



**Long Term Supply Agreement**

**between**

**REYES AUTOMOTIVE GROUP II, LLC**

**and**

**[            ]**

**Effective [Date]**



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## Supply Agreement

This Supply Agreement, dated as of July 10 2020 (the "Agreement"), is entered into by and between [REDACTED], a [REDACTED] ("Seller"), and **Reyes Automotive Group II, LLC**, a Texas limited liability company ("Buyer", and together with Seller, the "Parties", and each, a "Party").

WHEREAS, Seller is in the business of manufacturing and selling \_\_\_\_\_;

WHEREAS, Buyer wishes to purchase certain Goods (as defined below) from Seller in connection with Buyer's manufacture and supply of goods to its Customer; and

WHEREAS, Seller desires to manufacture and sell the Goods to Buyer pursuant to the terms hereof.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### 1. **Definitions** . Capitalized terms have the meanings set forth or referred to in this Section 1.

"Action" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or other, whether at law, in equity or otherwise.

"Affiliate" of a Person means any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such Person.

"Agreement" has the meaning set forth in the preamble to this Agreement.

"Background Intellectual Property Rights" means Buyer's Intellectual Property or Seller's Intellectual Property, as applicable, except for any Foreground Intellectual Property Rights.

"Bailed Property" has the meaning set forth in Section 14.1.

"Business Day" means any day except Saturday, Sunday or any other day on which commercial banks located in San Antonio, Texas are authorized or required by Law to be closed for business.

"Buyer" has the meaning set forth in the preamble to this Agreement.

"Buyer Contracts" means all contracts or agreements to which Buyer is a party or to which any of its material assets are bound.

"Buyer Parties" means Buyer, its Affiliates, customers, subcontractors and successors and assigns, and each of their respective Representatives.

"Buyer's Intellectual Property" means all Intellectual Property Rights owned by or licensed to Buyer, including all Foreground Intellectual Property Rights and any of Buyer's Background Intellectual Property Rights used in the design, production, and manufacturing of the Goods.



"Claim" means any Action brought against a Person entitled to indemnification under Section 10.

"Confidential Information" has the meaning set forth in Section 13.1.

"Confirmation" has the meaning set forth in Section 3.1.

"Control" (and with correlative meanings, the terms "Controlled by" and "under common Control with") means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of another Person, whether through the ownership or voting securities, by contract, or otherwise.

"Defective" means not conforming to the Product Warranty under Section 9.3.

"Defective Goods" means goods shipped by Seller to Buyer pursuant to this Agreement that are Defective.

"Delivery Date" means the delivery date for Goods ordered hereunder that is set forth in Schedule 1 or in a Purchase Order.

"Delivery Location" means the street address for delivery of the Goods specified in the applicable Purchase Order.

"Disclosing Party" has the meaning set forth in Section 13.1.

"Dispute" has the meaning set forth in Section 17.6.

"Dispute Notice" has the meaning set forth in Section 17.16.

"Dodd-Frank Act" has the meaning set forth in Section 4.4(a).

"Effective Date" means the date first set forth above.

"Encumbrance" means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

"Equipment" means, collectively, "equipment" (as that term is defined in UCC Section 9-102(a)(33)) that is used in the manufacture, production or assembly of Goods by Seller, and all machinery, equipment, Tooling, furnishings and fixtures (as such terms are defined in UCC Section 9-102) now owned or hereafter acquired by Seller, of any kind, nature or description, as well as all (a) additions to, substitutions for, replacements of and accessions to any of the foregoing items, (b) attachments, components, parts (including spare parts) and accessories installed thereon or affixed thereto, and (c) Intellectual Property Rights in connection with the foregoing.

"Force Majeure Event" has the meaning set forth in Section 17.21.



"Forecast" means a good faith projection or estimate of Buyer's anticipated orders for Goods during such future period, which approximates, based on information reasonably available at the time to Buyer, the quantity of Goods that Buyer may order for each such future period.

"Foreground Intellectual Property Rights" means any and all of the Intellectual Property Rights developed with respect to, or for incorporation into, the Goods, that are either developed by Buyer or its customer alone, by Buyer or its customer and Seller jointly or by Seller alone as requested by Buyer or Buyer's customer in connection with this Agreement.

"GAAP" means US generally accepted accounting principles in effect from time to time.

"Goods" means the goods identified on Schedule 1.

"Governmental Authority" means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

"Governmental Order" means any order, writ, judgment, injunction, decree, stipulation, award or determination entered by or with any Governmental Authority.

"Indemnified Parties" has the meaning set forth in Section 10.1.

"Indemnifying Party" has the meaning set forth in Section 10.1.

"Initial Term" has the meaning set forth in Section 6.1.

"Inspection Period" has the meaning set forth in Section 4.5.

"Intellectual Property Rights" means all industrial and other intellectual property rights comprising or relating to (a) Patents; (b) Trademarks; (c) internet domain names, whether or not Trademarks, registered by any authorized private registrar or Governmental Authority, web addresses, web pages, website, and URLs; (d) works of authorship, expressions, designs and design registrations, whether or not copyrightable, including copyrights and copyrightable works, software and firmware, application programming interfaces, architecture, files, records, schematics, data, data files, and databases and other specifications and documentation; (e) Trade Secrets; (f) product or Good component formulas; and (g) all industrial and other intellectual property rights, and all rights, interests and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights or forms of protection pursuant to the Laws of any jurisdiction throughout in any part of the world.

"Inventory Bank" means an adequate quantity of safety stock of finished Goods and raw materials, at the most-current design level, based on Buyer's firm orders and forecasts of the Goods as set forth in any Purchase Orders or periodic Releases issued to Seller hereunder.

"Inventory Sort" means a physical inspection of parts confirming good quality and adherence to Specifications documented and additional certification/labeling as such.



"Law" means any statute, law, ordinance, regulation, rule, code, constitution, treaty, common law, Governmental Order or other requirement or rule of law of any Governmental Authority.

"Losses" has the meaning set forth in Section 10.1.

"Nonconforming Goods" means any goods received by Buyer from Seller that: (a) do not conform to the make, model, or part number listed in the applicable Purchase Order, as amended by the parties from time to time; (b) do not fully conform to the applicable Specifications, as updated from time to time based on updates to part numbers by Buyer or its Customer; (c) on visual inspection, Buyer determines are otherwise Defective; or (d) exceed the quantity of Goods ordered by Buyer pursuant to this Agreement or any Release or Purchase Order. Where the context requires, Nonconforming Goods are deemed to be Goods for purposes of this Agreement.

"Non-standard Goods" means Goods that are not Off-the-Shelf Goods.

"Notice" has the meaning set forth in Section 17.5.

"Off-the-Shelf Goods" means Goods that are part of Seller's standard stock or are otherwise readily marketable to third-parties.

"Party" has the meaning set forth in the preamble to this Agreement.

"Patents" means all patents (including all reissues, divisionals, provisionals, continuations and continuations-in-part, re-examinations, renewals, substitutions and extensions thereof), patent applications, and other patent rights and any other Governmental Authority-issued indicia of invention ownership (including inventor's certificates, petty patents, and patent utility models).

"Permits" means permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained or required to be obtained, from any Governmental Authority.

"Person" means any individual, partnership, corporation, trust, limited liability entity, unincorporated organization, association, Governmental Authority or any other entity.

"Personnel" of a Party means any agents, employees, contractors or subcontractors engaged or appointed by such Party.

"Price" has the meaning set forth in Section 5.1.

"Product Warranty" has the meaning set forth in Section 9.3.

"Purchase Order" means Buyer's purchase order issued to Seller hereunder, which may, among other things, specify items such as (a) the Goods to be purchased, including make, model or part number, or other unique identifier; (b) Buyer's billing address; and (c) the Delivery Location for such Goods; in each case, including all terms and conditions attached to, or incorporated into, such purchase order, and any Release issued by Buyer to Seller under the Purchase Order. For the avoidance of doubt, any references to Purchase Orders hereunder also include any applicable Releases.

"Receiving Party" has the meaning set forth in Section 13.1.



"Reimbursement Authorization" has the meaning set forth in Section 14.2.

"Release" means a document periodically issued by Buyer to Seller pursuant to a Purchase Order that identifies (to the extent not specified in the original Purchase Order) the quantities of Goods to be delivered to Buyer and the required delivery date for such Goods.

"Representatives" means a Party's Affiliates and each of their respective Personnel, officers, directors, partners, shareholders, attorneys, third-party advisors, successors and permitted assigns.

"Seller" has the meaning set forth in the preamble to this Agreement.

"Seller Contracts" means all contracts or agreements to which Seller is a party or to which any of its material assets are bound.

"Seller Parties" means Seller, its Affiliates, customers (other than Buyer), subcontractors and successors and assigns, and each of their respective Representatives.

"Seller's Intellectual Property" means all Intellectual Property Rights owned by or licensed to Seller, including any of Seller's Background Intellectual Property Rights used in the design, production, and manufacturing of the Goods.

"Seller's Property" has the meaning set forth in Section 14.5.

"Specifications" means the specifications for the Goods attached to a Purchase Order or Purchase Order Amendment issued from time to time by Buyer pursuant to this Agreement.

"Taxes" means any and all present and future sales, income, stamp, and other taxes, levies, imposts, duties, deductions, charges, fees or withholdings imposed, levied, withheld or assessed by any Governmental Authority, together with any interest or penalties imposed thereon.

"Term" has the meaning set forth in Section 6.1.

"Termination Claim" has the meaning set forth in Section 6.2.

"Tooling" means, collectively, all tooling, dies, test and assembly fixtures, gauges, jigs, patterns, casting patterns, cavities, molds, and documentation (including engineering specifications and test reports) used by Seller in connection with its manufacture and sale of the Goods, together with any accessions, attachments, parts, accessories, substitutions, replacements and appurtenances thereto.

"Trademarks" means all rights in and to US and foreign trademarks, service marks, trade dress, trade names, brand names, logos, symbols, trade dress, corporate names and domain names and other similar designations of source, sponsorship, association or origin, together with the goodwill symbolized by any of the foregoing, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection in any part of the world.

"Trade Secrets" means all inventions, discoveries, trade secrets, business and technical information and know-how, databases, data collections, patent disclosures, and other confidential and proprietary information and all rights therein.





"UCC" means the Uniform Commercial Code, as adopted in the State of Texas.

"US" means the United States of America.

"Vehicle Platform" means the specific model of vehicle the items are going into as a component. Purchase and Sale of Goods.

## 2. Purchase and Sale of Goods

2.1 Purchase and Sale. Subject to the terms and conditions of this Agreement, during the Term, Buyer shall purchase the Goods from Seller, and Seller shall manufacture and sell the Goods to Buyer, at the Prices (subject to adjustment as provided herein) set forth on the Master Parts List ("MPL") attached hereto as **Schedule 1**. This Agreement is not a requirements contract, and Buyer reserves the right to purchase the Goods from alternate suppliers. The Parties may, from time to time, amend the MPL to reflect updated part numbers or to reflect any agreed revisions to any of the terms described in this Section 2.1; provided that no such revisions will modify this Agreement or be binding on the Parties unless such revisions have been fully approved in a signed writing by authorized Representatives of both Parties.

### 2.2 Purchase Orders and Releases .

(a) Purchase Orders. Buyer shall issue one or more Purchaser Orders (individual or blanket), which will identify the part numbers, delivery location, shipping terms, and other supplemental terms or information (i.e., production or pre-production parts) applicable to the Goods being ordered pursuant thereto. The Parties agree that this Agreement does not constitute a Purchase Order or Release for the Goods.

(b) Releases. Upon approval for the shipment of production level Goods, Buyer shall transmit a weekly Release for each individual Good to be delivered pursuant to an issued Purchase Order. Releases may be issued by Buyer in written or electronic form and shall substantially conform to the form Release attached hereto as **Exhibit A**. Each Release shall contain a time horizon of at least thirteen (13) weeks with quantity and delivery date data for each Good to be delivered pursuant to the applicable Purchase Order. The quantities of Goods specified in each Release for weeks 1 and 2 shall be firm orders to be complied with by the Parties (i.e., obligations of Supplier to timely deliver and Buyer to pay the agreed price for delivered Goods) ("Firm Orders"). The quantities of Goods specified in each Release for weeks 3 through 13 shall be Forecasts only and shall constitute unbinding planning figures.

2.3 Terms of Agreement and Buyer's Purchase Order Prevail; Order of Precedence. The Parties intend for the express terms and conditions contained in this Agreement (including any Schedules and Exhibits hereto) and in any Purchase Order or Release that are consistent with the terms and conditions of this Agreement to exclusively govern and control each of the Parties' respective rights and obligations regarding the manufacture, purchase and sale of the Goods, and the Parties' agreement is expressly limited to such terms and conditions. Notwithstanding the foregoing, if any terms and conditions contained in a Purchase Order or release conflict with any terms and conditions contained in this Agreement, the applicable term or condition of this Agreement will prevail and such contrary terms will have no force or effect. Except for such contrary terms, the terms and conditions of all Purchase Orders are incorporated by reference into this Agreement for all applicable purposes hereunder. Without limitation of anything contained in this Section 2.2, any additional, contrary or different terms contained in any Confirmation or any of Seller's invoices or other communications, and any other attempt to



modify, supersede, supplement or otherwise alter this Agreement, are deemed rejected by Buyer and will not modify this Agreement or be binding on the Parties unless such terms have been fully approved in a signed writing by authorized Representatives of both Parties.

2.4 Performance Subject to Buyer's Quality Assurance Manual. Seller's performance hereunder shall at all times be subject to the terms, conditions, requirements, and directives set forth in Buyer's Supplier Quality Assurance Manual which can be accessed at <http://reyesautomotivegroup.com/> (the "Quality Manual"). Seller acknowledges that Buyer shall have the right update the Quality Manual from time to time based on its internal and customer requirements, Seller shall have a continuing obligation to comply with the most recent version or edition of the Quality Manual, and Seller has read and agreed to the current version of the Quality Manual attached hereto as **Exhibit B**.

2.5 Buyer's Customer's Requirements. Seller shall ensure that all Goods supplied pursuant to this Agreement, and Purchase Order, or any Release conform and remain current with all of Buyer's customer's requirements and specifications for the Goods.

### **3. Ordering Procedure.**

3.1 Acceptance, Rejection, and Cancellation of Purchase Orders and Releases. Seller shall confirm to Buyer the receipt of each Purchase Order and Release issued hereunder (each, a "Confirmation") within seven days following Seller's receipt thereof in written form via EDI. Each Confirmation must reference Buyer's Purchase Order number, confirm acceptance of the Purchase Order or Release. If Seller fails to issue a Confirmation within the time set forth in the first sentence of this Section 3.1 or otherwise commences performance under such Purchase Order, Seller will be deemed to have accepted the Purchase Order. Buyer may withdraw any Purchase Order or Release prior to Seller's acceptance thereof. Seller may not cancel any previously accepted Purchase Order or Release hereunder. Buyer may only cancel a previously accepted Purchase Order or Release pursuant to the exercise of Buyer's rights under Section 6.2 and 6.3.

### **4. Shipment, Delivery, Acceptance, and Inspection.**

4.1 Shipment and Delivery Requirements. Time, quantity, and delivery to the Delivery Location are of the essence under this Agreement. Seller shall procure materials for, fabricate, assemble, pack, mark, and ship Goods strictly in the quantities, by the methods, to the Delivery Locations and by the Delivery Dates, specified in this Agreement or in an applicable Purchase Order or Release. Delivery times will be measured to the time that Goods are actually received at the Delivery Location. If Seller does not comply with any of its delivery obligations under this Section 4, Buyer may, in Buyer's sole discretion and at Seller's sole cost and expense, (a) approve a revised Delivery Date, (b) require expedited or premium shipment, or (c) cancel the applicable Purchase Order and obtain similar goods from other sources. Unless otherwise expressly agreed to by the Parties in writing, Seller may not make partial shipments of Goods to Buyer.

#### 4.2 Transfer of Title and Risk of Loss.

(a) Title to Goods shipped under any Purchase Order or Release passes to Buyer upon delivery of the Goods to Buyer. Title will transfer to Buyer even if Seller has not been paid for such Goods, provided that Buyer will not be relieved of its obligation to pay for Goods in accordance with the terms hereof.



(b) Notwithstanding any agreement between Buyer and Seller concerning transfer of title or responsibility for shipping costs, risk of loss to Goods shipped under any Purchase Order passes to Buyer upon receipt by Buyer at the Delivery Location, and Seller will bear all risk of loss or damage with respect to Goods until Buyer's receipt and acceptance of such Goods in accordance with the terms hereof.

4.3 Packaging and Labeling. Seller shall properly pack, mark, and ship Goods as instructed by Buyer and otherwise in accordance with applicable Law and industry standards, and shall provide Buyer with shipment documentation showing the Purchase Order number, Seller's identification number for the subject Goods, the quantity of pieces in shipment, the number of cartons or containers in shipment, Seller's name, the bill of lading number, and the country of origin.

4.4 Ingredients and Materials Disclosure. Upon Buyer's written request, Seller shall promptly provide to Buyer, in such form and detail as Buyer requests, a list of all ingredients and materials incorporated in the Goods, the amount of such ingredients and materials, and information concerning any changes in or additions to such ingredients and materials.

(a) Without limitation of the foregoing, upon Buyer's written request, Seller shall provide to Buyer all information (in sufficient detail), with written certifications thereof, to enable Buyer to timely comply with all of Buyer's and Buyer's customers' due diligence, disclosure and audit requirements under Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") and Rule 13p-1 and Form SD under the Securities Exchange Act of 1934, and all similar, applicable statutes and regulations, including due inquiry of Seller's supply chain (and certifications by such suppliers) identifying conflict minerals (as defined in Section 1502(e)(4) of the Dodd-Frank Act) contained in each Product and the country of origin of such conflict minerals (or, following due inquiry, why such country of origin cannot be determined).

(b) For each shipment of Goods, Seller shall provide Buyer, in writing, sufficient advance warning and notice (in addition to including appropriate labels on Goods, containers and packing) of any hazardous or restricted material that is an ingredient or a part of the shipment, together with such special handling instructions as may be necessary to advise logistics providers, handlers of the Goods and personnel of how to exercise that measure of care and precaution that will comply with any applicable Laws and prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the Goods, containers and packing.

4.5 Inspection.

(a) Goods are subject to Buyer's inspection and approval or rejection notwithstanding Buyer's prior receipt of or payment for the Goods. Buyer shall have a reasonable period of time following delivery of the Goods to the Delivery Location ("Inspection Period"), to inspect all Goods received under this Agreement and to inform Seller, in writing, of Buyer's rejection of any Nonconforming Goods. Buyer may return to Seller any or all units of rejected Goods that constitute Nonconforming Goods because they exceed the quantity stated in this Agreement or any Purchase Order. If Buyer rejects any other Nonconforming Goods, Buyer may elect to (a) require Seller, at Seller's sole cost, to repair or replace the rejected Goods at the location specified by Buyer (which may include Seller's location, Buyer's location or the location of a third party), (b) purchase similar goods from another source (and apply such purchases against any firm quantity requirements arising in connection with the exercise of Buyer's rights hereunder), (c) repair the Goods itself or have a third party repair the Goods, or (d) retain the rejected Goods; in each case without limiting the exercise by Buyer of any other rights available to Buyer under this Agreement or pursuant to applicable Law. All returns of Nonconforming Goods to



Seller are at Seller's sole risk and expense. Goods that are not rejected within the Inspection Period will be deemed to have been accepted by Buyer; provided, however, that Buyer's acceptance of any Goods will not be deemed to be a waiver or limitation of Seller's obligations pursuant to this Agreement (or any breach thereof), including those obligations with respect to Seller's Product Warranty and Seller's duty to indemnify Buyer.

(b) In the event Buyer determines, in its sole but commercially reasonable discretion, after inspection of Supplier received Goods, a full Inventory Sort of such Goods is necessary to comply with Buyer's Customer's quality requirements, Supplier shall reimburse Buyer for the reasonable documented expenses (including labor) incurred by Buyer to conduct such Inventory Sort.

## 5. Price and Payment.

5.1 Price. Subject to any price adjustments provided expressly herein, Buyer shall purchase the Goods from Seller at the prices set forth on the MPL attached hereto as **Schedule 1** ("Prices"). All Prices include, and Seller is solely responsible for, all costs and expenses relating to packing, crating, boxing, transporting, loading and unloading, customs, Taxes, tariffs and duties, insurance and any other similar financial contributions or obligations relating to the production, manufacture, sale, and delivery of the Goods. Except as provided on Schedule 1, all Prices are firm and are not subject to increase for any reason, including changes in market conditions, increases in raw material, component, labor or overhead costs or because of labor disruptions, changes in Buyer's customer's program timing or length, or fluctuations in production volumes.

5.2 Most Favored Customer. Seller represents and warrants that each of the Prices set forth on Schedule 1, as amended from time to time by the Parties, is at least as low as the price charged by Seller to other buyers for the same or substantially similar Goods. If at any time during the Term, Seller charges any other buyer a lower price for the same Goods or similar goods, Seller shall apply that price to all same or similar Goods under this Agreement. If Seller fails to meet the lower price, Buyer may, at its option, in addition to all of its other rights under this Agreement or at Law, terminate this Agreement without liability pursuant to Section 6.3. The Parties shall reflect any adjustment to pricing under this Section 5.2 in an amendment to Schedule 1; provided, however, that, notwithstanding anything to the contrary contained in this Agreement, the execution and delivery of any such amendment by each of the Parties will not be a condition to the effectiveness of such price adjustment.

5.3 Invoices. On or before the twentieth (20<sup>th</sup>) day of each calendar month, Seller shall issue one or more invoices to Buyer for Goods ordered during the previous calendar month. Each invoice for Goods must set forth in reasonable detail the amounts payable by Buyer under this Agreement and contain the following information, as applicable: a reference to this Agreement; Purchase Order number, amendment number and line-item number; Seller's name; Seller's identification number; carrier name; ship-to address; weight of shipment; quantity of Goods shipped; number of cartons or containers in shipment; bill of lading number; country of origin; and any other information necessary for identification and control of the Goods. Buyer reserves the right to return and withhold payment due to any invoices or related documents that do not comply with this Section 5.3 or which are disputed by Buyer. The Parties shall seek to resolve any invoice disputes expeditiously and in good faith in accordance with the dispute resolution provisions set forth in this Agreement. Any payment by Buyer of an invoice is not an acceptance of any nonconforming element or terms on such invoice or the related Goods.

5.4 Payment. Except for any amounts disputed by Buyer in good faith, Seller's invoices conforming to the requirements of Section 5.3 will be payable within sixty-five (65) days following



Buyer's receipt of Seller's invoice or (b) Buyer's receipt of the applicable Goods. Buyer may withhold payment pending receipt of evidence, in such form and detail as Buyer may reasonably direct, of the absence of any Encumbrances on the Goods. Any payment by Buyer for Goods will not be deemed acceptance of the Goods or waive Buyer's right to inspect such goods hereunder. Buyer will be entitled to any discounts allowable by Seller for prompt payment even though Buyer is unable to make payment within the time limits set by Seller if such failure is due to Seller's actions or other circumstances or events beyond Buyer's reasonable control. Buyer shall make all payments in US dollars by check, wire transfer or automated clearing house in accordance with the following Instructions:

ABA Number:  
Account Name:  
Account Number:  
Bank Name and Address:  
  
Attn:

5.5 Setoff; Contingent or Disputed Claims. All amounts due from Buyer to Seller are net of any indebtedness of Seller to Buyer. In addition to any right of set-off, deduction or recoupment provided or allowed by Law, Buyer may, without notice to Seller, set off against, and deduct and recoup from, any amounts due or to become due from Buyer to Seller, any amounts due or to become due from Seller to Buyer, including for damages resulting from breaches by Seller of its obligations under this Agreement or any other agreement between such parties. If an obligation of Seller is disputed, contingent or unliquidated, payment by Buyer of all or any portion of the amount due may be deferred until such dispute contingency is resolved or the obligation is liquidated. In the event of Seller's bankruptcy, if all of the contracts (including this Agreement) between Buyer and Seller have not been promptly assumed by Seller (under applicable Law), Buyer may withhold payment to Seller for Goods previously delivered (via administrative hold or otherwise) until the risk of potential rejection and other losses is eliminated.

## **6. Term; Termination.**

6.1 Term. The term of this Agreement shall commence on the Effective Date and continue for a period of seven (7) years unless it is earlier terminated pursuant to the terms of this Agreement or applicable Law (the "Initial Term"), provided however, on or before the expiration of the Initial Term, Buyer shall have the right to extend the term of this Agreement to the term of Vehicle Platform manufacture by Buyer's Customer upon.

6.2 Buyer's Right to Terminate for Convenience. Buyer may, at its option, terminate this Agreement, any Purchase Order issued hereunder, or the purchase of one or more individual Goods at any time and for any reason by giving written Notice to Seller (a "Termination Notice"). Termination will be effective on the later to occur of thirty (30) days after Buyer's transmission of the Termination Notice or such other later date (if any) set forth in such termination Notice. Within thirty (30) days after the effective date of termination set forth in Buyer's Notice to Seller under this Section 6.2, Seller may submit to Buyer a written Notice setting forth the following amounts, in sufficient detail to allow Buyer to audit such amounts (a "Termination Claim"): the purchase price under this Agreement for finished Non-standard Goods delivered to Buyer for Firm Orders in the last Release issued by prior to the effective date of Termination, not previously paid for, provided such Goods conform to the requirements of this Agreement. For the avoidance of doubt, the following rules shall apply to any Termination Notice sent by Buyer to Seller: (i) Buyer's termination of the purchase of any individual Good hereunder shall not serve as a termination of any other Good purchased hereunder, (ii) Buyer's termination of an individual



Purchase Order shall only serve to terminate the purchase of any Goods purchased pursuant to the terminated, and no other, Purchase Order, and (iii) Buyer's termination of this Agreement shall serve as a termination of all Purchase Orders issued pursuant to this Agreement. Except as expressly provided in this Section 6.2, Buyer will not be liable for and will not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, and general and administrative burden charges.

6.3 Buyer's Right to Terminate for Cause. Buyer may terminate this Agreement, a Purchase Order issued hereunder, or the Purchase of any individual Good, by providing written Notice to Seller:

(a) if Seller repudiates or threatens to repudiate, any of its obligations under this Agreement;

(b) except as otherwise specifically provided under this Section 6.3, if Seller is in breach of, or threatens to breach, any representation, warranty or covenant of Seller under this Agreement and either the breach cannot be cured or, if the breach can be cured, it is not cured by Seller within a commercially reasonable period of time under the circumstances, in no case exceeding fifteen (15) days following Seller's receipt of written Notice of such breach;

(c) notwithstanding the generality of Section (b), if Seller fails to, or threatens not to, timely deliver Goods conforming to the requirements of, and otherwise in accordance with, the terms and conditions of this Agreement;

(d) if Seller (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due, (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law, (iii) makes or seeks to make a general assignment for the benefit of its creditors, or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business;

(e) if Seller fails to provide Buyer, within a commercially reasonable time after Buyer's request (but in no case exceeding thirty (30) days after such request) with adequate and reasonable assurance of Seller's financial and operational capability to perform timely any of Seller's obligations under this Agreement;

(f) if Buyer's customer requires that Buyer obtain another supplier of Goods;

(g) if Seller takes any action, or fails to take any action, required under this Agreement or any other agreement between Buyer and Seller, or as reasonably requested by Buyer, the result of which is an imminent interruption or delay, or the threat of an imminent interruption or delay, in any production at any of Buyer's or its customer's manufacturing facilities;

(h) if, without obtaining Buyer's prior written consent, (i) Seller sells, leases or exchanges a material portion of Seller's assets, (ii) Seller merges or consolidates with or into another Person, or (iii) a change in Control of Seller occurs; or





(i) upon the occurrence of any other event constituting grounds for termination set forth in any other sections of this Agreement

Any termination under this Section 6.3 will be effective on Seller's receipt of Buyer's written Notice of termination or such later date (if any) set forth in such termination Notice. Upon the occurrence of any of the events described under this Section 6.3, Buyer may, in addition to any of its other rights to suspend performance under this Agreement or applicable Law, immediately suspend its performance under all or any part of this Agreement, without any liability of Buyer to Seller, and, notwithstanding anything to the contrary contained in this Agreement (including the limitations set forth in Section 11) Buyer may, at its election, recover any and all damages (including direct, indirect, incidental, and consequential damages), costs (including attorneys' and other professionals' fees and costs), expenses and losses incurred by Buyer as a result of any event described under this Section 0 or any breach of this Agreement by Seller.

#### 6.4 Effect of Expiration or Termination.

(a) Immediately upon the effectiveness of any notice of termination under Sections 6.2 of 6.3 by Buyer to Seller hereunder (as stated in such notice), Seller shall, unless otherwise directed by Buyer, and subject to Seller's obligation provide resourcing cooperation under Section 6.5:

(i) promptly terminate performance under this Agreement or outstanding Purchase Orders as applicable to the Termination Notice;

(ii) at Buyer's option, transfer title and deliver to Buyer all finished Goods corresponding to Firm Orders in Releases issued prior more than two weeks prior to effectiveness of the Notice of termination; and

(iii) return to Buyer all Bailed Property and any other property furnished by or belonging to Buyer or any of Buyer's customers, or dispose of such Bailed Property or other property in accordance with Buyer's instructions (provided that Buyer will reimburse Seller for the actual, reasonable costs associated with such disposal);

(b) Expiration or termination of the Term will not affect any rights or obligations of the Parties that:

(i) come into effect upon or after termination or expiration of this Agreement; or

(ii) otherwise survive the expiration or earlier termination of this Agreement pursuant to u and were incurred by the Parties prior to such expiration or earlier termination.

(c) Upon the expiration or earlier termination of this Agreement, each Party shall:

(i) return to the other Party or destroy all documents and tangible materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information;

(ii) permanently erase all of the other Party's Confidential Information from its computer systems, except for copies that are maintained as archive copies on its disaster recovery



and/or information technology backup systems. Each Party shall destroy any such copies upon the normal expiration of its backup files; and

(iii) upon the other Party's written request, certify in writing to such other Party that it has complied with the requirements of this Section 6.4(c).

(d) Subject to Section 6.4(b), neither Buyer, or in the case of the expiration of this Agreement, any Party, will be liable to the other Party for any damage of any kind (whether direct or indirect) incurred by the other Party by reason of the expiration or earlier termination of this Agreement. Termination of this Agreement will not constitute a waiver of any of the terminating Party's rights or remedies/either Party's rights, remedies or defenses under this Agreement, at law, in equity or otherwise.

6.5 Resourcing Cooperation. Upon the expiration or earlier termination of this Agreement for any reason, to the extent requested by Buyer in writing, Seller will take the following actions and such other actions as may be reasonably required by Buyer to transition production of Goods from Seller to an alternative seller without production disruptions:

(a) manufacture, deliver and sell to Buyer a sufficient inventory bank of Goods to ensure that the transition will proceed smoothly and without interruption or delay to Buyer's or Buyer's customers' production of products incorporating the Goods, with pricing equivalent to the pricing in effect immediately before expiration or termination;

(b) for any non-standard (i.e., not "off-the-shelf") Goods, promptly:

(i) provide to Buyer 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 supplies and components; and

(ii) assign to Buyer or an alternative seller any or all supply contracts or orders for raw materials or components relating to this Agreement and any outstanding Purchase Orders;

(c) at Buyer's option, sell to Buyer, at Seller's actual cost, any or all work-in-process and any raw-materials inventory relating to this Agreement and any outstanding Purchase Orders; and

(d) at Buyer's option sell to Buyer any or all finished Goods.

## **7. Certain Obligations of Seller.**

### **7.1 Quality.**

(a) Seller shall meet or exceed Buyer's quality standards for the Goods as adopted by Buyer from time to time, and which are provided by Buyer to Seller in writing (including but not limited to the requirements set forth in Buyer's Quality Manual). At Buyer's request, Seller shall furnish to Buyer test samples of Goods as reasonably required by Buyer or its customer to determine if their manufacture is in accordance with the specifications furnished by Buyer and Buyer's or Buyer's customer's quality standards. Seller shall perform quality inspections of Goods before delivery and shall certify inspection results in the manner requested by Buyer.





(b) Seller shall work together with Buyer to achieve global process improvements in the areas of technology, quality, responsiveness, delivery, and cost. At Buyer's request, Seller's representatives shall meet with Buyer to review the progress made on these objectives.

(c) Seller shall provide reasonable support as requested by Buyer to address and correct quality concerns. In addition to its other rights and remedies, Buyer may hold Seller responsible for costs associated with quality-issue investigation and containment to the extent caused by Seller's acts or omissions.

(d) Seller shall, on a continuous basis, identify ways to improve the quality, service, performance standards and technology for the Goods, including through participation in Buyer's quality improvement initiatives.

7.2 Protection Against Supply Interruptions. Seller shall, at Seller's sole cost and expense, take such actions as are necessary or appropriate to ensure the uninterrupted supply of Goods to Buyer for not less than thirty (30) days during any foreseeable or anticipated event or circumstance that could interrupt or delay Seller's performance under this Agreement, including any labor disruption, whether or not resulting from the expiration of Seller's labor contracts (and whether or not such occurrence constitutes a Force Majeure Event hereunder). Seller shall notify Buyer at least thirty (30) days before the termination or expiration of any collective bargaining or other labor agreement that relates to Seller's Personnel involved in the production or delivery of the Goods.

7.3 Duty to Advise. Seller shall promptly provide written Notice to Buyer of any of the following events or occurrences, or any facts or circumstances reasonably likely to give rise to any of the following events or occurrences: (a) any failure by Seller to perform any of its obligations under this Agreement; (b) any delay in delivery of Goods; (c) any defects or quality problems relating to Goods; (d) any change in Control of Seller; (e) any deficiency in Buyer specifications, samples, prototypes or test results relating to this Agreement; or (f) any failure by Seller, or its subcontractors or common carriers, to comply with Law. In addition, Seller shall promptly notify Buyer in writing of any change in Seller's authorized Representatives, insurance coverage or professional certifications.

7.4 Certain Changes.

(a) Seller shall promptly make any changes Buyer directs in writing with respect to the Goods, which may include changes in the design, drawings, specifications, processing, inspection, testing, quality control, methods of packing and shipping or the date or place of delivery. Any changes pursuant to this Section 7.4(a) will not affect the Price or time for delivery of Goods unless (i) within ten (10) days after Buyer's notice to Seller of the change, Buyer receives from Seller written Notice of a claim for adjustment with all sufficient information and documentation regarding Seller's costs and production timing resulting from such changes to allow Buyer to perform an audit and verify such claim, and (ii) after auditing and verifying such claim, the results of such audit indicate that, in order to implement such Buyer-requested changes, Seller's actual out-of-pocket costs increased by a material amount or that implementing such changes reasonably and appropriately caused a delay in the Delivery Date of any affected Goods. Seller may increase the Prices hereunder in a per-unit amount solely to the extent necessary to compensate Seller for such commercially reasonable cost increases (but not to allow for any additional margin, unless otherwise agreed by the Parties in writing for any such change). If Buyer's audit and verification results indicate that Seller's costs have or should have actually decreased, the Prices hereunder shall be deemed decreased on a per-unit basis to reflect the amount of any such cost savings.



Nothing in this Section 6.4(a), including any disagreement with Buyer as to any adjustment in price or time for performance, will excuse Seller from proceeding with this Agreement as changed.

(b) Seller may not make any changes with respect to the Goods or scope of this Agreement without Buyer's advance written approval, which may be given or withheld in Buyer's sole discretion, including (i) the location at which Goods are manufactured, (ii) any subcontractors to Seller with respect to Goods, (iii) the processes or procedures used by Seller in the production of Goods, (iv) the composition, fit, form, function or appearance of Goods, or (v) chemicals, raw materials or any components or ingredients used in production of Goods. If Seller learns of a possible change to the Goods that may reduce costs, improve quality, or otherwise be beneficial to Buyer, Seller shall promptly notify Buyer of the possible change.

#### 7.5 Seller's Financial Condition.

(a) Each acceptance of a Purchase Order or Release, or the delivery of Goods by Seller will constitute Seller's representation and warranty that Seller is not insolvent on a balance sheet basis, is paying all debts as they become due, is in compliance with all loan covenants and other obligations to which it is subject, and that all financial information provided to Buyer concerning Seller is true and accurate, fairly represents Seller's financial condition, and has been prepared in accordance with GAAP, uniformly and consistently applied.

(b) Seller shall furnish Buyer with statements accurately and fairly evidencing Seller's financial condition as Buyer may, from time to time, reasonably request.

(c) Seller shall promptly notify Buyer, in writing, of any and all events that have had or may have a material adverse effect on Seller's business or financial condition, including any change in management, sale, lease or exchange of a material portion of Seller's assets, a change in Control of Seller, or the breach of any loan covenants or other material obligations of Buyer to its creditors.

### **8. Compliance with Laws.**

8.1 Compliance. Seller shall at all times comply with all Laws applicable to this Agreement, Seller's operation of its business and the exercise of its rights and performance of its obligations hereunder. Without limitation of the foregoing, Seller shall ensure the Goods and any related packaging, conform fully to any applicable Law. Upon Buyer's reasonable request, Seller shall provide Buyer with (a) written certification of Seller's compliance with applicable Laws; (b) written certification of the origin of any ingredients or materials in the Goods; and (c) any additional information regarding the Goods requested by Buyer such that Buyer may comply in a timely manner with its obligations under Law.

8.2 Permits, Licenses, and Authorizations. Seller shall obtain and maintain all Permits necessary for the exercise of its rights and performance of Seller's obligations under this Agreement, including any Permits required for the import of Goods or any raw materials and other manufacturing parts used in the production and manufacture of the Goods, and the shipment of hazardous materials, as applicable.

### **9. Representations and Warranties; Product Warranty.**

9.1 Seller's Representations and Warranties. Seller represents and warrants to Buyer that:



(a) it is a \_\_\_\_\_, duly organized, validly existing and in good standing under the laws of the \_\_\_\_\_;

(b) it is duly qualified to do business and is in good standing in every jurisdiction in which such qualification is required for purposes of this Agreement, except where the failure to be so qualified, in the aggregate, could not reasonably be expected to adversely affect its ability to perform its obligations under this Agreement;

(c) it has the full right, power and authority to enter into this Agreement and to perform its obligations hereunder;

(d) the execution of this Agreement by its Representative whose signature is set forth at the end of this Agreement, and the delivery of this Agreement by Seller, have been duly authorized by all necessary corporate action on the part of Seller;

(e) the execution, delivery, and performance of this Agreement by Seller will not violate, conflict with, require consent under or result in any breach or default under (i) any of Seller's organizational documents, (ii) any applicable Law or (iii) with or without notice or lapse of time or both, the provisions of any material Seller Contract;

(f) this Agreement has been executed and delivered by Seller and (assuming due authorization, execution and delivery by Buyer) constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws and equitable principles related to or affecting creditors' rights generally or the effect of general principles of equity;

(g) it is in compliance with all applicable Laws and Seller Contracts relating to this Agreement, the Goods and the operation of its business (including all loan covenants and other financing obligations to which it is subject);

(h) it has obtained all licenses, authorizations, approvals, consents or permits required by applicable Laws to conduct its business generally and to exercise its rights and perform its obligations under this Agreement;

(i) it is not insolvent and is paying all of its debts as they become due; and

(j) all financial information that it has provided to Buyer is true and accurate and fairly represents Seller's financial condition, and has been prepared in accordance with GAAP, uniformly and consistently applied.

9.2 Buyer's Representations and Warranties. Buyer represents and warrants to Seller that:

(a) it is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Texas;

(b) it is duly qualified to do business and is in good standing in every jurisdiction in which such qualification is required for purposes of this Agreement, except where the failure to be so qualified, in the aggregate, could not reasonably be expected to adversely affect its ability to perform its obligations under this Agreement;



(c) it has the full right, power and authority to enter into this Agreement and to perform its obligations hereunder;

(d) the execution of this Agreement by its Representative whose signature is set forth at the end of this Agreement, and the delivery of this Agreement by Buyer, have been duly authorized by all necessary corporate action on the part of Buyer; and

(e) the execution, delivery, and performance of this Agreement by Buyer will not violate, conflict with, require consent under or result in any breach or default under (i) any of Buyer's organizational documents, (ii) any applicable Law or (iii) with or without notice or lapse of time or both, the provisions of any material Buyer Contract; and

(f) this Agreement has been executed and delivered by Buyer and (assuming due authorization, execution, and delivery by Seller) constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws and equitable principles related to or affecting creditors' rights generally or the effect of general principles of equity.

9.3 Product Warranty. Seller warrants to Buyer that (the "Product Warranty"):

(a) for the period provided by applicable law, or for such longer period as provided by Buyer to its customers or any end users, the Goods will:

(i) conform, in all respects, to the Specifications, standards, drawings, samples, descriptions, quality requirements, performance requirements, statements of work, and fit, form and function requirements furnished, specified or approved by Buyer for the Goods;

(ii) conform with Buyer's quality standards as set forth in Buyer's Quality Manual or as otherwise communicated from Buyer in writing to Seller from time to time;

(iii) be merchantable (as such term is defined in the UCC) and free from defects, latent or otherwise, in design, materials, and workmanship;

(iv) not infringe upon, violate or misappropriate the Intellectual Property Rights of any Person;

(v) be fit and sufficient for the particular purpose intended by Buyer and its customers, of which the Seller is aware (and Seller acknowledges that it knows of Buyer's intended use of the Goods and that such Goods have been selected, designed, manufactured or assembled by Seller based upon Buyer's stated use and will be fit and sufficient for the particular purposes intended by Buyer); and

(vi) comply with all applicable Laws.

(b) each of the Goods will be new and conveyed by Seller to Buyer with good title, free and clear of all Encumbrances.

9.4 Additional Terms. The Product Warranty (a) is in addition to all other warranties, express, implied, statutory and common law, (b) extends to the Goods' future performance, (c) survives Seller's delivery of the Goods, Buyer's receipt, inspection, acceptance, use of the Goods and payment for



the Goods, and the termination or expiration of this Agreement, (d) inures to the benefit of Buyer and its successors and assigns and the users of Buyer's or its customers' products, and (e) may not be limited or disclaimed by Seller. Buyer's approval of Seller's designs, materials, processes, drawings, specifications or the Specifications or similar requirements will not be construed to relieve Seller of any warranties. Seller shall transfer and assign to Buyer all of its rights (but not any obligations) under all warranties from equipment or material manufacturers or suppliers, permitted subcontractors or other third parties. Any applicable statute of limitations on Buyer's claims for breach of warranty will commence no earlier than the date on which Buyer discovers the breach.

9.5 Withdrawal or Recall of Goods. If Buyer, any of Buyer's customers or any Governmental Authority determines that any Goods sold to Buyer are Defective and a recall campaign is necessary, Buyer will have the right to implement such recall campaign and return Defective Goods to Seller or destroy such Goods, as determined by Buyer in its reasonable discretion or as otherwise directed by Buyer's customer, at Seller's sole cost and risk. If a recall campaign is implemented, at Buyer's option and Seller's sole cost, Seller shall promptly replace any Defective Goods and provide such replacement Goods to Buyer or Buyer's designee. The foregoing will apply even if the Product Warranty and any other product warranty applicable to the Goods have expired. Seller will be liable for all of Buyer's costs associated with any recall campaign if such recall campaign is based upon a reasonable determination that the Goods fail to conform to the warranties set forth in this Agreement. Where applicable, Seller shall pay all reasonable expenses associated with determining whether a recall campaign is necessary.

## 10. Indemnification.

10.1 Indemnification. Subject to the terms and conditions of this Agreement, Seller (as "Indemnifying Party") shall indemnify, defend and hold harmless the Buyer Parties and their officers, directors, employees, agents, Affiliates, successors and permitted assigns (collectively, "Indemnified Parties") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, incurred by any Indemnified Party (collectively, "Losses"), relating to/arising out or resulting from any third-party Claim alleging:

- (a) a breach or non-fulfillment of any of Indemnifying Party's representations, warranties, or covenants set forth in this Agreement;
- (b) any negligent or more culpable act or omission of Indemnifying Party or any of its Representatives (including any recklessness or willful misconduct) in connection with Indemnifying Party's performance under this Agreement;
- (c) any bodily injury, death of any Person or damage to real or tangible personal property caused by the acts or omissions of Indemnifying Party or any of its Representatives; or
- (d) any failure by Indemnifying Party or its Personnel to comply with any applicable Laws; or
- (e) that any of Indemnifying Party's Intellectual Property used in the design or production of the Goods, or that is embodied in the Goods, infringes any Intellectual Property Right of a third party; provided, however, that, without limitation of anything contained in Section 10.1,



Indemnifying Party has no obligations under this Section (e) with respect to Claims to the extent arising out of:

(i) any Specifications, raw materials, manufacturing parts or other materials provided by any Indemnified Party; or

(ii) any modifications or changes made to the Goods by or on behalf of any Person other than Indemnifying Party or its Representatives, if the infringement would have been avoided without such modification or change.

10.2 Exceptions and Limitations on Indemnification. Notwithstanding anything to the contrary in this Agreement, Indemnifying Party is not obligated to indemnify or defend any Indemnified Party against any Claim or corresponding Losses resulting directly from the Indemnified Party's or its Personnel's:

(a) gross negligence or more culpable act or omission (including recklessness or willful misconduct); or

(b) bad faith failure to materially comply with any of its obligations set forth in this Agreement.

**11. NO LIABILITY FOR CONSEQUENTIAL OR INDIRECT DAMAGES . EXCEPT FOR LIABILITY FOR INDEMNIFICATION, LIABILITY FOR BREACH OF CONFIDENTIALITY, OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT SHALL BUYER OR ITS REPRESENTATIVES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT BUYER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

## **12. Intellectual Property.**

12.1 Ownership. Each of the Parties acknowledges and agrees that:

(a) each Party retains exclusive ownership of its Background Intellectual Property Rights;

(b) Buyer does not transfer to Seller any of its Background Intellectual Property Rights, and Seller may not use any of Buyer's Background Intellectual Property Rights other than to produce and supply Goods to Buyer hereunder;

(c) Seller does not transfer to Buyer any of Seller's Background Intellectual Property Rights, except that Seller grants to Buyer and its customers the right to resell Goods or incorporate Goods purchased from Seller into finished goods and to sell such finished goods to its customers;





(d) all Foreground Intellectual Property Rights will be owned by Buyer;

(e) Seller assigns to Buyer all of Seller's right, title and interest in and to all Foreground Intellectual Property Rights, and, to the extent that any Foreground Intellectual Property Rights are copyrightable works or works of authorship (including computer programs, technical specifications, documentation, and manuals), the Parties agree that such works are "works made for hire" for Buyer under the US Copyright Act;

(f) Seller shall only use the Foreground Intellectual Property Rights to produce and supply Goods to Buyer; and

(g) Seller waives any claim against Buyer, including any hold-harmless or similar claim, whether known or unknown, contingent or latent, in any way related to a claim asserted against Seller or Buyer for infringement of any Intellectual Property Rights.

12.2 Prohibited Acts. Each of the Parties shall not:

(a) take any action that interferes with the other Party's Intellectual Property Rights, including such other Party's ownership or exercise thereof;

(b) challenge any right, title or interest of the other Party in such other Party's Intellectual Property Rights;

(c) make any claim or take any action adverse to such other Party's ownership of its Intellectual Property Rights;

(d) register or apply for registrations, anywhere in the world, the other Party's Trademarks or any other Trademark that is similar to such other Party's Trademarks or that incorporates such Trademarks in whole or in confusingly similar part;

(e) use any mark, anywhere, that is confusingly similar to the other Party's Trademarks;

(f) misappropriate any of the other Party's Trademarks for use as a domain name without such other Party's prior written consent; or

(g) alter, obscure or remove any of the other Party's Trademarks or trademark or copyright notices or any other proprietary rights notices placed on the products purchased under this Agreement (including Goods), marketing materials or other materials.

12.3 License of Seller's Background Intellectual Property Rights. Seller grants to Buyer an irrevocable, non-exclusive, worldwide, perpetual, royalty-free license, with the right to grant sublicenses, to use Seller's Background Intellectual Property Rights to produce, use, sell and to obtain, from alternate sources, products and services similar to the Goods (including related systems and components) following the expiration or earlier termination of this Agreement and in connection with Buyer's rights hereunder to purchase Goods from an alternative source at any time during the Term hereof.



### 13. Confidentiality.

13.1 Scope of Confidential Information. From time to time during the Term, either Party (as the "Disclosing Party") may disclose or make available to the other Party (as the "Receiving Party") information about its business affairs, goods and services (including any Forecasts), confidential information and materials comprising or relating to Intellectual Property Rights, trade secrets, third-party confidential information and other sensitive or proprietary information. Such information, as well as the terms of this Agreement, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" constitutes "Confidential Information" hereunder. Confidential Information does not include information that at the time of disclosure and as established by documentary evidence:

(a) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section 13 by the Receiving Party or any of its Representatives;

(b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information;

(c) was known by or in the possession of the Receiving Party or its Representatives prior to being disclosed by or on behalf of the Disclosing Party;

(d) was or is independently developed by the Receiving Party without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information; or

(e) is required to be disclosed pursuant to applicable Law.

13.2 Protection of Confidential Information. The Receiving Party shall, for three (3) years from the expiration or termination of this Agreement:

(a) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;

(b) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and

(c) not disclose any such Confidential Information to any Person, except to the Receiving Party's Representatives who need to know the Confidential Information (which in the case of Buyer shall include its customer) to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement.

The Receiving Party shall be responsible for any breach of this Section 13 caused by any of its Representatives. On the expiration or earlier termination of this Agreement, at the Disclosing Party's written request, the Receiving Party and its Representatives shall, pursuant to Section 1.1(c), promptly return/destroy all Confidential Information and copies thereof that it has received under this Agreement.





## 14. Tangible Property.

### 14.1 Bailment.

(a) All Equipment and other tangible property of every description, including supplies, materials, machinery, equipment, drawings, photographic negatives and positives, artwork, copy layout, electronic data and other items, furnished by Buyer (or Buyer's customers), either directly or indirectly, to Seller or to any supplier to Seller in connection with or related to this Agreement, or for which Seller has been at least partially reimbursed by Buyer (collectively, "Bailed Property") is and will at all times remain the property of Buyer (or Buyer's customer(s)), as applicable) and be held by Seller on a bailment-at-will basis.

(b) Only Buyer has any right, title or interest in and to Bailed Property, except for Seller's limited right, subject to Buyer's sole discretion, to use the Bailed Property in the performance of Seller's obligations under this Agreement. Seller shall not use the Bailed Property for any other purpose. Seller shall not commingle Bailed Property with the property of Seller or with that of a Person other than Buyer or Seller and shall not move any Bailed Property from Seller's premises without the prior written approval by Buyer. Buyer may, at any time, for any reason and without payment of any kind, retake possession of any Bailed Property without the necessity of payment or notice to Seller, or a hearing or a court order, which rights, if any, are waived by Seller. Upon Buyer's request, Bailed Property will be immediately released to Buyer or delivered to Buyer by Seller. Seller's continued holding of Bailed Property after demand has been made by Buyer for delivery will substantially impair the value thereof, and, accordingly, Buyer will be entitled to a court order of possession without any need of proving damages or posting of a bond. To the fullest extent permitted by law, Seller shall not allow any Encumbrance to be imposed on or attach to the Bailed Property through Seller or as a result of Seller's action or inaction, and Seller hereby waives any Encumbrance that it may have or acquire in the Bailed Property.

(c) Seller acknowledges and agrees that (a) Buyer is neither the manufacturer of the Bailed Property nor the manufacturer's agent, (b) Buyer is bailing Bailed Property to Seller for Seller's benefit, (c) Seller has inspected the Bailed Property and is satisfied that the Bailed Property is suitable and fit for its intended purposes, of which Seller is aware, and (d) BUYER HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF THE BAILED PROPERTY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. Notwithstanding the foregoing, if the bailment relationship described in this Section 0 is deemed to be a secured financing transaction, Seller grants to Buyer a continuing security interest in any rights or interests it may have in the Bailed Property.

### 14.2 Tooling Orders.

(a) Seller may not charge Buyer for the cost of manufacturing or procuring any Tooling or other materials used in the production and sale of the Goods unless Buyer agrees in writing to reimburse Seller for Seller's actual reasonable costs of manufacturing or procuring such Tooling or other materials (a "Reimbursement Authorization"). Payment for such Tooling or materials will be due only after (a) Buyer has successfully completed all testing of such Tooling or materials required by Buyer, which will be conducted at Seller's sole cost and expense, (b) Buyer has successfully conducted a tooling audit in accordance with its customer's requirements, and (c) Seller has provided to Buyer detailed invoices documenting the actual costs incurred by Seller for such Tooling or materials, including copies



of any invoice issued to Seller by any third party with respect thereto, and other any other information reasonably requested by Buyer with respect to such Tooling or materials (which may include CAD models and drawings). Buyer shall pay Seller only the actual cost of such Tooling or materials, not to exceed the authorized amount, if any, stated in the applicable Reimbursement Authorization.

(b) Such Tooling or other materials that are subject to a Reimbursement Authorization provided by Buyer will become Bailed Property (and title thereto will vest in Buyer) immediately upon completion of all testing required by Buyer (provided that Buyer will not be relieved of its obligation to pay for such Tooling or materials in accordance with the terms of this Agreement) or, if earlier, any payment by Buyer to Seller therefor. Any payments made by Buyer for Bailed Property are expressly intended by Buyer to be held in trust for the benefit of any subcontractors or suppliers used by Seller to fabricate the Bailed Property that relates to such payments; and Seller agrees to hold such payments as trustee in express trust for such subcontractors or suppliers until Seller has paid the subcontractors or suppliers in full for the Bailed Property. Buyer will not pay for any Tooling necessary for the production of sample products unless otherwise provided in the applicable Reimbursement Authorization.

14.3 Maintenance; Risk of Loss. Seller shall bear all risk of loss of and damage to Bailed Property. Seller shall, at its own expense, for the benefit of Buyer, insure all Bailed Property with full and extended coverage for all losses, for its full replacement value, in accordance with the terms of Section 16. As and when it is commercially reasonable to do so, Seller shall, at its sole cost and expense, maintain, repair, refurbish and replace Bailed Property. All replacement parts, additions, improvements, and accessories for such Bailed Property will automatically become Buyer's property upon their incorporation into or attachment to the Bailed Property. All replacements of Bailed Property will also be Buyer's property. Seller shall replace any missing components of or inserts to any Bailed Property.

14.4 Inventory. Seller will maintain a written inventory of all Bailed Property that sets forth a description and the location of all Bailed Property, and provide a copy of this inventory to Buyer upon request. Seller shall mark all Bailed Property permanently and conspicuously to identify it as the property of Buyer, and indicate Buyer's name and address. Seller shall immediately sign any documents reasonably requested by Buyer to evidence all of Buyer's rights to and interests in Bailed Property. Seller grants to Buyer a limited and irrevocable power of attorney, coupled with an interest, to execute and record on Seller's behalf any documents with respect to Bailed Property that Buyer determines are reasonably necessary to reflect Buyer's interest in the Bailed Property.

14.5 Seller's Property. Unless otherwise agreed to by Buyer in writing, Seller, at its sole expense, shall furnish, keep in good condition, and replace when necessary all Equipment and other items necessary or helpful for the production of the Goods (excluding Bailed Property, "Seller's Property"). Seller shall insure Seller's Property with full and extended coverage for all losses, for its full replacement value, in accordance with the terms of Section 16. Seller hereby grants Buyer an irrevocable option to take possession of and title to all Seller's Property that is used primarily or exclusively for the production of Goods upon payment to Seller of the lesser of the net book value or fair market value of such Seller's Property, in each case calculated according to GAAP, less any amounts that (a) Buyer has previously paid to Seller for the cost of such Seller's Property or equipment and (b) Seller owes to Buyer; provided, however, that this option will not apply if such Seller's Property is also used to produce Goods that are Seller's standard (i.e., "off the shelf") stock. Buyer's right to exercise the foregoing option is not conditioned on Seller's breach or Buyer's termination of this Agreement or upon payment of any other amounts due under this Agreement.



**15. Inspection and Audit Rights .** Seller hereby grants to Buyer and Buyer's customers, and each of their authorized Representatives, access to Seller's premises (including Seller's manufacturing operations used in production of the Goods) and all pertinent documents and other information, whether stored in tangible or intangible form, including any books, records, and accounts, in any way related to Seller's performance under this Agreement (including Sellers' processes and procedures), Goods, Bailed Property or any payment or other transaction occurring in connection with this Agreement, for the purpose of auditing Seller's compliance with the terms of this Agreement, including Seller's charges for Goods, or inspecting or conducting an inventory of finished Goods, work-in-process or raw-material inventory or Bailed Property; provided that any physical inventory inspection may take place no more frequently than annually. Seller agrees to cooperate fully with Buyer in connection with any such audit or inspection. Seller shall maintain, during the Term and for a period of four (4) years after the Term, complete and accurate books and records and any other financial information in accordance with GAAP. Seller shall segregate its records and otherwise cooperate with Buyer so as to facilitate any audit by Buyer. Seller shall reimburse Buyer for all amounts associated with errors discovered during an audit. In addition, Seller shall reimburse Buyer for the amount of Buyer's reasonable costs and expenses incurred in conducting the audit if the results of such audit indicate that such discrepancy is greater than five percent (5%) percent of the total amount actually payable by Buyer for the period examined. If requested by Buyer, Seller shall use its best efforts to permit Buyer and its Representatives to obtain from subcontractors or other suppliers to Seller the information and permission to conduct the reviews specified with respect to Seller in this Section 15.

**16. Insurance .** During the Term and for so long as Supplier supplies Buyer with the Goods, Seller shall, at its own expense, maintain and carry in full force and effect, Supplier agrees to maintain commercial general third party liability insurance coverage on an occurrence form with reputable insurers acceptable to Buyer covering liability arising from premises, operations, independent contractors, products/completed operations, personal injury and advertising injury, and liability assumed under an insured contract with a minimum of \$2,000,000 per occurrence, extended product liability coverage with an insurance amount of not less than \$2,000,000 million per occurrence, and excess insurance coverage in an amount of no less than \$5,000,000. Such insurance shall be procured from with financially sound and reputable insurers. Upon Buyer's reasonable request, Seller shall provide Buyer with a certificate of insurance evidencing the insurance coverage specified in this Section. The certificate of insurance shall name Buyer as an additional insured and loss payee. Seller shall provide Buyer with thirty (30) days' advance written notice in the event of a cancellation or material change in such insurance policy. Seller waives and Seller shall cause its insurers to waive, any right of subrogation or other recovery against Buyer, its Affiliates, and their insurers.

**17. Miscellaneous.**

17.1 Further Assurances. Upon Buyer's reasonable request, Seller shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, necessary to give full effect to this Agreement.

17.2 Relationship of the Parties. The relationship between Seller and Buyer is solely that of vendor and vendee and they are independent contracting parties. Nothing in this Agreement creates any agency, joint venture, partnership or other form of joint enterprise, employment or fiduciary relationship between the Parties. Neither Party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement or undertaking with any third party.



17.3 Entire Agreement. This Agreement, including and together with any related exhibits, schedules and the applicable terms of any Purchase Orders, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

17.4 Survival. Subject to the limitations and other provisions of this Agreement: (a) the representations and warranties of the Parties contained herein will survive the expiration or earlier termination of this Agreement; and (b) 7 through 17 of this Agreement, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, will survive the expiration or earlier termination of this Agreement. All other provisions of this Agreement will not survive the expiration or earlier termination of this Agreement.

17.5 Notices. All notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "Notice") must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this section). All Notices must be delivered by personal delivery, nationally recognized overnight courier or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

Notice to Seller:

[ADDRESS]  
Facsimile:  
Email:  
Attention:

Notice to Buyer:

[ADDRESS]  
Facsimile:  
Email:  
Attention:

17.6 Interpretation. For purposes of this Agreement: (a) the words "include," "includes" and "including" is deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments, and appendices mean the sections of, and exhibits, schedules, attachments and appendices attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Parties drafted this Agreement without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

17.7 Headings. The headings in this Agreement are for reference only and do not affect the



interpretation of this Agreement.

17.8 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability does not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction; provided, however, that if any fundamental term or provision of this Agreement, is invalid, illegal or unenforceable, the remainder of this Agreement is unenforceable. Upon a determination that any term or provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to/the court may modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

17.9 Amendment and Modification. No amendment to or rescission, termination or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination or discharge of this Agreement and signed by an authorized Representative of each Party.

17.10 Waiver.

(a) No waiver under this Agreement is effective unless it is in writing, identified as a waiver to this Agreement and signed by an authorized representative of the Party waiving its right.

(b) Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated and does not operate as a waiver on any future occasion.

(c) None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege or condition arising from this Agreement:

(i) any failure or delay in exercising any right, remedy, power or privilege or in enforcing any condition under this Agreement; or

(ii) any act, omission or course of dealing between the Parties.

17.11 Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise.

17.12 Equitable Remedies. Each Party acknowledges and agrees that (a) a breach or threatened breach by such Party of any of its obligations under Section 13 would give rise to irreparable harm to the other Party for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by such Party of any such obligations, the other Party shall, in addition to any and all other rights and remedies that may be available to such Party at law, at equity or otherwise in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy. Each Party agrees that such Party will not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this Section 17.12.





17.13 Assignment. Seller may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves the assigning or delegating Party of any of its obligations under this Agreement.

17.14 Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties and their respective permitted successors and permitted assigns.

17.15 No Third-Party Beneficiaries. Except as expressly set forth in the second sentence of this Section 17.15, this Agreement benefits solely the parties to this Agreement and their respective permitted successors and permitted assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. The Parties hereby designate each Indemnified Party as a third-party beneficiary of Section 10, each Buyer Party, having the right to enforce such Sections.

17.16 Dispute Resolution. Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity hereof (each, a "Dispute"), shall be submitted for negotiation and resolution to the [TITLE] of Seller (or to such other person of equivalent or superior position designated by Seller in a written Notice to Buyer) and the [TITLE] of Buyer (or to such other person of equivalent or superior position designated by Buyer in a written Notice to Seller), by delivery of written Notice (each, a "Dispute Notice") from either of the Parties to the other Party. Such persons shall negotiate in good faith to resolve the Dispute. If the Parties are unable to resolve any Dispute within thirty (30) days after delivery of the applicable Dispute Notice, either Party may file suit in a court of competent jurisdiction in accordance with the provisions of this Agreement.

17.17 Governing Law. This Agreement, including all exhibits, schedules, attachments and appendices attached hereto and thereto, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the Laws of the State of Texas, United States of America, without regard to the conflict of laws provisions thereof. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

17.18 Choice of Forum. Each Party irrevocably and unconditionally agrees that it shall not commence any action, litigation or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments and appendices attached hereto and thereto, and all contemplated transactions, including contract, equity, tort, fraud, and statutory claims, in any forum other than the State and Federal courts located in Bexar County, Texas, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation or proceeding only in the State and Federal courts located in Bexar County, Texas. Each Party agrees that a final judgment in any such action, litigation or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

17.19 Waiver of Jury Trial. Each Party acknowledges and agrees that any controversy that may arise under this Agreement, including any exhibits, schedules, attachments, and appendices attached to this Agreement, is likely to involve complicated and difficult issues and, therefore, each such Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement, including any exhibits, schedules, attachments, and appendices attached to this Agreement, or the transactions contemplated hereby. Each Party certifies and acknowledges that (a) no Representative of the other Party has represented, expressly or otherwise, that



such other Party would not seek to enforce the foregoing waiver in the event of a legal action, (b) such Party has considered the implications of this waiver, (c) such Party makes this waiver voluntarily, and (d) such Party has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section.

17.20 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together is deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement, if the party sending such facsimile, e-mail or other means of electronic transmission has received express confirmation that the recipient party received the Agreement (not merely an electronic facsimile confirmation or automatic email reply).

17.21 Force Majeure. Any delay or failure of either Party to perform its obligations under this Agreement will be excused to the extent that the delay or failure was caused directly by an event beyond such Party's control, without such Party's fault or negligence and that by its nature could not have been foreseen by such Party or, if it could have been foreseen, was unavoidable (which events may include natural disasters, embargoes, explosions, riots, wars or acts of terrorism) (each, a "Force Majeure Event"). Seller's financial inability to perform, changes in cost or availability of materials, components or services, market conditions or supplier actions or contract disputes will not excuse performance by Seller under this Section 17.21. Seller shall give Buyer prompt written notice of any event or circumstance that is reasonably likely to result in a Force Majeure Event and the anticipated duration of such Force Majeure Event. Seller shall use all diligent efforts to end the Force Majeure Event, ensure that the effects of any Force Majeure Event are minimized and resume full performance under this Agreement. During any Force Majeure Event, Buyer may, at its option (a) purchase Goods from other sources and reduce the quantities hereunder by such quantities without liability to Seller, and require Seller to reimburse Buyer for any additional costs to Buyer of obtaining the substitute goods compared to the Prices for such Goods under this Agreement, (b) require Seller to deliver to Buyer all finished Goods, work in process or parts and materials produced or acquired for work under this Agreement, or (c) require Seller to provide Goods from other sources in quantities and at a time requested by Buyer and at the Prices for the Goods hereunder. If requested by Buyer, Seller shall, within fifteen (15) days of such request, provide adequate assurances that a Force Majeure Event will not exceed sixty (60) days. If the delay lasts more than such sixty day period, or if Seller does not provide such adequate assurances, Buyer may immediately terminate this Agreement without any liability to Seller. The rights granted to Seller with respect to excused delays under this Section 17.21 are intended to limit Seller's rights under theories of force majeure, commercial impracticability, impracticability or impossibility of performance, or failure of presupposed conditions or otherwise, including any rights arising under Section 2-615 or 2-616 of the UCC.

17.22 No Public Announcements or Trademark Use. Unless expressly permitted under this Agreement, neither Party shall either:

(a) make any statement (whether oral or in writing) in any press release, external advertising, marketing or promotion materials regarding the subject matter of this Agreement, the other Party or its business unless:

(i) it has received the express written consent of the other Party, or



(ii) it is required to do so by Law or under the rules of any stock exchange to which it is subject.

(b) use any of the other Party's Trademarks without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of \_\_\_\_\_, 20\_\_.

[SELLER NAME]

By \_\_\_\_\_

Name:

Title:

[BUYER NAME]

By \_\_\_\_\_

Name:

Title: