v) be adequately contained, packaged, marked and labeled; and (vi) be manufactured in compliance with all applicable laws, regulations or orders as well as any applicable agency or association standards. All services performed by Seller shall be performed in a competent, workmanlike manner. These warranties shall be in addition to all statutory warranties Buyer has. Buyer's approval of Seller's design, material, process, drawing, specifications or the like shall not be construed to relieve Seller of the warranties set forth herein, nor shall a waiver by Buyer of any drawing or specification request for one or more articles constitute a waiver of any such

requirements for the remaining articles to be delivered hereunder unless so stated by Buyer in writing.

(b) Notwithstanding the expiration of the Warranty Period, Seller will indemnify and hold Buyer harmless with respect to the cost of any voluntary or involuntary recall campaigns and other corrective service actions that are required to rectify non-conformities in the Goods that are the result of a breach of the foregoing warranties, or which would have been a breach of the foregoing warranty had the non-conformity been discovered during the Warranty Period, whether such recall campaigns are mandated by any governmental entity, Buyer's customers or by the Buyer.

(c) Unless otherwise agreed the warranty period for the Goods shall commence on the date of delivery of the goods to the Buyer and shall end after 46 months after the date of delivery of the Goods.

## **12. DEFENSE, INDEMNITY AND INSURANCE**

(a) To the fullest extent permitted by law, Seller agrees to indemnify, hold harmless and defend Buyer from and against any loss, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings, including without limitation all judgments rendered against, and all fines and penalties imposed upon, Indemnitees and all attorney fees and any other costs of litigation ("Liabilities") that are in any way related to Seller's performance or obligations under a Purchase Order, including claims arising out of a breach hereof, warranty claims, product recall claims, product liability claims, injuries to persons, including death, or damage to property caused by Seller, its employees, agents, subcontractors, or in any way attributable to the performance of Seller. Seller's obligation to defend and indemnify under this Section will apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise except for claims that arise as a result of the gross negligence or willful misconduct of Buyer. Seller agrees to indemnify, save harmless and defend Indemnitees from and against all Liabilities arising out of actual or alleged infringement, including infringement of any patent, trademark or copyright relative to the goods.

(b) Seller shall maintain at its own expense insurance policies which adequately cover Seller's liabilities towards Buyer and third parties and in particular but without limitation include product liability and warranty liability insurance coverage. At Buyer's request, Seller shall furnish certificates of insurance setting forth the amounts of coverage, policy numbers and dates of expiration for insurance maintained by Seller within ten (10) days of Buyer's written request. Seller's purchase of insurance coverage and the furnishing of certificates of insurance shall not release Seller of its obligations or liability under this Purchase Order. In the event of Seller's breach of this provision,

Buyer shall have the right to cancel the undelivered portion of any Goods and shall not be required to make further payments except for conforming Goods delivered prior to cancellation.

### **13. INFORMATION DISCLOSED BY BUYER**

Seller acknowledges that Buyer may disclose confidential information in connection with the Goods covered by a Purchase Order. Seller agrees to keep all confidential information of Buyer, whether such information is marked or identified as confidential, in the strictest confidence and shall not use such information for the benefit of Seller or any third-party without the prior express written approval of Buyer which may be withheld in Buyer's sole discretion. Seller's obligations under this section shall continue for a period of five (5) years from the date of disclosure or, in the case of trade secrets, in perpetuity. The restrictions and obligations contained in this Section

impose no obligation upon Seller with respect to confidential information that Seller can demonstrate: (a) was in the Seller's possession before receipt from the Buyer, (b) is or becomes a matter of public knowledge through no fault of Seller, (c) is rightfully received by Seller from a third-party rightfully possessing such information without a duty of confidentiality, (d) is disclosed by the Buyer to a third-party without a duty of confidentiality on the third party; (e) is required to be disclosed by court order or other lawful governmental action, but only to the extent so ordered, and provided that Seller provides Buyer with reasonable prior notice of such disclosure so that Buyer may attempt to obtain a protective order, (f) is disclosed by the Seller with Buyer's prior written approval in accordance with such written approval, or (g) is independently developed by Seller without access to Buyer's confidential information.

### **14. PROPRIETARY RIGHTS**

Seller shall indemnify, defend and hold Buyer harmless from and against all liabilities, costs, damages, claims and expenses (including court costs and legal expenses and any settlement of such claim or action) incurred by Buyer in respect of any claim or action brought by any third party against Buyer that the Goods or their use by Buyer or Buyer's customer infringe the Intellectual Property Rights of such third party. Notwithstanding the foregoing, Seller shall not be liable to the extent that the infringement results from the manufacture of the Goods in accordance with instructions received from Buyer and Seller taking the level of care that is customary in the industry could not have known that following these instructions would result in an infringement of a third party's Intellectual Property Right.

At no additional cost, Seller agrees to grant and hereby grants to Buyer a worldwide, royalty free, fully paid up, transferable, irrevocable license to use any intellectual property owned by Seller that is necessary or incidental to the reasonably intended use or application of the Goods.

## **15. ELECTRONIC COMMUNICATIONS AND ELECTRONIC SIGNATURES**

Seller shall comply with any method of electronic communication specified by Buyer, including requirements for electronic funds transfer purchase order transmission, production releases, electronic signatures, and communication.

## **16. ADVERTISING**

Any reference to Buyer or any of its Affiliated Companies or use of Buyer's trademarks or logos by Seller in Seller's advertising or publicity materials is strictly prohibited without Buyer's express written consent.

## **17. ACCESS TO INFORMATION**

Seller grants to Buyer access to all pertinent financial and operational information relating to (a) any of Seller's obligations under a Purchase Order, (b) Seller's financial viability, or (c) any payments requested by Seller pursuant to a Purchase Order. Buyer will have the right at any reasonable time to send its authorized representatives to examine all such information. Seller shall maintain all pertinent information relating to a Purchase Order for a period of at least four years after completion of services or delivery of Goods pursuant to that Purchase Order.

## **18. ASSIGNMENT**

Each Purchase Order is entered into in reliance upon the Seller's personal performance of the duties imposed. Seller will not assign or delegate all or substantially all of its substantive duties under a Purchase Order, nor transfer to another any intellectual property right that is licensed to Buyer hereunder, without Buyer's prior and express written approval, nor assign any right to any receivable owed to Seller by Buyer hereunder. Any such assignment or delegation without the previous written consent of Buyer, at the option of Buyer, shall effect a cancellation of this Purchase Order. Any consent by Buyer to an assignment shall not be deemed to waive Buyer's right to recoupment from Seller and/or its assigns for any claim arising out of this transaction, and shall not prohibit Buyer from enforcing any of its rights against the assignee. Buyer will have the right to assign any benefit or duty under a Purchase Order to any third party upon notice to Seller with or without consent.

## 19. EXCUSABLE DELAYS

Any delay or failure of either party to perform its obligations shall be excused if it is caused by an extraordinary event or occurrence beyond the control of the non-performing party and without the non-performing party's fault or negligence, such as acts of God, fires, floods, windstorms, explosions, riots, acts of terrorism, natural disasters and wars (hereafter an "Excusable Delay"). Neither Seller's inability to perform as a result of Seller's insolvency or financial condition nor Seller's non-performance due to a change in price or availability of raw materials or components based on market conditions shall constitute an Excusable Delay. As soon as possible, but not later than one full business day after the occurrence of an Excusable Delay, Seller will provide notice to Buyer of the anticipated duration of the delay and the time in which the delay will be cured. During the delay or failure to perform by Seller, Buyer, at its option (a) may purchase the Goods from other sources and reduce its schedules to Seller by such quantities, without liability to Seller; (b) may request Seller to deliver to Buyer at Buyer's expense all finished goods, work in process and parts and materials produced or acquired for work under a Purchase Order. If the delay lasts more than (15) business days, Buyer may, among its other remedies, immediately cancel a Purchase Order without liability and procure replacement Goods from alternative sources. For the avoidance of doubt, labor disruptions, strikes, lockouts and slowdowns affecting Seller's facilities shall not give rise to Excusable Delay hereunder. Prior to the expiration of any directly related labor contract of Seller, Seller will, at its expense, take such actions as Seller may reasonably determine to ensure the uninterrupted production of supplies for a period of thirty

(30) days for Buyer during any anticipated labor disruption or slowdown resulting from the expiration of the labor contract.

## 20. REMEDIES, WAIVER

Buyer's rights and remedies shall be cumulative and in addition to any other rights or remedies provided by law

## 21. TERMINATION

(a) Unless a Purchase Order specifically states otherwise, Buyer may terminate its purchase obligations under a Purchase Order, in whole or in part, at any time by providing written notice of termination to Seller. Buyer will have such right of termination notwithstanding the existence of an Excusable Delay of Section 22.

(b) Upon termination by Buyer pursuant to Section 24 (a), Buyer's obligation to Seller will be (i) the Purchase Order price for all finished work and completed services which conform to the requirements of a Purchase Order;

(ii) Seller's reasonable costs of the work in process and parts and materials transferred to Buyer in accordance with subsection (g)(ii) hereof; (iii) Seller's reasonable costs of settling the claims by subcontractors of subsection (g)(iii) hereof; and (iv) Seller's actual cost of carrying out its obligations of subsection (g)(iv) hereof, but Buyer's obligations will not exceed those Buyer would have had to Seller in the absence of termination. Unless otherwise agreed in writing, Buyer shall have no obligation for and shall not be required to make payments to Seller, directly or on account of claims by Seller's suppliers and subcontractors, for loss of anticipated profit, overhead, product development and engineering costs, tooling, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, and general and administrative burden charges resulting from the termination of a Purchase Order.

(c) Seller will furnish to Buyer, within one month after the effective date of termination, Seller's proposed termination claim, which will consist exclusively of the items of Buyer's obligation to Seller that are listed in subsection (b) hereof. Buyer may audit Seller's records, before or subsequent to payment, to verify amounts requested in Seller's termination claim. Buyer shall evaluate and make a final binding decision with respect to such termination claim.

(d) In addition to its other remedies, Buyer may, at its option, terminate a Purchase Order without liability for cancellation claims under subsections (b) and (c) above, termination claims or other claims of Seller if (i) Seller sells, or offers to sell all or a substantial portion of its assets used for the production of Goods for Buyer; (ii) Seller sells or exchanges, or offers to sell or exchange an amount of its stock that would result in a change in the control of Seller; or (iii) the Seller fails to remain competitive with respect to quality, technology, delivery and pricing of the Goods. In the event of a termination pursuant to this Section 24(d), Buyer shall give Seller written notice of the termination at least thirty (30) days prior to the effective termination date. Seller shall notify Buyer no more than ten

(10) days after entering into any negotiations for the sale or exchange of its stock or assets that could result in a

change of control of Seller. Upon Seller's request, Buyer will execute an appropriate non-disclosure agreement relating to information disclosed by Seller regarding the potential transaction. Buyer will

have no obligation to Seller under subsection (b) or (c) above if Buyer terminates its purchase obligations of a Purchase Order pursuant to this subsection (d).

(e) A Purchase Order may be terminated immediately by Buyer without liability to Seller for cancellation under subsections (b) and (c) above, termination claims or other claims of Seller, if any of the following events, or any other comparable events, occur and Seller shall reimburse Buyer for all costs incurred by Buyer in connection with any of the following, including but not limited to all attorney's and other professional fees and costs (i) Seller becomes insolvent; (ii) Seller files a voluntary petition in bankruptcy; (iii) an involuntary petition in bankruptcy is filed against Seller; (iv) a receiver or trustee is appointed for Seller; (v) Seller requests accommodations from Buyer, financial or otherwise, in order to meet its obligations under a Purchase Order; or (vi) Seller executes an assignment for the benefit of creditors. Buyer will have no obligation to Seller under subsection (b) or (c) above if Buyer terminates its purchase obligations of a Purchase Order pursuant to this subsection (e).

(f) A Purchase Order may be terminated by Buyer immediately without liability to Seller for cancellation under subsections (b) and (c) above, termination claims or other claims of Seller in the event of a default by the Seller. Seller shall be deemed to be in default under a Purchase Order where Seller (i) breaches or threatens to breach any of the terms of this Purchase Order; (ii) fails to perform or threatens not to perform services or deliver Goods in accordance with any Purchase Order issued by Buyer to Seller; or (iii) fails to make progress or provide adequate assurance, once requested pursuant to Section 17 above, so as to endanger timely and proper delivery of the Goods.

(g) Upon receipt of the notice of termination, Seller, unless otherwise directed by Buyer, will (i) terminate promptly all work under a Purchase Order; (ii) transfer title and deliver to Buyer or its designee the finished work, the work in process, and the parts and materials which Seller produced or acquired in accordance with a Purchase Order and which Seller cannot use in producing goods for itself or for others; (iii) verify/settle all claims by subcontractors for actual costs that are rendered unrecoverable by such termination and provided the recovery of materials in Seller's possession is ensured; (iv) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest until disposal instruction from Buyer has been received; and (v) upon Buyer's reasonable request, cooperate with Buyer in effecting resourcing production of the Supplier to a different supplier.

(h) Seller may terminate its obligations under a Purchase Order only pursuant to notice of non-renewal, as set forth in paragraph 6(a) above.

## 22. COMPLIANCE WITH LAW

(a) Seller agrees to meet the full requirements of directive 2000/53/EC of the European Parliament and of the Council (End-of-life-vehicle-directive) and of the International Material Data System (IMDS) as specified by Buyer and Buyer's customers and agrees to present complete information to Buyer upon request, at the level requested, unless otherwise specifically agreed by Buyer in writing.

(b) To the extent any Goods covered by this Purchase Order are to be imported into the United States, 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.

## 23. CHOICE OF FORUM; APPLICABLE LAW

This Agreement shall be subject to and interpreted in accordance with the laws of Germany on exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) and without regard to the rules of conflict of law.

The Parties agree that the courts having jurisdiction over Buyer's principal place of business (Berlin, Germany) shall have exclusive jurisdiction for any action or proceedings commenced under any Supply Contract.

## 24. TOOLING ORDER

If Buyer issues a Tooling Purchase Order, Seller will design and fabricate, rework or acquire from such sources as Buyer has given prior approval, and install all Tooling described in such Tooling Purchase Order ("Tooling"), subject to the terms and conditions contained herein and as further specified in the separate Tooling Agreement and/or the Supplier Manual.

## 25. TITLE, IDENTIFICATION OF TOOLING

In the event that Buyer issues a Tooling Purchase Order, all right, title, and interest in and to any part of the Tooling, including any and all designs, drawings, specifications, spare parts, trial parts and ancillary products, shall pass to Buyer upon payment of the agreed price.



## 26. TOOLING INVOICES, PAYMENT

(a) Payment for Buyer-owned Tooling will be made after approval of the Part Submission Warrant ("PSW") and in accordance with Buyer's Standard Payment Terms unless stated otherwise in a Tooling Purchase Order or otherwise approved in writing by Buyer's Vice President of Purchasing. Buyer reserves the right to require proof that Supplier can convey good and marketable title to all Tooling prior to making any payment to Supplier for such Tooling.

(b) If a Tooling Purchase Order designates that it is non-competitively placed or based on affordable targets, Buyer's payment obligation shall be no more than the specified maximum, if any, for (i) Seller's actual costs for purchased materials and services (including purchased Tooling and portions thereof); and (ii) Seller's actual cost for direct labor and overhead. Seller shall establish a reasonable accounting system that enables ready identification of Seller's cost. Buyer may audit Seller's records, at any time prior to two (2) years after final payment, to verify Buyer's payment obligation to Seller.

(c) To the extent permitted by applicable law, any payments made by Buyer for Buyer-owned Tooling are expressly intended by Buyer to be held in trust for the benefit of any subcontractor(s) used by Seller to produce the Buyer-owned Tooling that are covered by such payments and Seller agrees to hold such payments as trustee in express trust for such subcontractors until Seller has paid the subcontractors in full for the Buyer-owned Tooling. Seller acknowledges and agrees that its subcontractor is an intended third party beneficiary of the terms of this section relating to the express trust and as such, the tooling subcontractors shall have the right to enforce these terms directly against Seller in their own name. Seller agrees that Buyer has no obligation to Seller or Seller's tooling subcontractor under this section other than making the payment to Seller in accordance with a Tooling Purchase Order. In the event Seller's tooling subcontractor brings an action against Seller under this section, Seller agrees that it will not join Buyer in any such action.

## 27. PROVISIONS APPLICABLE TO SELLER-OWNED TOOLING

Seller acknowledges that the Purchase Order price includes a cost element to help Seller recover the capitalization of Seller-owned Tooling. The Seller-owned Tooling will be properly maintained by the Seller at its own expense for so long as the Supplies are purchased by Buyer for its serial production as well as for its service and replacement part requirements. All Seller-owned Tooling shall be considered Seller's Property pursuant to Section 5 above.