



Aerojet Redmond – Automotive Fire Suppression Terms & Conditions

1. ACCEPTANCE: This order is Buyer's offer to purchase the goods or services (the "Products") described in this order. Acceptance of this offer is limited to its terms. This order consists only of the terms contained herein and in any documents or specifications expressly incorporated by reference. It does not constitute an acceptance by Buyer of the terms contained in any quotation, proposal or order confirmation furnished by Seller.
2. BLANKET ORDERS: If this order is identified as a "blanket order", Buyer shall issue a "Vendor Release and Shipping Schedule" to Seller for specific quantities and delivery dates for Products. Buyer shall have the right to cancel, adjust or reschedule the quantities of Products shown in such "Vendor Release and Shipping Schedule" except that it may not cancel, adjust or reschedule the Products shown as "Firm Obligations" on such "Vendor Release and Shipping Schedule".
3. WARRANTY:
 - ~~3.01. Supplier Warranty: The Supplier warrants that during the applicable Warranty Period the Goods will: (as defined in Section 3.01.07, 3.01.12 or 3.01.16) the Goods will:~~
 - 3.01.01. Conform in all respects to the drawings, specifications, Statements of Work, samples and other descriptions and requirements relating to the Goods that have been furnished, specified or approved by the Buyer;
 - ~~3.01.02. (Not Applicable to Tooling) Comply with all Government Requirements of the countries in which the Goods or the vehicles into which the Goods are to be installed are to be sold;~~
 - 3.01.03. Be merchantable;
 - 3.01.04. Be free from defects in design to the extent furnished by the Supplier, its Related Companies or their subcontractors, even if the design has been approved by the Buyer;
 - 3.01.04. **A lien will be in place until payment is received in full**
 - 3.01.20.3.01.05. Long Term Durability Requirement: If the Production Purchase Order includes a Quality/Reliability Statement of Work, the specifications and requirements in it are in addition to the obligations of the Supplier specified in this Section 3 and Section 20.
 - 3.01.21.3.01.06. Warranty Programs: If the Supplier and the Buyer (or any of its Related Companies) have entered into a Warranty Program Agreement covering the Goods, it will specify the extent to which its terms take precedence over the relevant provisions in the Global Terms and Conditions. A Warranty Program Agreement will not affect the Supplier's obligations under the provisions of Section 20, unless the Warranty Program Agreement expressly provides otherwise.
 - 3.01.22.3.01.07. Claim for Breach of Warranty: The Supplier's Warranty and any rights of the Buyer to make a claim
4. QUALITY ASSURANCE: Seller shall qualify as an acceptable vendor in compliance with the requirements of current revision of Buyer's supplier quality systems requirements within a reasonable time after Seller accepts Buyer's initial order for Products. After its initial qualification, Seller shall maintain its status as an acceptable vendor under Buyer's supplier quality system requirements.
5. PRICES: The prices shown in this order shall be firm unless Buyer has expressly agreed to adjust the prices shown during the performance of this order. The prices shown include all charges by Seller for packing, reusable containers, and transportation to the point of delivery. The prices shown also include all applicable federal, state and local taxes except taxes with Seller is required by law to collect from Buyer. Seller shall show taxes which it is required by law to collect from Buyer separately on its invoices and shall not invoice any tax for which Buyer has furnished a valid exemption certificate. Seller represents that its prices charged for Products under this order are at least as low as the prices charged by Seller to buyers of the same kind as Buyer under conditions substantially similar to those specified in this order.
6. SHIPPING AND DELIVERY: Seller will comply with Buyer's "ship to" and "bill to" instructions as shown in this order or in the applicable "Vendor Release and Shipping Schedule". Seller will route its shipments in accordance with the instructions of Buyer or its shipping agent. Title to and risk of loss of the Products shall pass to Buyer upon delivery of the Products to the F.O.B. point shown in this order. Seller understands that Buyer establishes its manufacturing schedules in reliance on Seller's timely performance of this order and that time is of the essence in Seller's performance. Seller agrees to show the engineering revision level of the Products shipped on all shipping documents.



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7. **INSPECTION:** Buyer, or Buyer's customer shall have the right to review any designs, drawings or specifications prepared by Seller under this order and to inspect and test Products at Seller's premises prior to delivery to Buyer. Buyer shall make such inspections and test so as not to delay the work unduly. Buyer shall also have the right to inspect Products at Buyer's plant within a reasonable time after delivery. Any review, inspection or test by Buyer under this section shall not relieve or excuse Seller from its obligations under this order.
8. **CHANGES:**
 - 8.01. **Changes To Buyer's Order:** The Buyer may make changes to its order for the Goods or Tooling at any time. These may include changes to the design, specifications, engineering level, materials, packaging, shipping date, or time or place of delivery. The Supplier will make all changes requested by the Buyer. The Supplier may not make any change on its own without first obtaining the Buyer's consent in a Written Notice.
 - 8.02. **Notice:** *The Buyer will provide the Supplier with notice of any change through an amendment or revision to the outstanding Purchase Order, the issuance of a new Production Purchase Order, an RFQ or a Written Notice. If the amendment is accomplished by issuing a new Production Purchase Order, the Initial Term of the original Production Purchase Order will apply. If the Initial Term has already expired, the Renewal Term in effect at the time of amendment will continue.*
 - 8.03. **Impact on Cost:** *The Supplier will promptly notify the Buyer in a Written Notice if the proposed change will affect cost or timing and provide substantiation of its claim. If the Buyer determines that an adjustment is appropriate, the Buyer and the Supplier will negotiate in good faith on an equitable price adjustment (up or down), a change in shipping or delivery terms, or other appropriate adjustment. If the Buyer determines that no adjustment is appropriate, it will so advise the Supplier in a Written Notice stating its reasons.*
9. **INFORMATION:**
 - 9.01. If Buyer supplies drawings, data, design, inventions, computer software or other technical information to Seller to facilitate the performance of this order, then such information shall remain Buyer's property and Seller shall hold it in confidence. Seller shall not reproduce, use or disclose such information to others for any purposes other than the performance of this order without Buyer's prior written consent. Such information shall be returned to Buyer upon completion by Seller of its obligations under his order or upon demand, along with all copies Seller has made and all other documents in which such information has been incorporated.
 - 9.02. Unless Buyer has entered into a separated written non-disclosure agreement with Seller, any information which Seller may disclose to Buyer with respect to the design, manufacture, sale or use of the Products covered by this order shall be deemed to have been disclosed as part of the consideration for order, and Buyer shall be free to use such information.
10. **BUYER'S PROPERTY:** All property used by Seller in connection with this order which Buyer owns and delivers to Seller, or pay Seller for, including, but not limited to, tools, dies, jugs, molds, patterns, fixtures and equipment and any replacement thereof, shall be and remain the property of Buyer. Buyer may remove or inspect such property at any time and Buyer shall have free access to Seller's premises for such purposes. All property owned by Buyer shall be marked as Buyer's property and used only for performing Buyer's orders. Seller shall maintain and repair such property and return it to Buyer in its original condition, reasonable wear and tear excepted, at the request of the Buyer.
11. **TITLE AND ENGINEERING DRAWINGS, SPECIFICATIONS**
 - 11.01. *Any drawings and specifications produced or acquired by Seller under this Purchase Order will belong to Buyer, subject only to Seller's patent rights, but without any other restrictions on Buyer's use, including reproduction, modification, disclosure or distribution of the documents or the information contained therein. To the extent such documents contain original work of authorship created in order to comply with this purchase order, the copyrights to such work shall be owned in accordance with the Copyrights clause of this purchase order. Seller agrees not to label any such documents with a notice asserting that the documents contain confidential or proprietary information of Seller. Any engineering drawing that Seller is required to prepare and furnish to Buyer will conform to the requirements of the local computer aided design standards of Buyer.*
 - 11.02. *All drawings, know-how, and confidential information supplied to Seller by Buyer and all rights therein will remain the property of Buyer and will be kept confidential by Seller in accordance with paragraph f of the clause entitled, INFORMATION AND DATA. Seller is licensed to use Buyer's drawings, know-how, and confidential information only for the purpose of fulfilling its obligations under a Purchase Order. In addition to the obligations of paragraph f of the clause entitled, INFORMATION AND DATA, Seller will not disclose such*



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drawings to third parties unless this is required for Seller to fulfill its duties under this purchase order. Seller will inform Buyer in writing of any third parties to whom Seller subcontracts any of the work required under this purchase order specifying in detail the work which has been subcontracted to such third party. Seller will ensure that any third party to which Seller subcontracts any of the work hereunder is bound by all the terms and conditions relating to such work to which Seller is bound under this purchase order.

12. INFORMATION AND DATA

- 12.01. *Seller will furnish to Buyer, or another party designated by Buyer, without restriction on use or disclosure all information and data Seller acquires or develops in the course of Seller's activities under this purchase order. Seller also will discuss with Buyer or another party so designated by Buyer, without restrictions on use or disclosure any potential design, quality or manufacturing problems with Supplies Seller worked on or produced pursuant to this purchase order.*
- 12.02. *Seller will furnish to Buyer all other information and data of Seller which Buyer or its customer reasonably deems necessary to fit such goods into a vehicle, and to advise Buyer's customer on how to maintain such goods, and to understand and apply the information and data of paragraph (a) hereof, with no restrictions on use other than Seller's patent rights.*
- 12.03. *With respect to inventions which Seller conceives or first reduces to practice in the course of Seller's activities under this purchase order for the Supplies, Seller grants to Buyer a permanent, paid-up, nonexclusive, worldwide license, with a right to sublicense others, to make, have made, use, have used and sell manufactures, compositions, machines, processes, covered by patents obtained on such inventions.*
- 12.04. *Seller grants to Buyer a permanent, paid-up, nonexclusive, worldwide license, with a right to grant a sublicense, to (i) make, have made, use, have used and sell manufactures, compositions, machines and processes used in products or services made by or for Buyer or any of its associated companies, under any other patents which are now or hereafter owned or controlled by Seller and are necessary to exercise Buyer's rights in paragraph (c) hereof, and (ii) use, repair, modify and sell any operating software incorporated in the Supplies in conjunction with the use or sale of the Supplies.*
- 12.05. *To the extent Buyer requires a license that is not provided in paragraphs (c) and (d) hereof, Seller grants to Buyer, a nonexclusive license, on reasonable terms and conditions, to make, have made, use, have used and sell manufactures, compositions, machines and processes used in products or services made by or for Buyer or any of its associated companies, under any patents now or hereafter owned or controlled by Seller which cover any inventions embodied in the Supplies of this purchase order.*
- 12.06. *Unless otherwise indicated in writing by Buyer, Seller will use reasonable care to prevent disclosing to others and will use only for the benefit of Buyer, (i) the technical information and data furnished by Buyer or developed or acquired by Seller in its work under this purchase order, prior development agreement or early sourcing agreement for Supplies related to or using such technical information or data, and (ii) information relating to any portion of Buyer's or Buyer's customer's business that Seller may acquire in the course of Seller's activities under this purchase order, prior development agreement or early sourcing agreement. This obligation shall continue so long as any purchase order for Supplies related to or using such technical information or data is in effect and for a period of two years thereafter. This obligation will not apply to information that is or becomes publicly known through no fault of Seller. Nevertheless, Seller may disclose the information and data of subsections (f)(i) and (f)(ii) hereof to third parties if this is required for Seller to fulfill its duties under this purchase order and such third parties have agreed to conditions at least as stringent as those contained herein.*
- 12.07. *In the event that Seller, either now or in the future, sells to Buyer or any of its associated companies directly or through another party Supplies which are related to Seller's experimental or development work under a purchase order in production quantities for at least two of Buyer's customer's model years, the rights and licenses of paragraph (e) hereof will become paid up and irrevocable.*
- 12.08. *In the event Seller provides Supplies under a purchase order in production quantities for use on Buyer's products, and Seller refuses or is unable to provide, under commercially reasonable terms, such Supplies to Buyer in additional markets after receiving written request from Buyer, then effective 60 days after receiving such written request, Seller grants Buyer a permanent, paid-up, nonexclusive, worldwide license, with a right to grant sublicenses to any of its associated companies, in such additional markets under all intellectual property rights under which Seller has a right to grant licenses, to make, have made, use, have used and sell the Supplies and derivatives thereof in the manufacture of vehicles manufactured by or for Buyer's customer or any of its associated companies and the worldwide sale of such vehicles. Seller shall also cooperate with Buyer in the exercise of such*



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license including providing, without restriction on use, reproduction or disclosure, all information and data deemed necessary by Buyer.



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13. COPYRIGHTS

- 13.01. Any work of authorship created by Seller or Seller's employees under a Purchase Order which is specially ordered or commissioned by Buyer's customer will be considered as a "work made for hire" and all copyrights for such works of authorship will belong to Buyer's customer.
- 13.02. In the event any portion of any work of authorship created by the Seller in performing the services under this purchase order does not qualify as "work made for hire", Seller hereby assigns or, if Seller has failed to previously secure ownership of all copyrights in such portion, will obtain title and assign all copyrights to such work to Buyer.
- 13.03. All works of authorship subject to paragraphs (a) or (b) hereof will bear a valid copyright notice designating Buyer's customer, as the circumstances require, as the copyright owner, for example: "Copyright © 200X, Ford Motor Company", where "200X" is the year the work was created.
- 13.04. Seller hereby grants to Buyer and Buyer's customer a permanent, nonexclusive, paid-up, worldwide license, with a right to grant a sublicense to any of their associated companies, under each copyright it owns and controls or has the right to license, in each work of authorship fixed in any tangible medium of expression furnished by Seller to Buyer or its designee pursuant to this purchase order, to use such work, to reproduce such work, to prepare derivative works, to distribute copies of such work to the public, and to perform and display such work publicly.

14. **PATENT INDEMNITY:** Seller shall indemnify Buyer, its successors, assigns, agents, customers and users of the Products against loss, damage, or liability, including costs and expenses, including attorney's fees, which may be incurred on account of any suit, claim, judgement or demand involving infringement or alleged infringement of any patent, copyright, industrial design, right or other intellectual property rights in the manufacture, use or disposition of the Products supplied under this order, if the Products delivered under this order are produced to a specification or design other than one provided by Buyer. It shall be a condition of this indemnity that Buyer shall notify Seller of any suit, claim or demand against it and, shall permit Seller to defend or settle such suit, claim, judgement or demand.
15. **RELEASE OF INFORMATION AND ADVERTISING:** Seller and Buyer agree that this order is confidential business information. Neither of them, without the prior written consent of the other, shall make any news release or public announcement of the order or advertise or publish the fact that Buyer has placed this order with Seller.
16. **ASSIGNMENT:** Seller may assign this order or any of Seller's rights or duties under this order, or subcontract the performance of any of its duties under this order, only with Buyer's prior written consent. The terms and conditions of this order shall bind any permitted successors and assigns of Seller.
17. **EXCUSABLE DELAYS:** Neither Seller nor Buyer shall be liable for damages for delay in or prevention of its performance of this order arising out of causes beyond its reasonable control, including, but not limited to, acts of God or the public enemy, acts of any Government in either its sovereign or contractual capacity, fires, floods, strikes or other labor disputes, or freight embargoes. It shall be a condition of excuse under this section that the part seeking excuse notify the other party in writing within ten (10) days after the beginning of any cause which may excuse performance under this section. If all or any material portion of Seller's performance of this order is excused under this section for a period exceeding ninety days, Buyer shall have the right to terminate this order without further liability to Seller.
18. **TERMINATION RIGHTS:**
- 18.01. Buyer may terminate the performance of work under this order (or any part thereof) at any time without cause upon written notice of termination to Seller. Upon receipt of such notice, Seller shall, unless the notice directs otherwise, immediately discontinue work under this order. Within thirty days after receipt of the written notice of termination, Seller shall submit any claim for its expenses resulting from the termination and Buyer shall promptly make a reasonable settlement of the claim.
- 18.02. Buyer may terminate the performance of work under this order (or any part thereof) for cause upon written notice of termination to Seller if (a) Seller fails to cure any material failure to perform, discharge or fulfill its obligations under this order to the reasonable satisfaction of Buyer within ten days after receipt of a written notice from Buyer that Buyer considers Seller to be in default under this order; or (b) Seller, without the prior written consent of Buyer, assigns or transfers all or part of its rights and obligations under this order to another person, either voluntarily or by operation of law; or (c) Buyer has reasonable grounds for insecurity about Seller's ability to



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continue to perform this order satisfactorily, including Seller's ability to maintain acceptable quality standards and delivery schedules, or a satisfactory financial condition.

18.03. *No Other Liability: The Buyer has no liability to the Supplier or any Related Company of the Supplier for lost profits, unabsorbed overhead, capital investment, interest expense, product development and engineering costs, facilities and equipment rental or purchase or rearrangement costs, unamortized depreciation costs, penalties, or general or administrative charges, whether incurred directly or indirectly by the Supplier, any of its Related Companies, or their suppliers, except to the extent provided in Section 18.*

19. **HAZARDOUS MATERIALS:** Seller shall notify Buyer of all "hazardous materials" (as that term is defined in applicable federal, state and local statutes) which are contained in the Products. Seller shall furnish Buyer with copies of all applicable "Material Safety Data Sheets" for Products no later than the initial shipment date under this order. Seller shall also comply with all laws, orders and regulations pertaining to the use, storage and disposal of restricted, toxic, and hazardous materials.
20. **GOVERNING LAW:** This order shall be governed by the law of the state of Washington, including the Uniform Commercial Code, but excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods, and excluding Washington law with respect to conflicts of law.
21. **CONTINUING OBLIGATIONS: SEVERABILITY:** *The obligations of the Buyer and the Supplier under the following Sections will survive the expiration, non-renewal or termination of the Purchase Order: 3, 8, 11, 12, 13, 14, 15, 18, 20, 29, 30, 32, 33, 34, 35, 37, 38, 39, 40, and 41.*
22. **EXPORT, TRADE CREDITS, OFFSET & COUNTER TRADE CREDITS:** To the extent permitted by law or Treaty, Seller shall assign to Buyer all such credits which arise from this order with the right to reassign such credits as determined by Buyer.
23. Seller shall provide Buyer all necessary information and documentation in the possession or control of Seller relating to the Products supplied under this purchase order and required to comply with applicable customs, product marking, country of origin, and other laws.
- 23.01. Buyer and its subsidiaries and affiliates shall be entitled to and Seller hereby assigns to Buyer all duty and import drawback rights of Seller related to the products.
- 23.02. Seller agrees to inform Buyer of the existence of any such rights and upon request will supply such documents as may be required to obtain or assign such drawback rights.
24. **ENTIRE AGREEMENT:** This order, including all documents incorporated by reference, contains the entire agreement between Buyer and Seller with regard to the purchase and sale of the Products sold under this order. This order supersedes any prior agreements or discussions (whether written or oral) between Buyer and Seller about this order. No amendment or modification to this order (other than a written notice of change issued by Buyer under Section 8) shall be valid unless made in writing and signed by a duly authorized representative of each of Buyer and Seller.
25. **NO WAIVER:** No modification or waiver of any provisions hereof will be effective for any purpose unless such modification or waiver is specifically set forth in writing signed by a procurement representative of the party to be charged with such modifications or waiver. No waiver of any right or remedy in respect to any occurrence or event on one occasion will be deemed a waiver of such right or remedy in respect of such occurrence or event on any other occasion.
26. **OFFSETS:** Buyer may offset against any sums otherwise due Seller any amounts Buyer in good faith claims to be due from Seller, whether such claims arise under or outside this order.
27. **GOVERNMENT REGULATIONS:** Seller shall not, in performing the work required by this order, discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age or handicap. Seller will comply with all provisions of the Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act of 1967, as amended; the Rehabilitation Act of 1973; the Vietnam Era Veterans Readjustment Act of 1974; and Executive Orders No. 11246 of September 25, 1965, and No. 11141 of February 12, 1964; and of the rules and



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regulations created thereby and requirements of the Clean Air Act; Federal Water Pollution Act, as amended; and Executive Order 11738, dated September 10, 1973.

28. **QUALITY PRODUCT:**

- 28.01. Buyer requires 100% quality parts and on-time delivery performance, based upon appropriate information. Buyer will not be obligated to accept substitutions, untimely deliveries, deliveries in quantities other than those ordered by Buyer or deliveries of goods failing to conform to Seller's warranties contained in Warranties clause hereof. Time is of the essence in this order. Seller will immediately give written notice to Buyer of any actual or potential cause or event which threatens the timely performance of this order.
- 28.02. *Buyer's Options: The Buyer is entitled to: (a) reject the nonconforming Goods, return them to the Supplier and, at the Buyer's option, request redelivery of conforming Goods; or (b) retain them and either repair them itself or request the Supplier do so, on or off-site. In any event, the Supplier will bear the risk and expense of the remedial action undertaken by the Buyer or the Supplier.*
- 28.03. *Costs Incurred by the Buyer: The Supplier is liable for all direct, incidental and consequential damages, losses, costs, and expenses incurred by the Buyer resulting from the failure of the Supplier to deliver conforming Goods or to comply with the shipping and delivery or other requirements of the Buyer, even if the Supplier has cured the failure. These include costs associated with the off lining of vehicles or the Goods, interruptions or delays in production, reduced line-speeds, and plant shutdowns.*
- 28.04. *No Acceptance or Waiver of Rights: The Buyer's rights under this Section 30 apply even if the nonconformity does not become apparent until after delivery of the Goods. The Supplier is not liable for damage to the Goods after delivery due to actions taken by the Buyer or third parties. Payment will not constitute acceptance of nonconforming Goods, nor will it limit or affect any of the Buyer's rights.*

29. **NO THIRD-PARTY RIGHTS** *No Third-Party Rights Except as expressly provided in this agreement, no term, condition or right in or arising under any of the documents or Web-Guides relating to the purchase of the Goods gives or creates any third-party beneficiary rights or any other rights whether in law or equity to any person or entity other than the Buyer, the Supplier and their Related Companies.*

30. **AUDIT RIGHTS:**

- 30.01. *If requested by the Buyer, the Seller will permit the Buyer to examine all pertinent documents, data and other information relating to the Goods, Tooling, the Seller's obligations under the Purchase Order, any payment made to the Supplier or any claim made by the Seller; View any facility or process relating to the Goods or the Purchase Order, including those relating to production quality; and Audit any facility or process to determine compliance with the requirements of the Purchase Order. Any examination will be conducted during normal business hours and upon advance Written Notice to the Supplier. The Supplier will use its best efforts to permit the Buyer to obtain from the subcontractors of, and vendors, to the Supplier the information and permission to conduct the review specified hereof.*
- 30.02. *Supplier Records and Facilities: If requested by the Buyer, the Supplier will permit the Buyer (which, for purposes of this Section 32, includes its authorized representatives) to:*
- 30.03. *Examine all pertinent documents, data and other information relating to the Goods, Tooling, the Supplier's obligations under the Purchase Order, any payment made to the Supplier or any claim made by the Supplier;*
- 30.04. *View any facility or process relating to the Goods or the Purchase Order, including those relating to production quality; and*
- 30.05. *Audit any facility or process to determine compliance with the requirements of the Purchase Order, including those under Section 4.*
- 30.06. *Any examination under this Section 32 will be conducted during normal business hours and upon advance Written Notice to the Supplier.*
- 30.07. *Subcontractor Records and Facilities: If requested by the Buyer, the Supplier will use its best efforts to permit the Buyer to obtain from the subcontractors of, and vendors, to the Supplier the information and permission to conduct the reviews specified in Section 32, regardless of any other right the Buyer may have to that information or facilities.*
- 30.08. *Records Retention: The Supplier will keep all relevant documents, data and other written information for at least 2 years following: (a) in the case of the Goods, the later of the last delivery of the Goods or the date of the final payment to the Supplier under the Purchase Order; and (b) in the case of Tooling, the later of the date of*



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completion of the Production Part Approval Process (PPAP), the date of submission of the Part Submission Warrant (PSW), or the date of final payment. The Buyer may make copies of these materials.

31. CONFIDENTIALITY

31.01. **Confidential Information:** Confidential Information is information that meets the requirements specified below for Supplier Confidential Information or Buyer Confidential Information. Information that does not meet these requirements is not Confidential Information, regardless of any legend or marking to the contrary. A reference in this Section 34 to Confidential Information of the Other Party is a reference to Supplier Confidential Information when the reference relates to an obligation of the Buyer, and to Buyer Confidential Information when the reference relates to an obligation of the Supplier.

31.01.01. Supplier Confidential Information is any information disclosed under the Purchase Order that meets all of the following requirements:

31.01.02. The information is non-public information that is proprietary to: (A) the Supplier; (B) any of its Related Companies; or (C) any third party to which any of them has an obligation of confidentiality relating to the information.

31.01.03. The information is disclosed to the Buyer: (A) in tangible form and identified as confidential in the tangible form; or (B) orally, and is identified as confidential at the time of disclosure, and is described in a written statement (which must also identify it as confidential) within a reasonable time after disclosure.

31.01.04. The information is: (A) Level Two Materials; (B) provided under a Team Value Management initiative; (C) Embedded Software;

31.01.05. Buyer Confidential Information is any information that meets all of the following requirements, regardless of whether it has been disclosed under the Purchase Order:

31.01.06. The information is non-public information that is proprietary to: (A) the Buyer; (B) any of its Related Companies; or (C) any third party to which any of them has an obligation of confidentiality relating to the information.

31.01.07. The information is:

31.01.08. a Volume Projection, or is provided under a Team Value Management initiative;

31.01.09. the Buyer's or any of its Related Companies' future product plans or any details of those plans; or

31.01.10. any other information identified by the Buyer or any of its Related Companies (orally or in writing) as confidential.

31.02. **Obligations and Standard of Care**

31.02.01. The Buyer and the Supplier will each use Reasonable Care to protect the confidentiality of Confidential Information of the Other Party. Reasonable Care is the standard of care that the party holding the information would use in protecting the confidentiality of its own confidential information.

31.02.02. Some of the Buyer's and its Related Companies' electronic systems (for example, WERS) are designed for collaboration and the sharing of information among multiple parties, including other suppliers. The Supplier should not input Supplier Confidential Information into any electronic system of the Buyer or any of its Related Companies unless the Buyer or any of its Related Companies has advised the Supplier in a Written Notice that the system is suitable for receipt of Supplier Confidential Information.

The obligations under Section 34 (a) do not apply to any information that: (1) is or becomes publicly available through no breach of any agreement between the Buyer and the Supplier; (2) is approved for release by the disclosing party in a Written Notice; (3) is lawfully obtained from a third party without a duty of confidentiality; (4) was already known to the receiving party prior to its disclosure; (5) is required to be disclosed by a valid court order; or (6) is input by the Supplier into an electronic system for which the Supplier has not received the Written Notice described in Section 34 (b). The exception in clause (5) will apply only if the receiving party has: (A) provided the disclosing party with a Written Notice of the court order; and (B) fully cooperated with the disclosing party in seeking confidential treatment for the disclosures. The Buyer's confidentiality obligations under Section 34 (a) also do not apply to Embedded Software, to the extent required to exercise License rights for the Embedded Software.

31.02.03. **Sharing with Related Companies and Consultants:** The Buyer and the Supplier may share Confidential Information of the Other Party with their: (a) Related Companies; and (b) consultants, contractors, experts and agents; provided, that the person or entity with whom or which the information is being shared has agreed in writing to be bound by confidentiality provisions comparable to those specified in this Section 17. The Supplier will first obtain the written consent of the Buyer if the Supplier or any of its



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Related Companies wants to share Buyer Confidential Information with any party (including any of its Related Companies) that is a motor vehicle manufacturer or distributor.

- 31.02.04. *Sharing with Other Third Parties: Neither the Buyer nor the Supplier will share any Confidential Information of the Other Party with any third party, including any competitor of the other party, without the prior written agreement of the other party, except as may otherwise be permitted under the Purchase Order, a Technology Agreement, or other written agreement between the parties.*
- 31.02.05. *No Other Obligations: The Buyer, the Supplier, and their Related Companies have no other obligation for confidential information supplied to them from whatever source, unless otherwise agreed to in writing.*
- 31.02.06. *Effective Date of Buyer's Obligations: The Buyer's obligations under this Section 34 apply to Supplier Confidential Information disclosed to the Buyer on or after January 1, 2004.*

32. **BUYERS INTELLECTUAL PROPERTY RIGHTS:** *The Supplier will first obtain the Buyer's written approval before it manufactures, sell or otherwise discloses to third parties any goods made by the Supplier, or one of their subcontracts using any Tooling, equipment or Intellectual Property Rights of the Buyer or its Related Companies.*
33. **COMPLETION AND PAYMENT:** *The Supplier, at its own expense, will manufacture the requisite number of sample Goods using the Tooling in order to successfully complete the Buyer's Production Part Approval Process (PPAP) and submit the Part Submission Warrant (PSW). The Tooling will be completed when the necessary samples have been submitted and approved by the Buyer. The Supplier has no claim for payment until the Tooling is completed and the Part Submission Warrant and any other necessary documentation have been submitted.*

34. TOOLING ORDER

- 34.01. *IF THIS IS A Tooling Purchase Order; Seller will design and fabricate, rework, or acquire from such sources as Buyer has given prior approval, and install the tools, dies, fixtures, molds, or patterns, described in such Tooling Order ("Tooling"), subject to the terms and conditions contained herein.*
- 34.02. SAMPLES, STATUS
- 34.02.01. *Seller shall, manufacture a reasonable number of sample parts on the Tooling for inspection and/or testing by Buyer or Buyer's customer to ensure the capability of the Tooling to produce parts which meet Buyer's customer quality standard QS9000. In addition to Seller's obligations under the warranty provisions of this purchase order and to the extent technically feasible, the Tooling shall be designed and fabricated to be sufficiently durable to support the manufacture of all production and service requirements through the production lifetime of the part and also permit the production of Buyer's or Buyer's customer's subsequent service-only requirements. The Tooling will be deemed to be completed when the necessary samples have been submitted and approved by Buyer. Buyer may request Seller to furnish semimonthly (or more frequently at Buyer's option) status reports on the construction and acquisition of the Tooling. Each status report shall identify the Tooling, identify the subcontractors working on the Tooling, and designate the percentage of completion of the work. Seller will notify Buyer immediately upon becoming aware that the Tooling may not be completed by the completion date specified on the Tooling Purchase Order and Seller shall furnish to Buyer a schedule of the actions that Seller will take, at Seller's expense, to achieve completion on the specified completion date.*

35. TITLE, IDENTIFICATION

- 35.01. *All right, title, and interest in and to any part of Tooling to be paid for by Buyer ("Buyer-Owned Tooling or Buyer's Customer-owned Tooling") shall pass to Buyer's customer as soon as it is acquired or fabricated in accordance with a Tooling Purchase Order, **payment is received in-full from Buyer, and all liens are lifted.** During the term of a Purchase Order, all such Buyer-Owned Tooling or Buyer's Customer-owned Tooling in the possession of Seller shall be deemed to be Bailed Property and shall not be deemed to be a fixture or a part of Seller's real property. Seller will (i) properly house and maintain such property on Seller's premises, (ii) prominently mark it Property of Buyer or Buyer's customer, (iii) refrain from commingling it with the property of Seller or with that of a third party, and (iv) adequately insure it against loss or damage and (v) not move it to another location whether owned by Seller or a third party, without the prior written consent of Buyer, except in the case of an emergency, Seller may move the Tooling property provided that it gives Buyer notice that the Tooling has been moved and the location of the Tooling as soon as reasonably practicable. Seller shall indemnify Buyer*



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against any claim adverse to Buyer owned Tooling and indemnify Buyer and Buyer's customer against any claim adverse to Buyer's customer's ownership of the Customer-owned Tooling, except as such claims may result from any acts or omissions of Buyer. To the extent permitted by law, Seller waives its right to object to the repossession of the Buyer owned Tooling and or Buyer's Customer-owned Tooling by Buyer in the event Seller is involved in bankruptcy proceedings. While in its possession, Seller, at Seller's expense, shall maintain the Customer-owned Tooling in first class condition and immediately replace any items which are lost or destroyed or become worn out. All repaired or replaced Buyer owned Tooling and or Buyer's Customer-owned Tooling shall be the property of Buyer or Buyer's customer. Wear and repair of Buyer owned Tooling and or Buyer's Customer-owned Tooling is Seller's responsibility. Title to any modifications, changes or accessions to Buyer owned Tooling and or Buyer's Customer-owned Tooling shall vest in Buyer or Buyer's customer regardless of whether Buyer has reimbursed Seller for such modification, changes or accessions. Seller shall keep such records in relation to Buyer owned Tooling and or Buyer's Customer-owned Tooling as Buyer may reasonably require. None of the Buyer owned Tooling and or Buyer's Customer-owned Tooling shall be used in the production, manufacture or design of any goods or materials except to the order of Buyer or Buyer's customer. Seller shall not sell or otherwise dispose of any product using Buyer owned Tooling and or Buyer's Customer-owned Tooling to any party other than Buyer except where specifically authorized by Buyer in writing. Seller's responsibility continues beyond the expiry date of this purchase order. If the Buyer owned Tooling and or Buyer's Customer-owned Tooling is not utilized to produce any parts for Buyer for a period of two years, Seller shall so notify Buyer and request instructions as to the disposition of the Buyer owned Tooling and or Buyer's Customer-owned Tooling. If Seller subcontracts all or any portion of the manufacture of the Buyer-owned Tooling, Seller shall so notify Buyer in advance and obtain for Buyer and Buyer's customer all of the rights contained in this clause from each such subcontractor used by Seller.

36. TOOLING INVOICES, PAYMENT FOR CUSTOMER-OWNED TOOLING

- 36.01. Payment for Buyer-owned Tooling will be made in accordance with Buyer's standard/normal payment terms unless stated otherwise on the Tooling Purchase Order. Seller shall comply with Buyer's Claims Guidelines contained in Buyer's applicable Tooling Guide.
- 36.02. 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.
- 36.03. To the extent permitted by applicable law, any payments made by Buyer for Customer-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 Customer-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 Customer-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.

**** END OF DOCUMENT ****