

MASTER TERMS DIRECT PURCHASING  
(v. 2018)

MERCEDES-BENZ EXTRA LLC  
MERCEDES-BENZ U.S. INTERNATIONAL, INC.  
MERCEDES-BENZ VANS, LLC

**Revision History**

Revision Level	Change Date
1.0	9/14/2018

## MASTER TERMS DIRECT PURCHASING

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## AGREEMENT

These Master Terms Direct Purchasing (“Master Terms”) govern the supply of automotive systems, components, and/or parts by and between Buyer and Supplier.

In consideration of the mutual promises contained herein, the parties agree to the following contractual terms:

### SECTION 1: Definitions

1.1 As used herein and elsewhere in the Contract Documents, unless expressly provided otherwise, the following terms shall have the meanings given below:

- (a) “Affiliated Persons”: means Supplier’s officers, directors, employees, or agents, or any of its stockholders, principals or owners acting on its behalf or in its interests.
- (b) “Agreement”: The entire agreement between Buyer and the Supplier represented by the Contract Documents, which may be modified, amended, supplemented or restated from time to time.
- (c) “Amortized Supplier Equipment”: Any machinery, equipment, materials, molds, gauges, fixtures, patterns, dies, jigs, specifications, models, tools, tooling, handling systems, and aids or other equipment developed or used for the manufacturing of any Products, owned by Supplier, identified by Buyer or Buyer Affiliate, and the cost of which is amortized as part of the part price.
- (d) “Applicable Laws”: means the U.S. Foreign Corrupt Practices Act, without regard to jurisdictional limitations, U.S. export control laws to the extent applicable to the goods and information which are the subject of this Agreement, and all other laws, regulations, rules, orders, decrees or other directives carrying the force of law applicable to any activities engaged in by Supplier or any of its Affiliated Persons in connection with this Agreement, in each case as the same may be amended from time to time.
- (e) “Bailment Agreement”: Shall mean the agreement for Supplier to accept possession of the Buyer Owned Equipment on the terms and conditions of Section 5.3 below.
- (f) “Bailment Term”: The term in which the provisions of Section 5.3 apply to the Buyer Owned Equipment and Buyer Intellectual Property, as applicable, which becomes effective as set forth in Section 5.3(a) and which terminates upon the expiration or earlier termination of the Agreement, unless otherwise set forth in Section 5.3 with respect to a particular item of Buyer Owned Equipment.
- (g) “Buyer”: The legal entity which issues a Purchase Order to Supplier pursuant to the Agreement.

- (h) “Buyer Affiliate”: The Daimler entity, if different from Buyer, which will accept ultimate delivery of the Product and/or Services pursuant to Buyer’s Purchase Order.
- (i) “Buyer Intellectual Property”: Rights to inventions, ideas, improvements, or discoveries, processes, composition of materials, designs, specifications, software, mask works, or other technical information involving the Services, Product and/or Service Parts, Buyer Owned Equipment, including, without limitation, all rights to patents, trademarks, copyrights, or legally protected trade secrets pertaining thereto and renewals thereof, whether or not incorporated into the Product, Service Parts and/or Buyer Owned Equipment, but excluding Supplier Intellectual Property.
- (j) “Buyer Owned Equipment”: Any molds, machinery, equipment, materials, gauges, fixtures, patterns, dies, jigs, specifications, models, tools, tooling, handling systems, and aids or other equipment developed or used for the manufacturing of any Products and/or Service Parts that have been or are to be fully paid for by Buyer or Buyer Affiliate, including, without limitation, the equipment specified in the Equipment Database.
- (k) “Buyer Owned Equipment Approval Date”: The date on which Buyer and/or Buyer Affiliate in its sole discretion accepts the applicable Buyer Owned Equipment through its pre-production approval process (PPAP) and such Buyer Owned Equipment has received final off-tool sample approval by Buyer and/or Buyer Affiliate in its sole discretion.
- (l) “Buyer Owned Equipment Title Transfer Date”: The date on which both of the following have occurred: (1) the applicable Buyer Owned Equipment has completed PPAP yellow (part, process, and color), and (2) Buyer has made eighty percent (80%) payment for such Buyer Owned Equipment in accordance with Section 5 herein.
- (m) “Buyer’s Policies”: Buyer’s and or Buyer Affiliate’s policies and procedures provided to Supplier and/or described on the Supplier Portal or its successor site.
- (n) “Chain of Supply List”: A list maintained by Supplier pursuant to Section 4.8 hereof that indicates the name and address of all Lower Tier suppliers (including, without limitation, Directed Lower Tier suppliers) that supply goods and services to Supplier or another Lower Tier in connection with Supplier’s obligations under the Agreement.
- (o) “Contract Documents”: The written documents which govern the contractual relationship between Buyer and Supplier and its affiliated parties, which include (a) the Master Terms Direct Purchasing (this document); (b) all referenced attachments and policies herein, including, without limitation, the current version of Buyer’s and/or Buyer Affiliate’s Supplier Quality Assurance Manual; (c) the Source Package; (d) the Purchase Order(s) issued during the term of this Agreement; (e) the Development Agreement (if any); and (f) the AKV and/or Responsibilities Matrix (if any), each of which shall be considered an integral part of any Purchase Order issued by Buyer. In case of inconsistencies, the Contract Documents shall prevail over each other in the priority listed in the preceding sentence of this paragraph, unless otherwise specified herein.

- (p) “Cost Breakdowns”: The breakdown of the costs of the Services that is submitted by Supplier in its quote to Daimler in accordance with the Source Package.
- (q) “DAG”: Daimler AG, having its principal office and place of business in Stuttgart, Germany, and the ultimate corporate parent of Buyer.
- (r) “Daimler”: DAG, including any of its subsidiaries or affiliates.
- (s) “Daimler Specifications”: The technical specifications and requirements as amended, modified, or updated from time to time by Daimler.
- (t) “Developer”: means the person or entity, which may also be one in the same as Supplier or an affiliate of Supplier, engaged by Daimler initially to develop the Product to a specified quality gate under the Development Agreement and/or Source Package.
- (u) “Development Agreement”: The agreement executed by the Developer and Daimler regarding the development of the Product, which may be assigned to Supplier (or an affiliate of Supplier) by Daimler to provide for the completion of development of the Product to production readiness.
- (v) “Directed Lower Tier”: A Lower Tier supplier with whom Buyer and/or Buyer Affiliate has directed that Supplier engage for a portion of the supply of Product and Services as set forth herein.
- (w) “Equipment Database”: The electronic database maintained by Buyer and/or Buyer Affiliate containing a list of certain inventory and equipment to be purchased by Supplier in the course of Supplier’s performance of the Services under the Agreement, as the same may be amended, modified and updated from time to time.
- (x) “Force Majeure Event”: Any default or delay of performance under the Agreement which is (a) beyond the control of Supplier, and (b) not occasioned by the fault or negligence of Supplier, and (c) which results from wars or other acts of a public enemy, non-monetary restrictions, prohibitions, priorities, or allocations imposed by any governmental authority (other than an order of court relating to, or based upon, insolvency proceedings), freight embargoes, floods, tornados, or other unusually severe weather, earthquakes, epidemics, as all may be caused by acts of God. A Force Majeure Event shall not include (x) non-performance by any Lower Tier suppliers, including without limitation, a Directed Lower Tier, Supplier’s sub-suppliers or affiliates for reasons other than a Force Majeure Event applying to such Lower Tier suppliers, sub-suppliers or affiliates, and which also shall not include (y) any strike, lockout, shortage of labor, lack of or inability to obtain raw materials, fuel, utilities or supplies (unless caused solely by governmental restriction), or (z) any other labor or industrial disturbance; and further provided that delays caused by or associated with computer programs or computer related data do not constitute a cause beyond the control or without the fault or negligence of Supplier.

- (y) “Government Entity”: means a government or any department, agency or instrumentality thereof (including any company or other entity controlled by a government), a political party or a public international organization.
- (z) “Government Official”: means any officeholder, employee or other official (including any immediate family member thereof) of a Government Entity, any person acting in an official capacity for a Government Entity or any candidate for political office.
- (aa) “Higher Tier”: A supplier of Buyer supplying parts for the Vehicle with which Buyer has entered or intends to enter into a written supply agreement similar to the Agreement, to the extent such supplier receives other parts intended for the Vehicle from one or more other supplier(s).
- (bb) “Lower Tier”: A supplier supplying parts or services for the Vehicle, to the extent such supplier supplies parts intended for the Vehicle to one or more other supplier(s), whether another Lower Tier supplier or a Higher Tier supplier.
- (cc) “Lower Tier Acknowledgment and Waiver:” An acknowledgment and waiver that shall be executed by all Lower Tier suppliers of Supplier (including, without limitation, Directed Lower Tiers) in accordance with the terms of Section 37 herein, and pursuant to which each Lower Tier acknowledges certain rights of Buyer and/or Buyer Affiliate under the Agreement.
- (dd) “Marked Part”: A part which bears a Daimler trademark or an identifying mark specified by Daimler, or a part peculiar to the Daimler design.
- (ee) “MBE”: Mercedes-Benz Extra LLC, a Delaware limited liability company, having its principal place of business at 1 Mercedes Drive, Vance, Alabama, 35490, Attn: General Counsel.
- (ff) “MBUSI”: Mercedes-Benz U.S. International, Inc., an Alabama corporation, having its principal place of business at 1 Mercedes Drive, Vance, Alabama, 35490, Attn: General Counsel.
- (gg) “MBV”: Mercedes-Benz Vans, LLC, a Delaware limited liability company, having its principal place of business at 8501 Palmetto Commerce Parkway, Ladson, South Carolina, 29456, Attn: General Counsel.
- (hh) “Model Year”: The annual vehicle production period for Buyer and/or Buyer Affiliate, which commences approximately on August 1 of the calendar year preceding the Model Year designation.
- (ii) “NAFTA”: The North American Free Trade Agreement, or any successor trade agreement among the United States and Mexico and/or Canada.
- (jj) “Parties”: Buyer and Supplier, collectively.



- (kk) “Party”: Buyer and Supplier, individually.
- (ll) “Product”: The product(s) to be supplied by Supplier to Buyer and/or Buyer Affiliate or a Higher Tier in accordance with the Agreement, as described by the Specifications and the Scope of Work, as may be amended from time to time by mutual agreement reduced to writing or in accordance with the Source Package.
- (mm) “Project”: The successful development of the Vehicle by Daimler and successful implementation by Buyer and/or Buyer Affiliate.
- (nn) “Proprietary Information”: Any and all technical information, ideas, specifications, drawings, designs, manufacturing data, records, computer programs, and program documentation (including without limitation any patented or unpatented knowledge or information concerning either Party’s products, production, or other methods, processes, scheduling, sources of supply, customers, marketing or otherwise) disclosed by one Party to the other Party to the Agreement, pursuant to or in connection with the Project.
- (oo) “Purchase Order”: An order for the supply of specific Product, Service Parts, Buyer Owned Equipment or other goods or services issued by Buyer to Supplier pursuant to the Agreement, which may be in printed form mailed to Supplier, or, at the discretion of Buyer, by electronic communications, or by means of the Buyer electronic data interchange system or by way of a pricing agreement.
- (pp) “Recall Campaign”: A systematic effort by Daimler to locate certain Product and/or Service Parts installed in vehicles and believed by Daimler possibly to be in breach of Supplier’s warranty, or not to comply with laws, regulations, orders, or other governmental requirements, in order to replace, correct, or check such Product and/or Service Parts.
- (qq) “Scope of Work”: The general description of Services to be provided by Supplier pursuant to the Agreement and the Contract Documents, which is attached to the Development Agreement and/or the Purchase Order.
- (rr) “Services”: shall collectively refer to all products supplied and/or services rendered by Supplier (including the supply of the Products, Service Parts and acquisition of Buyer Owned Equipment) pursuant to the Agreement.
- (ss) “Service Parts”: Replacement parts for the Product, or any part thereof, which are used by Daimler or its distributors in connection with maintenance or servicing of the Vehicle.
- (tt) “Source Package”: commercial requirements/Source Package and request for quote delivered to Supplier by Daimler.
- (uu) “Specifications”: Collectively, the Daimler Specifications and the Supplier Specifications, as may be amended from time to time by mutual agreement reduced to writing or in accordance with the Source Package.

(vv) “Subcontractor”: means any properly qualified individual, firm, association, or corporation undertaking the performance of any part of the Services under the terms of the Contract Documents by virtue of an agreement between itself and the Supplier with the written approval of Buyer.

(ww) “Supplier”: The legal entity which has agreed to supply the Product to Buyer and Buyer Affiliate in accordance with the Contract Documents or the legal entity which has agreed to supply products and services to a Higher Tier and who has agreed, by way of acceptance of a Purchase Order, or otherwise, to be bound by the Contract Documents.

(xx) “Supplier Intellectual Property”: Rights to inventions, ideas, improvements, or discoveries, processes, composition of materials, designs, specifications, software, mask works, or other technical information, including, without limitation, all rights to patents, trademarks, copyrights, or legally protected trade secrets and renewals thereof, to the extent that such were in Supplier’s possession prior to any discussions with or Supplier’s receipt of any materials from Daimler, as evidenced by Supplier’s written documentation.

(yy) “Supplier Buyer Equipment”: Any machinery, equipment, materials, molds, gauges, fixtures, patterns, dies, jigs, specifications, models, tools, tooling, handling systems, and aids or other equipment developed or used for the manufacturing of any Products, other than Amortized Supplier Equipment and Buyer Owned Equipment, owned by Supplier and identified by Buyer and/or Buyer Affiliate.

(zz) “Supplier Portal”: Buyer’s or Buyer Affiliate’s supplier portal found at <https://supplier.daimler.com> or its successor site.

(aaa) “Supplier Specifications”: Drawings, technical specifications and/or engineering plans developed and submitted by Supplier to Daimler or a Higher Tier in accordance with Source Package.

(bbb) “System”: The design and manufacturing of all Vehicle parts which a Higher Tier supplies to Buyer and/or Buyer Affiliate and/or another Higher Tier.

(ccc) “Vehicle”: The vehicle or vehicles for which Buyer uses the Supplier as the source of the Product and/or Service Parts pursuant to the Agreement.

## SECTION 2: **Contract Documents**

2.1 The contractual relationship between Buyer and Supplier shall be governed by the Agreement and in case of inconsistencies, the Contract Documents shall prevail over each other in the priority listed in Section 1.1(o) above. The Contract Documents are, by this reference, incorporated into and made a part of the Agreement.

2.2 The Contract Documents are in English and/or German. In the event a document exists in both languages, the version which was first made shall be binding, unless the Parties later designate a version in the other language as the “Original.” Consistent with the designation by

Daimler of English as its official language, the Parties shall use their best efforts to use English in their documentation wherever possible and appropriate, provided that this shall not compromise the accuracy of the communications between the Parties.

2.3 The terms and conditions of these Master Terms Direct Purchasing and the Contract Documents shall be deemed to have been accepted by Supplier upon the first to occur of (a) written, electronically communicated, or electronic data acceptance thereof by Supplier, whether through Buyer's Supplier Portal or otherwise, (b) Supplier's submission of a bid or quote in response to the Source Package, (c) Supplier's first shipment or other commencement of performance under a Purchase Order or other contract document, (d) issuance by Buyer of a Scope of Work to source the Product with the Supplier; or (e) issuance of any Purchase Order for tooling and/or for any Product or Service Part.

### SECTION 3: Requirements and Exclusivity

3.1 Buyer and/or Buyer Affiliate intends to use the Product in the Vehicle, which may be manufactured and/or assembled at Buyer's facility, any Buyer Affiliate facility, or other designated facility and, subject to the terms of the Agreement, Buyer will purchase from Supplier a certain amount, as determined by Buyer in its sole discretion, of the demand requirements as set forth in Buyer's Purchase Order, for the Product and/or Service Parts, which Buyer and/or Buyer Affiliate has for the Vehicle production at Buyer's, Buyer Affiliate's, or other designated facility, provided that Supplier (a) complies with the terms of the Agreement, and (b) shall conclude with Buyer, in due time, the Purchase Orders issued by Buyer pursuant to the Agreement. Notwithstanding the foregoing, Buyer may purchase any Product or Service Parts from another supplier or directly from a Lower Tier supplier, sub-supplier or component supplier who manufactured such part. Buyer's decision to purchase some or all of the Service Parts from another supplier or directly from a Lower Tier supplier or sub-supplier does not relieve Supplier from its obligations under the Agreement.

3.2 Supplier shall deliver the Product to Buyer or Buyer Affiliate, as applicable under the Contract Documents, for the Vehicle, shall conclude with Buyer, in due time, the Purchase Orders, and shall supply to Buyer or Buyer Affiliate 100% of Buyer's orders for the Product and related Service Parts, as the case may be as set forth in Buyer's Purchase Orders.

3.3 Unless otherwise specified in the Development Agreement, if the Product and/or related Service Parts therefor, as the case may be, (1) were developed by or on behalf of Daimler, or if (2) Daimler paid for the respective development costs, or if (3) Daimler paid for the respective costs of the tooling therefor, then the delivery of such Product and of the relevant parts, including Service Parts, shall be made by Supplier exclusively to Buyer or its designee and the Supplier shall not be permitted to supply Product or parts to third parties, including but not limited to the independent aftermarket, neither in its own name nor in the name of Buyer, its affiliates or any other brand owned by or delivered to Buyer or Buyer Affiliate. In the case of a Product and/or Service Parts specifically developed or manufactured for the Vehicle and procured by Supplier from its Lower Tier sub-suppliers, Supplier shall preserve exclusivity rights in its contracts with Lower Tier sub-suppliers in order that Supplier can warrant its full compliance with its exclusivity obligation to Buyer, if any.

3.4 Supplier shall not sell, transfer, or lend to any entity except Buyer, or otherwise make use of a Product or Service Parts identified with marks, trade names, or trademarks held by Buyer, Buyer Affiliate, or Daimler, or otherwise packaged or contained in wrappings or containers so identified.

#### SECTION 4: **Production by Supplier**

4.1 Buyer or Buyer Affiliate shall advise Supplier in due time regarding its volume plans for the Product. Buyer's and/or Buyer Affiliate's volume plans are estimates and forecasts and are non-binding on Buyer or Buyer Affiliate and are provided for informational purposes only. Any variation (increase or decrease) in volume projections shall have no impact on Supplier's continuing obligation to provide Buyer's and/or Buyer Affiliate's actual demand requirements for the Products to Buyer or Buyer Affiliate. Any variation or deviation from any volume projection shall in no way constitute a basis for Supplier to cease production or refuse to perform its obligations under this Agreement to supply Buyer or Buyer Affiliate with its demand requirements for the Product or as a basis for Supplier to demand any increase in price. Supplier shall produce the Product consistent with the Specifications. Buyer and/or Buyer Affiliate will provide Supplier with Buyer's and/or Buyer Affiliate's actual requirements and delivery times for the Product pursuant to Purchase Orders issued by Buyer or Buyer Affiliate.

4.2 Supplier shall take all necessary actions to be able to produce and supply to Buyer and/or Buyer Affiliate the Product and/or Service Parts as contemplated by the Agreement. Supplier should be able to support Buyer or Buyer Affiliate peak daily production volumes by matching Buyer and/or Buyer Affiliate's daily production schedules.

4.3 Supplier shall comply with the quality standards and quality assurance procedures for the manufacture of the Product and/or Service Parts as set forth in the Source Package and Buyer and/or Buyer Affiliate's Supplier Quality Assurance Manual located on the Supplier Portal (as may be amended from time to time), and any other quality standards provided to Supplier, and shall implement quality plans and procedures in accordance therewith. Buyer, Buyer Affiliate, and their representatives shall have access, as they may deem reasonable, to Supplier's manufacturing facilities to determine whether proper compliance with such standards and procedures is being followed.

4.4 Provided instructions have been given to Supplier in a timely manner, Supplier shall affix on the Product and Service Parts Daimler's trademark as instructed by Buyer or Buyer Affiliate, in a size and a location as agreed to by Supplier, which agreement shall not be unreasonably withheld.

4.5 Supplier shall maintain documentation regarding the design and manufacture of the Product and/or Service Parts according to the instructions given by Buyer and/or Buyer Affiliate for at least 20 years from the date on which the Product and/or Service Parts cease to be manufactured by Supplier for Buyer and/or Buyer Affiliate and used in the Vehicle, or such shorter time period as Buyer and/or Buyer Affiliate may determine from time to time.

4.6 If and to the extent Supplier supplies part or all of the Product or Service Parts to one or more other suppliers of Buyer for the purpose of supplying Buyer with production or Service

Parts for the Vehicle, then Supplier shall be considered the “Lower Tier” supplier, and such other suppliers the “Higher Tier” supplier. Each Lower Tier shall duly cooperate with the Higher Tier and shall fully comply with the requirements of such Higher Tier, in addition to the terms of this Agreement. Buyer is a third party beneficiary of Supplier’s contracts with its Lower Tier suppliers. In the event that any Lower Tier is a Directed Lower Tier, such Directed Lower Tier shall remain obligated to Buyer for the production of Products in accordance with these Master Terms Direct Purchasing, regardless of any termination of the contract between such Directed Lower Tier and the Higher Tier.

4.7 If Supplier is a Higher Tier, it shall (a) be responsible for managing the Lower Tier supplier relationship and shall be responsible for the performance of the Lower Tier in accordance with this Agreement, (b) inform Buyer and relevant Lower Tiers immediately of any problem which Supplier cannot promptly resolve and propose to Buyer proper remedies for such problem, and (c) if applicable, comply with the Directed Lower Tier Parts Management Directives, which are located on the Supplier Portal and as may be amended from time to time.

4.8 Supplier shall develop, maintain and provide to Buyer and Buyer Affiliate a Chain of Supply List, and Supplier shall update its Chain of Supply List on an annual basis, or more frequently, if requested by Buyer or Buyer Affiliate.

4.9 Under no circumstances shall Supplier at any time modify the Product or Service Parts without the prior written approval of Buyer and/or Buyer Affiliate, which Buyer and/or Buyer Affiliate may withhold in its discretion, if such modification affects the Specifications, the measurements, functioning, or serviceability of other components and parts, or of the Vehicle as a whole. All other modifications are also subject to the prior written approval of Buyer and/or Buyer Affiliate, although any such approval shall not be unreasonably withheld. Buyer and/or Buyer Affiliate may require any design change or modification of the Product, if such change or modification is due to legal requirements, manufacturability, marketing needs, and/or stylistic considerations. Buyer and/or Buyer Affiliate may request any other design changes or modifications to the Product subject to Supplier’s consent, which shall not be unreasonably withheld. Supplier undertakes to keep any cost resulting from any design change or modifications, such as cost incurred because of tooling adaptations and any obsolescence charge, to a minimum. Supplier shall document all changes in cost in the detailed format required by Buyer and/or Buyer Affiliate and in accordance with the Agreement. Furthermore, with respect to design changes or modifications due to legal requirements, manufacturability, marketing needs, and/or stylistic considerations, Supplier commits that the Product shall remain competitive. The comparison basis for minimum cost and competitiveness shall be quotations submitted to Buyer and/or Buyer Affiliate by competitors of the Supplier for the Product, or an alternate product fitting the same purpose with the incorporation of the design change proposed by Buyer and/or Buyer Affiliate. Supplier acknowledges that its obligations and commitments under this Section 4.9 are of a material nature.

4.10 To the extent that Supplier utilizes any affiliates, subsidiaries or other related person for purposes of fulfilling its obligations under this Agreement or any of such affiliates, subsidiaries or other related persons provide or supply Products, Service Parts, or any components thereof, Supplier agrees that each and every provision of this Agreement shall be binding upon all such

affiliates, subsidiaries or other related persons, and Supplier represents and warrants to Buyer that it has the express authority to bind all such affiliates, subsidiaries or other related persons to this Agreement. Supplier shall at all times remain fully responsible to Buyer or Buyer Affiliate for the performance under this Agreement by any and all such affiliates, subsidiaries or other related persons.

## SECTION 5: **Buyer Owned Equipment**

### 5.1 Supplier Acquisition of Buyer Owned Equipment.

(a) Supplier shall acquire all Buyer Owned Equipment as listed in the Equipment Database pursuant to Purchase Orders issued by Buyer to Supplier in accordance with Section 9 hereof. Supplier shall also acquire any Buyer Owned Equipment subsequently determined to be necessary for the manufacturing of any Products and/or Service Parts pursuant to additional Purchase Orders issued to Supplier by Buyer, whether or not such Buyer Owned Equipment is reflected in the Equipment Database. Supplier shall invoice Buyer for the Buyer Owned Equipment in accordance with the provisions of Section 9 hereof, as may be modified by Section 5.2 below.

(b) Supplier shall be responsible for any and all sales and use tax, leasing tax, value added tax ("VAT"), excise tax, property tax, duty, fee or any other charge attributable to the Buyer Owned Equipment. Supplier's responsibilities for said taxes and charges are set forth in Section 25 below.

(c) Supplier shall complete and provide to Buyer, as required, the Tooling Information Sheet, in the form located on the Supplier Portal, or as otherwise provided to Supplier by Buyer (as may be amended from time to time), describing and depicting the Buyer Owned Equipment.

### 5.2 Purchase of Buyer Owned Equipment.

(a) For each item of Buyer Owned Equipment, effective as of the applicable Buyer Owned Equipment Title Transfer Date, Supplier, for and in consideration of the Buyer Equipment purchase price, SELLS, GRANTS, BARGAINS, CONVEYS, ASSIGNS, TRANSFERS AND DELIVERS to Buyer or Buyer Affiliate, as applicable, and its successors and assigns, all right, title and interest in and to such Buyer Owned Equipment as collectively identified in the Tooling Information Sheet. Supplier warrants that at such time, it will be and is the sole and exclusive owner of, and will have and has good and marketable title to the Buyer Owned Equipment being conveyed to Buyer or Buyer Affiliate free and clear of all liens, liabilities, security interests, leasehold interests and encumbrances of any nature whatsoever.

(b) It is expressly understood that, notwithstanding anything to the contrary contained in the Agreement, title to the applicable Buyer Owned Equipment shall not pass until the Buyer Owned Equipment Title Transfer Date, which may or may not be the same day as the Buyer Owned Equipment Approval Date.

(c) The purchase price for any Buyer Owned Equipment shall be equal to the sum of all prices reflected in the Purchase Orders and change orders (if any) issued by Buyer therefor. Buyer shall pay eighty percent of the purchase price for the Buyer Owned Equipment upon the occurrence of the following: (i) Buyer and/or Buyer Affiliate accepts the applicable Buyer Owned Equipment through PPAP yellow (part, process, and color); (ii) Supplier submits a proper invoice; (iii) if requested by Buyer and/or Buyer Affiliate, Supplier confirms transfer of ownership in accordance with these Master Terms by execution and delivery of a Bill of Sale in a form satisfactory to Buyer or otherwise as requested by Buyer and/or Buyer Affiliate (it is understood and agreed that title to the Buyer Owned Equipment will pass to Buyer or Buyer Affiliate at the Buyer Owned Equipment Title Transfer Date as set forth 5.2(a) regardless of the execution of any Bill of Sale and that the execution of a Bill of Sale, if requested by Buyer and/or Buyer Affiliate is only further evidence of such title transfer); (iv) Supplier provides Buyer or Buyer Affiliate with all PPAP yellow filed; and (v) Supplier provides Buyer and/or Buyer Affiliate with a completed Tooling Information Sheet, in the form located on the Supplier Portal, or as otherwise provided, as may be amended from time to time. Final payment will not be made by Buyer until the Buyer Owned Equipment Approval Date. Any payment obligation of Buyer shall be subject to the receipt of a proper invoice from Supplier. Except as modified by this Section 5.2, all Purchase Orders and invoices shall be issued and paid in accordance with Section 9 below. Notwithstanding the foregoing, the terms for payment for Buyer Owned Equipment shall be as set forth in the version of the Master Terms Direct Purchasing which were in effect on the date of issuance of the Purchase Order for the applicable Buyer Owned Equipment.

(d) Upon transfer of title to the Buyer Owned Equipment to Buyer or Buyer Affiliate, unless otherwise expressly stated in the Agreement, Supplier will retain possession of the Buyer Owned Equipment pursuant to Section 5.3 below.

(e) For the avoidance of doubt, it is expressly understood that all Buyer Owned Equipment will be sold to Buyer or Buyer Affiliate pursuant to the terms and conditions of this Section 5.2 upon the applicable Buyer Owned Equipment Title Transfer Date.

### 5.3 License and Bailment of Buyer Owned Equipment.

(a) Supplier shall retain possession after the sale of the Buyer Owned Equipment to Buyer or Buyer Affiliate on a license and bailment basis in accordance with this Section 5.3 and the applicable terms of the Agreement. The applicable Bailment Term and the provisions of this Section 5.3 shall become effective as to any individual item of Buyer Owned Equipment upon the possession by Supplier, regardless of whether Buyer or Buyer Affiliate has paid the purchase price of such Buyer Owned Equipment on or before such date. To the extent owned by Buyer or Buyer Affiliate in accordance with Section 14 herein, the Bailment Term and provisions of this Section 5.3 shall become effective as to the Buyer Intellectual Property immediately.

(b) During the Bailment Term, Supplier agrees to accept possession of all of the Buyer Owned Equipment purchased by Buyer or Buyer Affiliate on a bailment basis.

Supplier shall possess and use the Buyer Owned Equipment strictly in accordance with the terms and conditions set forth herein.

(c) Buyer and/or Buyer Affiliate hereby grants Supplier a limited right and license to use the Buyer Owned Equipment solely for the manufacture of the Product and Service Parts during the Bailment Term and in accordance with the terms hereof.

(d) The Bailment Term shall continue until the expiration of the Agreement, or on any earlier date as the Agreement may be terminated in accordance with its terms and provisions.

(e) *Ownership.*

(i) Nothing in the Agreement or this Section 5.3 shall constitute a transfer or agreement to transfer by Buyer, Buyer Affiliate, or any other entity of any title to any Buyer Owned Equipment or Buyer Intellectual Property. Regardless of the fact that additional work may be performed by Supplier on the Buyer Owned Equipment, after the Buyer Owned Equipment Title Transfer Date, Buyer and/or Buyer Affiliate shall have sole and exclusive ownership of all right, title, and interest in and to the Buyer Owned Equipment, and Supplier shall have no right or property interest therein except as expressly granted hereby. Buyer and/or Buyer Affiliate shall retain a precautionary security interest in the Buyer Owned Equipment and the Buyer Intellectual Property to secure Supplier's obligations during the Bailment Term. The Buyer Owned Equipment shall be kept at the address(es) specified in the Equipment Database or on the applicable Purchase Orders until such time as a written consent to a change of location is obtained from Buyer and/or Buyer Affiliate. If the Buyer Owned Equipment is to be attached to real estate, Supplier shall furnish Buyer and/or Buyer Affiliate with a disclaimer or disclaimers of any interest in the Buyer Owned Equipment signed by all entities having an interest in the real estate. Supplier shall maintain the Buyer Owned Equipment so that, if attached to real estate, the Buyer Owned Equipment may be removed without damage to the real estate. In the event that Buyer Owned Equipment will be kept at locations other than Supplier's plant, each Lower Tier that owns and/or operates such other locations must execute a Lower Tier Acknowledgment and Waiver in accordance with the provisions of Section 37, and Supplier must procure all such fully executed Lower Tier Acknowledgment and Waiver documents prior to transferring any Buyer Owned Equipment to any such outside location.

(ii) During the Bailment Term, the Buyer Owned Equipment shall at all times remain the property of Buyer and/or Buyer Affiliate, and Supplier shall have no right or property interest therein but only the right to use the same under the Agreement. Buyer and/or Buyer Affiliate may display notice of its ownership by affixing to the Buyer Owned Equipment an identifying plate, stencil, or other indicia of ownership. Supplier shall not remove, alter or deface Buyer's or Buyer Affiliates' ownership plates, tags, or identification on or in the Buyer Owned Equipment during the Bailment Term.



(iii) The Buyer Intellectual Property and tangible embodiments thereof shall at all times remain the property of Buyer or Buyer Affiliate and Supplier shall have no right or property interest therein but only the right to use the same under the Agreement.

(f) The Buyer Owned Equipment shall be used only in the lawful business of the Supplier. Supplier, without the written consent of Buyer and/or Buyer Affiliate, shall not remove the Buyer Owned Equipment from such location nor part with possession or control thereof. Buyer and/or Buyer Affiliate shall have the right to inspect without notice the Buyer Owned Equipment at any time and place as designated by Buyer.

(g) At the expiration of the Bailment Term, Supplier shall, in the event that Supplier is not in default and is in compliance with all the terms and conditions of the Agreement, have the right to purchase the Buyer Owned Equipment on an AS-IS-WHERE-IS basis for the fair market value, scrap value, or a mutually agreed price to be paid to Buyer and/or Buyer Affiliate by Supplier on that date. In addition, whether or not Supplier is in default at such time, Buyer shall have the option to require Supplier to purchase the Buyer Owned Equipment at the expiration hereof on an AS-IS-WHERE-IS basis for the sum of \$1.00, to be paid to Buyer by Supplier on that date. Unless all the conditions of the Agreement have been fulfilled by Supplier by such date, and the purchase price for the Buyer Owned Equipment paid, the right to purchase the Buyer Owned Equipment hereby granted shall be waived and forfeited. Notwithstanding anything herein to the contrary, Supplier shall not have the right to purchase the Buyer Intellectual Property upon the expiration of the Bailment Term or the Agreement.

(h) The obligations of Supplier under the Agreement (including, without limitation, this Section 5.3) shall continue in force and effect regardless of the inability of Supplier to use the Buyer Owned Equipment or the Buyer Intellectual Property for any reason whatsoever, including but not limited to, a Force Majeure Event.

(i) Supplier shall maintain the Buyer Owned Equipment, shall pay all license fees, assessments and taxes, including, without limitation, personal property taxes, and VAT for the Buyer Owned Equipment and, unless otherwise instructed by Buyer, shall provide annual written proof of the payment of personal property taxes or any other taxes as requested by Buyer. Unless otherwise instructed by Buyer and/or Buyer Affiliate, Supplier shall fully insure the Buyer Owned Equipment and the insurance policy shall be in form and in an amount equivalent to the current replacement value and reasonably acceptable to Buyer and/or Buyer Affiliate, and shall name Buyer and Buyer Affiliate as an additional insured. In addition, Supplier shall purchase insurance in an amount reasonable under the circumstances to cover the liability of Buyer and Buyer Affiliate for public liability and property damage which in any event shall not be less than \$1,000,000 per occurrence. The insurance policies and proceeds shall be the sole property of Buyer and/or Buyer Affiliate. Supplier shall deliver to Buyer or Buyer Affiliate, not less than five days prior to the scheduled delivery date of the Buyer Owned Equipment, the policies of insurance or duplicates thereof or other evidence satisfactory to Buyer of such insurance coverage. Each insurer shall agree by endorsement upon the policy or policies issued by it, that it shall give Buyer and/or Buyer Affiliate 30 days prior written notice of the

effective date of any alteration or cancellation. If Supplier fails to obtain such insurance, Buyer and/or Buyer Affiliate shall have the right to obtain insurance at Supplier's expense. In the event Supplier fails to preserve and maintain the Buyer Owned Equipment, discharge all taxes, liens, or charges, pay all costs and expenses, or procure and maintain insurance as provided herein, Buyer and/or Buyer Affiliate may take whatever steps are necessary to carry out these requirements. All advances by Buyer or Buyer Affiliate shall be repayable by Supplier to Buyer or Buyer Affiliate on demand, together with interest thereon at the highest legal contract rate until paid.

(j) Upon expiration or termination of the Agreement, Supplier shall, at its sole cost (unless Supplier exercises its option to purchase the Buyer Owned Equipment or Buyer or Buyer Affiliate requires Supplier to purchase the Buyer Owned Equipment) immediately return the Buyer Owned Equipment to Buyer or Buyer Affiliate in the same condition as received, reasonable wear, tear and depreciation resulting from proper use thereof alone excepted. Furthermore, at such time, Supplier shall, at its sole cost, immediately return all tangible embodiments of Buyer Intellectual Property in any medium whatsoever.

(k) Without limiting Buyer's other rights and remedies pursuant to the Agreement, law or otherwise, during the Bailment Term, Buyer and/or Buyer Affiliate may enter any premises where the Buyer Owned Equipment is located for the purpose of inspection and may remove the Buyer Owned Equipment forthwith, without notice to Supplier, if, in Buyer's or Buyer Affiliate's sole opinion, the Buyer Owned Equipment is being improperly used or maintained.

(l) Supplier has selected and/or approved both the Buyer Owned Equipment of the type and quality described and the supplier from whom the Buyer Owned Equipment has been purchased. It is understood and agreed that Supplier, in its underlying agreement or agreements with any supplier of the Buyer Owned Equipment, shall require that all warranties by such suppliers at all times run in favor of Buyer and/or Buyer Affiliate and Supplier, irrespective of whether Buyer, Buyer Affiliate or Supplier was the original purchaser of the Buyer Owned Equipment from such supplier, or the actual owner thereof, from time to time. Supplier shall also be responsible throughout the term hereof for the enforcement of, and maintaining the right of enforcement of, all warranties, agreements or representations, if any, which may be made by the supplier to Supplier or Buyer or Buyer Affiliate; however, Buyer and Buyer Affiliate MAKE NO WARRANTY, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO THE BUYER OWNED EQUIPMENT OR ANY PART THEREOF, AS TO ITS DESIGN, QUALITY, CAPACITY, DURABILITY, CONDITION, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE, EXCEPT THAT BUYER WARRANTS THAT IT SHALL HAVE TITLE TO EACH ITEM OF BUYER OWNED EQUIPMENT AT THE TIME OF DELIVERY THEREOF. ANY DELAY IN DELIVERY SHALL NOT AFFECT THIS SECTION 5.3 OR OTHERWISE AFFECT THE AGREEMENT IN ANY WAY. NO DEFECT IN OR UNFITNESS OF THE BUYER OWNED EQUIPMENT SHALL RELIEVE SUPPLIER OF ANY OBLIGATION UNDER THIS SECTION 5.3 OR OTHERWISE UNDER THE AGREEMENT. BUYER AND BUYER AFFILIATE SHALL IN NO WAY BE RESPONSIBLE OR LIABLE FOR DAMAGES (WHETHER CONSEQUENTIAL, INDIRECT, SPECIAL OR OTHERWISE), ARISING OUT OF THE DELIVERY, USE,

PERFORMANCE OR CONDITION OF THE BUYER OWNED EQUIPMENT. Supplier understands and agrees that neither the supplier nor any salesman or other agent of the supplier is an agent of Buyer or Buyer Affiliate. No salesman or agent of the supplier is authorized to waive or alter any term or condition of the Agreement or this Section 5.3, and no representation as to the Buyer Owned Equipment or any other matter by the supplier shall in any way affect Supplier's duty to perform its obligations as set forth in the Agreement and this Section 5.3. Supplier acknowledges that Buyer and Buyer Affiliate have made no representation or warranty of any kind, nature or description, express or implied, with respect to the Buyer Owned Equipment.

(m) *Risk of Loss.*

(i) During the Bailment Term, Supplier assumes the entire risk of loss, theft, or damage to the Buyer Owned Equipment, whether or not covered by insurance, and no such loss, theft, or damage shall relieve Supplier of its obligations hereunder except as otherwise specifically set forth in the Agreement. This Section 5.3(m) is in addition to and is not intended to limit any other obligations of Supplier set forth in the Agreement with respect to risk of loss, theft or damage to the Buyer Owned Equipment.

(ii) In the event of loss, theft or damage to the Buyer Owned Equipment in whole or in part, Supplier shall promptly so notify Buyer and/or Buyer Affiliate and, at Buyer's or Buyer Affiliate's option, shall: (a) restore the Buyer Owned Equipment to good condition and working order; or (b) replace the Buyer Owned Equipment with like Buyer Owned Equipment in good condition and working order and furnish Buyer or Buyer Affiliate with necessary documents to vest good and marketable title thereto in Buyer or Buyer Affiliate; or (c) if Buyer or Buyer Affiliate determines that any item of Buyer Owned Equipment is beyond repair, pay to Buyer or Buyer Affiliate, within ten (10) days of such notification, the loss value thereof, which shall be an amount equal to the value of the item of Buyer Owned Equipment on the date of loss, and upon such payment this Section 5.3 shall terminate with respect to the item of Buyer Owned Equipment so paid for and Supplier shall thereupon become the owner thereof.

(iii) The obligations of Supplier pursuant to Section 5.3(m)(ii) shall be offset to the extent that any insurance proceeds are received by Buyer or Buyer Affiliate with respect to the subject Buyer Owned Equipment.

(n) Neither Buyer nor Buyer Affiliate, nor any successor or assigns, shall have any obligation to install, erect, test, adjust or service the Buyer Owned Equipment. Supplier, at its own cost and expense, shall: (a) pay all charges in connection with the delivery, installation and operation of the Buyer Owned Equipment; (b) comply with all laws, ordinances, regulations, requirements, and rules with respect to the installation, use, maintenance, and operation of the Buyer Owned Equipment; (c) take good and proper care of the Buyer Owned Equipment and make all repairs and replacements necessary to maintain, preserve, and keep the Buyer Owned Equipment in good condition and working order. Supplier shall not make any alterations, additions, or improvements to the Buyer Owned Equipment without the prior written consent of Buyer or Buyer Affiliate. All repairs, replacements, parts, devices, accessories, and improvements of whatsoever kind

or nature furnished or affixed to the Buyer Owned Equipment shall belong to and become part of the property of Buyer and/or Buyer Affiliate.

(o) *Precautionary Security Interest.*

(i) Upon the commencement of the Bailment Term, Supplier hereby creates and grants to Buyer or Buyer Affiliate, as applicable, a purchase money security interest in the Buyer Owned Equipment, together with all replacements thereof and all attachments and accessories new or hereafter installed therein or affixed thereto, in order to secure Supplier's obligations as provided herein and all additional indebtedness, costs, obligations and expenses of Supplier provided in the Agreement. In addition to all remedies provided herein to Buyer and Buyer Affiliate, upon Supplier's default, Buyer and/or Buyer Affiliate may exercise its rights of enforcement and shall have all remedies under the Uniform Commercial Code applicable in such jurisdiction as may be required by law with respect to the Buyer Owned Equipment bailed under this Section 5.3. It is understood that the above security interest has been granted in an excess of caution in the event that the Bailment Agreement should be construed by a court of competent jurisdiction as an installment sale. Accordingly, provisions of this Section 5.3(o) shall not lessen nor restrict, but shall be in addition to, all other obligations of Buyer under the Agreement.

(ii) Supplier shall take every possible step to ensure that the interests of Buyer and/or Buyer Affiliate in the Buyer Owned Equipment are fully secured, respected, and are enforceable by Buyer and/or Buyer Affiliate at any time. This obligation includes, but is not limited to, cooperating in the filing of appropriate Uniform Commercial Code financing statements, including protective filings, and/or such other documents, if any, as may be necessary or desirable in order to perfect valid and enforceable rights for Buyer and/or Buyer Affiliate in the Buyer Owned Equipment all of which Buyer and/or Buyer Affiliate are hereby authorized to file. Buyer and/or Buyer Affiliate shall also have title to replacements, which shall automatically become part of the Buyer Owned Equipment. In furtherance thereof, Supplier shall notify Buyer and/or Buyer Affiliate immediately in writing of Supplier's receipt of each item of Buyer Owned Equipment in order to allow Buyer and/or Buyer Affiliate to timely file the respective financing statement.

(iii) Buyer and/or Buyer Affiliate, as secured party under the Uniform Commercial Code, may file financing statements without the signature of Supplier as debtor. THIS SECTION 5.3 IS A BAILMENT AGREEMENT; ANY FILING IS SOLELY PRECAUTIONARY.

(iv) Supplier shall execute and deliver to Buyer and/or Buyer Affiliate, upon Buyer's and/or Buyer Affiliate's request, such instruments and assurances as Buyer and/or Buyer Affiliate deems necessary for the confirmation or perfection of this Section 5.3 and Buyer's and/or Buyer Affiliate's rights hereunder.

(p) Supplier shall indemnify Buyer and Buyer Affiliate against and hold Buyer and Buyer Affiliate harmless from any and all claims, actions, damages, costs, including

reasonable attorney's fees, obligations, liabilities, and liens (including any of the foregoing arising or accrued without Buyer's or Buyer Affiliate's fault or negligence, or under the doctrine of "strict liability") arising out of the manufacture, purchase, bailment, use, possession, selection, storage, delivery or return, operation, maintenance, renting, control or other disposition of the Buyer Owned Equipment, or in any way connected therewith (including this Section 5.3). Upon institution of any action against Buyer and/or Buyer Affiliate for any claim, action, damages, obligations, liability, or lien, Supplier shall assume full responsibility for the defense thereof. The provisions of this Section 5.3(p) shall survive termination of the Agreement.

(q) Supplier represents that the Buyer Owned Equipment is being bailed for business purposes, and agrees that under no circumstances shall any portion of the Bailment Agreement be deemed or construed as a consumer contract.

(r) The Bailment Agreement shall be subject to all other terms of the Agreement, including, without limitation, applicable default, remedy and confidentiality provisions contained herein.

(s) Without the consent of Buyer or Buyer Affiliate, which may be withheld by Buyer or Buyer Affiliate in its sole discretion, Supplier may not pledge, mortgage, hypothecate, sell, encumber, sublet or lend the Buyer Owned Equipment or permit it to be used by anyone other than Supplier or its employees.

(t) Notwithstanding the provisions of Section 33 below, Buyer and/or Buyer Affiliate may assign its rights under this Section 5.3 in the Buyer Owned Equipment and the Buyer Intellectual Property without notice to or consent of Supplier. On any such assignment, the assignee shall succeed to all of Buyer's and/or Buyer Affiliate's rights in respect thereto. The assignee's rights shall be free from all claims, defenses, setoffs or counterclaims that Supplier may be entitled to assert against Buyer and/or Buyer Affiliate. Such assignment shall relieve Buyer and/or Buyer Affiliate of its obligations to Supplier hereunder and shall be construed as being an assumption of such obligations to Supplier hereunder and shall be construed as being an assumption of such obligations by the assignee. In addition, Buyer and/or Buyer Affiliate may mortgage or otherwise encumber the Buyer Owned Equipment and Buyer Intellectual Property, or both, in whole or in part, without notice to or consent of Supplier. The rights of Supplier under the Bailment Agreement shall be subordinated to any security agreement or mortgage now existing or hereafter executed concerning any of the Buyer Owned Equipment or Buyer Intellectual Property. Supplier agrees to execute and deliver to Buyer and/or Buyer Affiliate promptly upon request an appropriate estoppel certificate to any secured party or mortgagee of any of the Buyer Owned Equipment or Buyer Intellectual Property. If Supplier is given notice of such assignment, it shall acknowledge receipt thereof in writing. Each such assignee, secured party, and/or mortgagee for security shall have all of the rights, but not all of the obligations, of Buyer and/or Buyer Affiliate under this Section 5.3. Supplier shall not assert against Buyer's and/or Buyer Affiliate's assignee, secured party, and/or mortgagee, or against any of their respective successors in interest,

any defense, counterclaim, or offset that Supplier may have against Buyer and/or Buyer Affiliate.

5.4 Buyer and/or Buyer Affiliate are not responsible for any repairs, service, or defects in the Buyer Owned Equipment or the operation thereof. Supplier agrees that all such risks are to be borne by Supplier at its sole risk and expense, since Supplier itself has made its own selection of the Buyer Owned Equipment based upon its own judgment. Supplier irrevocably and unconditionally releases any and all claims whatsoever against Buyer and Buyer Affiliate for any defect or deficiency in the Buyer Owned Equipment.

5.5 All patterns, tools, dies or other material furnished by Buyer and/or Buyer Affiliate to Supplier, or which are specifically paid for by Buyer and/or Buyer Affiliate, and any replacements thereof or anything affixed or attached thereto, whether or not such items constitute Buyer Owned Equipment or Buyer Intellectual Property (or tangible embodiments thereof) (a) shall be and remain the personal property of Buyer and/or Buyer Affiliate; (b) shall be plainly marked or otherwise adequately identified by Supplier as property of Buyer and/or Buyer Affiliate, if reasonably possible; and (c) shall be safely stored separate and apart from Supplier's property. Supplier shall not substitute any property for such property, and shall not use such property except for filling the Purchase Orders issued by Buyer. While in the custody or control of Supplier, such property shall be held at Supplier's risk. Supplier shall keep such tooling or property in its possession and/or control in good condition, fully covered by insurance, free of liens or encumbrances, and shall replace such tooling or property when lost, damaged, or destroyed. All Buyer and/or Buyer Affiliate tooling or property shall be transferred as Buyer and/or Buyer Affiliate may direct at any time, in which event Supplier shall immediately prepare such property for shipment and shall deliver such property to Buyer and/or Buyer Affiliate or its assignee in the same condition as originally received, reasonable wear and tear excepted.

5.6 Supplier shall, at the appropriate time, make a competitive offer for purchase by Buyer and/or Buyer Affiliate of special tools for the repair of the Product and/or Service Parts.

5.7 Without limitation to any other provision herein, Supplier is solely responsible for all maintenance and upkeep necessary to keep the Buyer Owned Equipment, Amortized Supplier Equipment and Supplier Buyer Equipment in good working order and condition to fulfill Supplier's obligations under the Agreement. In addition, in the event that any Buyer Owned Equipment, Amortized Supplier Equipment or Supplier Buyer Equipment should wear out, fail and/or need replacing during the term of the Agreement, Supplier shall be solely responsible for manufacturing or replacing such Buyer Owned Equipment, Amortized Supplier Equipment or Supplier Buyer Equipment, as the case may be, in order for Supplier to fulfill its obligations under the Agreement, but in any event in accordance with the terms of the Agreement.

## 5.8 Amortized Supplier Equipment.

(a) Upon full amortization of the Amortized Supplier Equipment in the series production price, Buyer shall have the option, in its sole discretion, to purchase the fully amortized Amortized Supplier Equipment for the purchase price of \$1.00. In the event Buyer elects to purchase such Amortized Supplier Equipment, it shall be subject to the bailment and license terms of Section 5.3 herein.

(b) Upon termination or earlier expiration of the Agreement, with respect to fixtures and gauges, Buyer shall have the option to purchase from Supplier any or all of the fixtures and gauges for an amount equal to the lesser of (1) the amount owing at the time of termination based upon the piece price for such fixtures and gauges, amortized over the useful life of the Vehicle, or (2) the fair market value of the fixtures and gauges.

## SECTION 6: Trade, Labeling Requirements and Customs

6.1 Country of Origin Marking. All Products and Service Parts supplied by Supplier to Buyer and/or Buyer Affiliate shall comply with any country of origin marking requirements, including, without limitation, any requirements described on the Supplier Portal, and those in effect in the United States, Canada, and Mexico, as set forth in the NAFTA and in applicable regulations of the customs administrations in all jurisdictions. Such compliance is to include required marking of all containers in which Products and Service Parts are supplied to Buyer and/or Buyer Affiliate. Upon the request of Buyer and/or Buyer Affiliate, Supplier shall provide Buyer and/or Buyer Affiliate with such country of origin certification as shall be requested by Buyer and/or Buyer Affiliate.

6.2 Drawback. Buyer and/or Buyer Affiliate shall own all rights to drawback of customs duties paid or payable on products supplied by Supplier to Buyer or Buyer Affiliate and all rights to drawback of customs duties paid or payable on materials and components used in manufacturing such products. These rights of Buyer and/or Buyer Affiliate shall include rights to all types of drawback, including substitution drawback. Supplier shall provide Buyer and/or Buyer Affiliate all information and documentation necessary for Buyer and/or Buyer Affiliate to claim and obtain drawback, including, but not limited to, entry information, waivers of Supplier's or sub-suppliers' drawback rights, certificates of manufacture, and certificates of delivery. Supplier shall take all necessary steps within its control to allow Buyer and/or Buyer Affiliate or its designated agent to obtain such drawback and reasonably assist Buyer and/or Buyer Affiliate or its designated agent in these efforts.

6.3 Products Supplied to Buyer from Outside the United States. Unless otherwise agreed to in writing, Supplier shall serve as importer of record and be responsible for the filing with U.S. Customs and Border Protection of all entry documentation and the payment of all customs duties, fees, and charges, including, but not limited to, antidumping duties, countervailing duties, temporary duties, special duties, marking duties, penalties, liquidated damages, and storage charges. Supplier shall assume all responsibilities and liabilities arising under U.S. Customs laws and regulations for import shipments.

6.4 Intentionally Omitted.

6.5 Customs Duties and Brokers' Fees. The responsibility for customs duty and customs brokers' fees shall be determined in accordance with the transportation code stated in any Purchase Order. Supplier shall be responsible for any duties and/or special duties, including, but not limited to, marking, anti-dumping, and countervailing duties, to the extent permitted under the law of the country of importation. Supplier shall provide Buyer and/or Buyer Affiliate, or its designee, or the appropriate governmental authority all documentation and information required by law or regulation or otherwise necessary to determine the proper minimum duty to be paid upon the importation of the goods into any country or to obtain any refunds or drawbacks of duties paid. Any duty costs passed to Buyer from Supplier shall reflect only actual duty costs of Supplier.

6.6 Import or Export Licenses. Supplier shall advise Buyer and/or Buyer Affiliate if the importation or exportation of the Product requires an import or export license. Supplier shall assist Buyer and/or Buyer Affiliate in obtaining any such license unless Supplier is providing the Product DDP, in which case the Supplier shall obtain the license for the importation of the Product.

6.7 Documentation. Supplier shall provide to Buyer and/or Buyer Affiliate and the appropriate governmental agency the documentation necessary to determine the admissibility and the effect of entry of the Product into the country in which the Product is delivered to Buyer and/or Buyer Affiliate. Supplier warrants that the information regarding the import or export of the Product supplied to Buyer and/or Buyer Affiliate is and shall be true and correct in every respect and that all sales covered by any Purchase Order shall be made at not less than fair value under the anti-dumping laws of any countries to which the Product is exported.

6.8 Packaging. Supplier shall ensure that all Products supplied by Supplier to Buyer and/or Buyer Affiliate, and all containers and other shipping and packaging materials used with such Products, comply with all applicable laws and regulations, including, but not limited to, laws and regulations addressing the transportation and labeling of hazardous materials, and any requirements of Buyer and/or Buyer Affiliate that are provided on the Supplier Portal.

6.9 TSCA Certification. Consistent with Section 35.2 of the Agreement, Supplier shall ensure that all Products supplied by Supplier to Buyer and/or Buyer Affiliate comply with all applicable requirements of the Toxic Substances Control Act ("TSCA") and regulations thereunder. Any chemical parts must be accompanied by a TSCA certification. The invoice of all Products supplied by Supplier to Buyer and/or Buyer Affiliate and consisting of a chemical substance, whether imported in bulk or as part of a mixture, shall contain the appropriate certification concerning TSCA compliance that is set forth in section 12.121 of the regulations of the U.S. Customs and Border Protection (19 C.F.R. § 12.121). Where a Supplier supplies to Buyer and/or Buyer Affiliate a Product consisting of or containing a chemical substance or mixture as part of an article supplied to Buyer and/or Buyer Affiliate, Supplier shall ensure that such Product complies with any applicable requirements of the TSCA. The invoice of such Product supplied by Supplier shall contain the appropriate certification concerning TSCA compliance that is set forth in section 12.121 of the regulations of the U.S. Customs and Border Protection (19 C.F.R. § 12.121) if reporting of the importation of such Product is required by a rule or order issued under the authority of the TSCA.



6.10 American Automobile Labeling Act. Supplier shall furnish to Buyer and/or Buyer Affiliate all information and data necessary or requested by Buyer or Buyer Affiliate to enable Buyer and/or Buyer Affiliate to comply with its obligations under the American Automobile Labeling Act, or any obligations it may have under the laws of the jurisdiction to which the Product will be shipped or the jurisdiction where Buyer Affiliate is located.

6.11 United States Customs-Trade Partnership Against Terrorism (C-TPAT).

(a) Buyer participates in the U.S. Department of Homeland Security (DHS) Customs and Border Protection (CBP) Customs-Trade Partnership Against Terrorism (C-TPAT) program. C-TPAT is a government-business initiative to build cooperative relationships that strengthen and improve overall international supply chain and U.S. border security.

(b) For any situation where Buyer and/or Buyer Affiliate is the importer of record, Supplier must participate in and ensure shipments made in connection with this Agreement are conveyed through transportation providers that are certified under the U.S. CBP C-TPAT program.

(c) Upon request, Supplier shall provide to Buyer and/or Buyer Affiliate reasonable evidence of compliance with this clause.

(d) Supplier shall include paragraphs (b) and (c) of this clause, or equivalent provisions, in any subcontracts involving shipments related to this Agreement.

## SECTION 7: **Supplier's Selling Prices**

7.1 The price(s) for the Product and/or Service Parts supplied to Buyer and/or Buyer Affiliate shall be based upon the agreed price(s) in the respective Purchase Orders issued under the Agreement, subject only to those adjustments set forth in Section 8 below, and shall each be broken down to at least the level of detail shown in the Cost Breakdowns. Without limiting any other provision of the Agreement, the price includes preparation of the Product and/or Service Parts to be fit for transportation, packaging and racks with appropriate shipping dunnage, unless otherwise specifically excluded.

7.2 Notwithstanding any other term of the Agreement, the Contract Documents or any Purchase Order issued pursuant to the Agreement, title to and risk of loss of the Product and/or Service Parts shall transfer from Supplier to Buyer as described in the Title/Risk of Loss Guidelines located on the Supplier Portal, regardless of any conflicting delivery or price term, and regardless of which Party pays the cost of transportation to the destination specified by Buyer or Buyer Affiliate.

## SECTION 8: **Price Adjustments**

8.1 Pricing Firm. Except as specifically provided in this Section 8, the prices as agreed upon between Buyer and Supplier and set forth in the initial Purchase Order for Products and/or Service Parts, as provided in Section 7.1, shall be firm for the Term of this Agreement. There shall be no change to the price for any Products and/or Service Parts absent written agreement

between the Parties and the issuance of a Purchase Order by Buyer reflecting a new price, subject to the then current Master Terms Direct Purchasing. There is no requirement or obligation for any annual price adjustment, and the price set forth in the most recent Purchase Order shall control until such time as any new pricing is agreed upon and reflected in a newly issued Purchase Order. There will be no price adjustment resulting from Supplier's inability to accurately anticipate costs or Supplier's inability to generate a profit from the sale of the Products and Service Parts to Buyer.

8.2 Interruption of Supply. If there is any dispute or disagreement regarding pricing, Supplier shall continue to perform its obligations under this Agreement in accordance with the most recent price agreed upon and set forth in a Purchase Order.

8.3 Costs Savings. With respect to pricing and price adjustments, Supplier shall, at all times, comply with the cost provisions specified by the Buyer, as may be amended from time to time, and the price of the Product shall be that which is set forth in the applicable Purchase Order(s).

8.4 Payment of Certain Costs. Supplier shall comply with the Payment for Null Series and Production Trial Parts requirements located on the Supplier Portal, as may be amended from time to time.

8.5 Adjustments for Annual Improvements. The prices for the Product and Service Parts shall be reduced annually in accordance with the future productivity commercial piece price reductions submitted with Supplier's quote in accordance with the provisions of the Source Package. This annual productivity reduction will be taken off the Purchase Order price for the life of the Product.

8.6 Adjustments for Design Changes.

(a) If Buyer or Buyer Affiliate initiates a change in design of the Product or Service Parts (including specifications for materials therefor), which results in increased or decreased costs to the Supplier, the pertinent prices shall be adjusted to reflect the increases and/or decreases in the Supplier's cost structure outlined in the pertinent Cost Breakdowns. Supplier shall work closely with Buyer and/or Buyer Affiliate to ensure that incremental tooling charges, if any, are kept to a minimum. Failure to agree upon a price change will not relieve Supplier of its continuing obligations under this Agreement.

(b) If the Supplier initiates a change in the design of the Product or Service Parts and Buyer or Buyer Affiliate approves such design change which results in increased costs, the pertinent price shall be adjusted to reflect the increase and/or decrease in the Supplier's cost structure as set forth in the pertinent Cost Breakdowns provided that the net result is an increase in the overall cost, the price will be adjusted only if and to the extent such increase was included in Supplier's proposal for modification. If the result of such change is a net decrease in cost, the price for the pertinent Product or Service Parts shall reflect such reduced cost level. Failure to agree upon a price change will not relieve Supplier of its continuing obligations under this Agreement.

(c) Notwithstanding the aforementioned price adjustments for design changes, the prices for the Product and Service Parts shall not be adjusted if the design change was necessary for the Supplier to meet the then current specifications and any mutually agreed validation requirements.

#### 8.7 Adjustments for Cost Savings.

(a) Either party may make proposals for the improvement of any manufacturing process, design, and any other process. If such proposal is to be implemented, the Supplier shall do so as soon as possible. Beginning with the effective date of the implementation, the pertinent prices shall be decreased by an amount equal to the agreed upon percentage of the achieved cost savings.

(b) Supplier undertakes to strive to achieve lower cost levels, and Supplier will pass on to Buyer the cost savings which have been achieved in accordance with such optimization of the calculation items. To the extent legally permissible, Supplier will also be prepared to participate in cooperative buying activities with other companies purchasing material from the same suppliers to benefit from the most competitive material purchase prices.

(c) Cost savings will become effective as they are achieved and will be fully reflected in reduced prices immediately. The Parties will together review on a regular basis the status of cost improvements.

8.8 Pricing: Service Parts. Service Parts shall be sold by Supplier to Buyer at the then applicable selling prices according to the breakdown described in the Cost Breakdowns, including preparation for transportation, packaging, and appropriate transport equipment. Buyer may, at its option, request Supplier to supply general distributors of the Vehicle directly with Service Parts at the same prices available to Buyer, plus documented additional logistic cost, and Supplier shall comply with such request, accepting corresponding purchase orders from the relevant general distributors. Service Parts prices include Service Parts documentation in English and German consisting of two sets each which shall be amended from time to time as required by and submitted to Buyer.

Three (3) Year Policy At the completion of series production, the price for the spare parts shall be calculated from the most recent applicable series production price plus the costs actually incurred by the Supplier for special packaging. This price shall be fixed for a period of three (3) years from the end of series production. The parties agree to renegotiate the new prices for the provision of spare parts no later than three (3) months prior to the end of the three (3) year period. Until a new price has been mutually agreed, the most recently agreed price shall apply. The parties agree to negotiate in good faith on the agreement of a new price following this three (3) year period.

#### 8.9 Pricing: Most Favorable Costs; Self-Invoicing; and Taxes

(a) Notwithstanding the agreements on price in the Purchase Orders issued under the Agreement and in the Cost Breakdowns, in the event the Products or Service Parts, if

permitted by the Agreement, are not exclusively delivered to Buyer and/or Buyer Affiliate, then the actual price to be paid by Buyer shall in no event be higher than prices paid by any other customer of Supplier for the Products or Service Parts.

(b) Settlement of payments by Buyer shall be in accordance with Buyer practices, as adopted from time to time, which may include self-invoicing according to final Vehicle clearance at the end of the Buyer or Buyer Affiliate assembly line.

(c) Taxes paid by Buyer with respect to Buyer Owned Equipment shall constitute a downward adjustment to the price to be paid to Supplier by Buyer.

#### 8.10 Obsolescence.

(a) Supplier is not entitled to and shall not claim obsolescence if obsolescence is included in Supplier's piece price for Product or Service Parts.

(b) Subject to subsection (a) above, if, after Buyer has issued a Purchase Order for any Product or Service Part, such Product, Service Part, or component thereof, subject to the Purchase Order becomes obsolete, whether by reason of a design change, raw material change, or otherwise and Buyer agrees that such Product, Service Part, or component thereof is no longer acceptable in connection with the Purchase Order, Supplier shall have a period of 30 days after the earlier of (i) the expiration of a consecutive 9 month period in which Supplier has not received a release from Buyer for Product or Service Parts, or (ii) receipt of written notice from Buyer of a change to Product or Service Parts effectively obsoleting a prior design to such Product or Service Parts, to submit to Buyer an obsolescence claim for the cost of materials on hand and documented third party expenses incurred by Supplier in connection with such obsolete Product, Service Part or component. After such 30 day period, Supplier waives all rights it may have for an obsolescence claim. Any obsolescence claim shall take into account the actual cost of the obsolete Products, Service Parts or components. Buyer is not responsible for any Products, Service Part, component, raw materials or other expenses incurred by Supplier which are not part of an issued Purchase Order from Buyer.

(c) Subject to subsection (a) above, Buyer will only consider reimbursement of an obsolescence claim for on-hand inventory in line with Buyer's firm releases for Product or Service Parts at the time the Supplier knew or should have known that the Product and/or Service Parts were obsolete, subject to the requirements of 8.10(b). It is Supplier's responsibility to minimize any obsolescence. Prior to making a claim of obsolescence, Supplier must check with other DAG locations using the same Product or Service Parts, and Supplier must repurpose (including for any other Supplier customers) any raw materials, components, sub-components or any other material. Supplier shall be responsible for any obsolescence as a result of Suppliers' failure to minimize obsolescence. In no event will Buyer be responsible for any of Supplier's Lower Tier supplier obsolescence, whether a directed Lower Tier supplier or otherwise.

(d) Any additional costs, whether related to Supplier's Products or other suppliers' products, which are caused by Supplier's delay in executing required Product engineering

changes, shall be borne by the Supplier. Buyer may, at its discretion, pay for the additional costs contemplated herein and charge back such costs to the Supplier.

(e) Supplier shall comply with the obsolescence process as found on the Supplier Portal, and as may be amended from time to time.

## SECTION 9: **Purchase Orders and Invoicing**

9.1 The purchase of Product or Service Parts shall be made pursuant to the Agreement through the issuance by Buyer to Supplier of Purchase Orders, in forms adopted by Buyer from time to time for such purpose. Acceptance of each Purchase Order is expressly limited to the terms of the Agreement and the Contract Documents. Additionally, Supplier shall acquire the Buyer Owned Equipment pursuant to the Agreement through the issuance by Buyer to Supplier of Purchase Orders. Except as otherwise specifically provided herein, the Contract Documents may not be modified, superseded, or altered except by written agreement or by electronic data agreement signed or issued by an authorized representative of Buyer, notwithstanding any terms which may now or in the future appear on any quotations, sales orders, acknowledgments, invoices, or other forms issued by Supplier, whether printed, by electronic communication, or by electronic data interchange all of which are hereby rejected and shall not be part of the Contract Documents. THE CONTRACT DOCUMENTS SHALL CONTROL IN THE EVENT OF ANY CONFLICT WITH THE TERMS OF ANY QUOTATION, SALES ORDER, ACKNOWLEDGMENT, INVOICE, OR OTHER FORM ISSUED BY SUPPLIER, WHETHER PRINTED OR BY ELECTRONIC DATA INTERCHANGE, AND REGARDLESS OF THE MEANS BY WHICH SUPPLIER EFFECTS ACCEPTANCE OF THE PURCHASE ORDER. This provision shall be deemed to be incorporated into each Purchase Order issued under the Agreement.

9.2 Supplier is obligated to accept each Purchase Order issued in accordance with the Contract Documents. Each Purchase Order shall be deemed to have been accepted by Supplier upon the first to occur of (a) written, electronic, or electronic data acceptance thereof by Supplier, (b) Supplier's submission of a bid or quote in response to the Source Package; or (c) Supplier's first shipment or other commencement of performance under the Purchase Order by Supplier.

9.3 Supplier shall notify Buyer in writing upon receipt of any Purchase Order if Product or Service Parts sold hereunder are subject to laws or regulations relating to hazardous or toxic substances; or when disposed of, to regulations governing hazardous waste, or to any other environmental or safety and health regulations. Supplier shall furnish all appropriate shipping certification and instructions for shipping, safety, handling, exposure, and disposal (including, without limitation, material safety data sheets) in a form sufficiently clear for use by Buyer's non-technical personnel and sufficiently specific to identify all action which the user must take concerning the material.

9.4 Buyer shall have the right at any time to change any Purchase Order (whether by adjustment order or otherwise) as to specifications, delivery, packaging, or means of shipment. If any such change is expected to result in either additional or reduced cost to Supplier, Supplier shall immediately inform Buyer of such fact and Supplier and Buyer shall agree upon an

adjustment in the price or other terms of the Purchase Order to reflect the change. Any obsolescence charge must be made by Supplier within 30 days as set forth in Section 8 above.

9.5 When deliveries are specified to be in accordance with written releases issued by Buyer, Supplier shall not fabricate or assemble any Product, nor procure required materials, nor ship any supplies, except to the extent authorized by such written releases or provisions of a Purchase Order specifying minimum fabrication or delivery quantities.

9.6 Separate invoices shall be issued by Supplier for deliveries of the Product and/or Service Parts within thirty (30) days of delivery to the Buyer or Buyer Affiliate dock at destination, unloaded or as otherwise directed by Buyer or Buyer Affiliate. Invoices shall be issued by Supplier for Buyer Owned Equipment in accordance with Section 5.2(c) hereof. Delay in receiving invoices, as well as errors and omissions on invoices, shall be considered just cause for withholding payment without losing cash discount privileges. Subject to Section 5.2(c) above, payment terms are as specified by Buyer in the Purchase Order. Each invoice shall specify the Purchase Order to which it relates. The medium of payment shall be expressed in United States currency.

## SECTION 10: Liens

10.1 Waiver and Release of Liens. To the full extent permitted by applicable law, Supplier hereby waives and releases any and all rights of mechanic's lien, materialmen's lien, laborer's lien and similar rights for payment for Product, Service Parts, Buyer Owned Equipment or other Services, labor, equipment, or materials furnished by Supplier in performance of the Agreement and granted by law to persons supplying materials, equipment, services and other things of value to improve or modify land or structures thereon, which Supplier may have against Buyer's and/or Buyer Affiliate's premises or property belonging to Buyer and/or Buyer Affiliate or their agents. Supplier shall indemnify and save harmless Buyer, Buyer Affiliate, their employees, agents and assigns from and against all laborers', mechanics' or materialmen's liens, or any other lien, claim (including, without limitation, attorneys' fees), charge, or encumbrance, of whatever kind upon the Product, Service Parts, Buyer Owned Equipment, Buyer's plant, Buyer Affiliate's plant, any property of Buyer and/or Buyer Affiliate and/or any monies retained by Buyer or due or to become due from Buyer to Supplier, arising out of the Services performed by Supplier or by its Lower Tier suppliers or their vendors or Lower Tier suppliers and/or out of the Product, Service Parts, Buyer Owned Equipment, or other materials, Services or equipment furnished by Supplier or by its Lower Tier suppliers or any of their respective employees, agents, or Lower Tier suppliers under or in connection with the Agreement or in connection with the Product and/or Service Parts.

10.2 Supplier to Keep all Property Free and Clear of Liens. Without limitation and in addition to any other provision in the Agreement, Supplier shall at all times promptly pay for all Services, materials, equipment and labor used or furnished by Supplier in the performance of its obligations under the Agreement and shall at its expense keep all property belonging to Buyer and/or Buyer Affiliate, including, without limitation, the Buyer Owned Equipment, free and clear of any and all of the above-mentioned liens and rights of lien arising out of Product or Service Parts or other Services, labor, equipment or materials furnished by Supplier or its employees,

materialmen or Lower Tier suppliers in the performance of the Agreement. If Supplier fails to release and discharge any such claim of lien against the property of Buyer and/or Buyer Affiliate arising out of performance of the Agreement within five (5) working days after receipt of written notice from Buyer and/or Buyer Affiliate to remove such claim of lien, Buyer and/or Buyer Affiliate may, at its option, discharge or release the claim of lien or otherwise deal with the lien claimant, and Supplier shall pay Buyer and/or Buyer Affiliate any and all costs and expenses of Buyer and/or Buyer Affiliate in so doing, including reasonable attorneys' fees incurred by Buyer and/or Buyer Affiliate.

## SECTION 11: Logistics Directives & Other Supplier Obligations

11.1 Time and quantity are of the essence in all of the Contract Documents, including, without limitation, each Purchase Order.

11.2 Delivery Terms.

(a) Supplier shall deliver the Product and/or Service Parts delivery duty paid (DDP as defined in Incoterms 2010) to Buyer or Buyer Affiliate dock at destination or designated dock at destination.

(b) For clarity, the term DDP as used in subsection (a) above shall also apply to all US domestic shipments; therefore, Supplier shall (i) deliver the goods when the goods are placed at the disposal of Buyer and/or Buyer Affiliate, ready for unloading at the named place of destination and (ii) bear all costs and risks involved in bringing the Product and/or Service Parts to the place of destination.

(c) Notwithstanding anything herein to the contrary, title and risk of loss shall pass in accordance with Section 7.2.

11.3 Logistics Directives. Supplier shall comply with all Buyer and/or Buyer Affiliate requirements, as applicable, as to the shipping, transportation, packing, and marking of the Product. Supplier shall comply with the Logistics Directives, which are located on the Supplier Portal and as may be amended from time to time.

11.4 IT Requirements. Supplier shall comply with all Buyer and/or Buyer Affiliate requirements, as applicable, as to electronic data exchange. Supplier shall comply with the IT Requirements, which are located on the Supplier Portal and as may be amended from time to time.

11.5 Information Security Requirements. Supplier shall comply with all Buyer and/or Buyer Affiliate requirements, as applicable, as to the security of Buyer and/or Buyer Affiliate's data and information. Supplier shall comply with the Information Security Requirements, which are located on the Supplier Portal and as may be amended from time to time.

11.6 eDocs Terms of Use. If required by Buyer and/or Buyer Affiliate, Supplier shall comply with the eDocs Terms of Use Requirements, as may be amended from time to time.

11.7 Production Supplier Data Standards. Supplier shall comply with the Production Supplier Data Standards located on the Supplier Portal, and as may be amended from time to time.

11.8 Location of Suppliers. Suppliers shall be located within proximity of Buyer's or Buyer Affiliate's assembly plant such that Supplier can meet all delivery requirements of Buyer; Buyer or Buyer Affiliate approval of any production/sequencing location is required. Supplier represents and agrees that it can and will carry out its obligations under this Agreement without investing any amount for the acquisition of any real property, buildings, equipment, installation, furnishings, or supplies which are not easily or reasonably utilized in other activities in which the Supplier is normally involved, and without employing specially-trained personnel unless they can be fully utilized in other activities in which the Supplier is normally involved.

## SECTION 12: **Inspection and Rejection**

12.1 Buyer and/or Buyer Affiliate may inspect and evaluate, including without limitation at Supplier's or any Lower Tier's facilities, all Product or Service Parts (including all Buyer Owned Equipment, Amortized Supplier Equipment and Supplier Buyer Equipment and all other tooling and material used in their manufacture), and all Services at times and places designated by Buyer or Buyer Affiliate. All Product or Service Parts received are subject, at the option of Buyer or Buyer Affiliate, to inspection by Buyer and/or Buyer Affiliate subsequent to arrival at the Buyer or Buyer Affiliate premises or subsequent to the delivery date specified in the Purchase Order, whichever occurs later. Payment by Buyer for any Product or Service Parts does not indicate or constitute acceptance and neither inspection nor payment shall relieve Supplier of its responsibility to furnish conforming goods.

12.2 Supplier shall provide and maintain a Supplier Quality Assurance System approved by Buyer and/or Buyer Affiliate and which meets the Buyer and/or Buyer Affiliate specifications. Supplier's plan shall be in compliance with Buyer's and/or Buyer Affiliate's Supplier Quality Assurance Manual, located on the Supplier Portal (as may be amended from time to time), and the Source Package. Supplier shall promptly comply with any revisions to such manual, or its successors. Supplier shall perform inspections as designated Buyer and/or Buyer Affiliate, and Supplier shall make inspection systems, procedures, and records available to Buyer and/or Buyer Affiliate upon request.

12.3 Except and only to the extent replaced by a particular specification or Supplier Quality Assurance standard, the following shall apply to inspections of the Product and Service Parts or any shipment, partial shipment, or other unit (whether or not a commercial unit) thereof:

- (a) Inspection shall be in compliance with the terms and descriptions of the Purchase Order and all Specifications applicable to the Product and Service Parts;
- (b) Notwithstanding payment or any prior inspection, Buyer and/or Buyer Affiliate may revoke acceptance and reject the Product and Service Parts or require correction and return the Product and Service Parts to the Supplier at Supplier's expense (including any and all VAT) and risk of loss if any Product and Service Parts delivered or Services rendered do not conform to applicable requirements;



(c) If Buyer and/or Buyer Affiliate require correction or cure of any non-conforming or defective Product and Service Parts or delivery, Buyer and/or Buyer Affiliate may instruct Supplier as to the means and methods of cure or cover. If such instructions are given, Supplier shall deliver (at the earliest possible moment and by the fastest practical means, but without any increase in shipping costs to Buyer) conforming substitutes or replacements for each defective or non-conforming item or delivery of the Product and Service Parts. All defective or non-conforming Product and Service Parts shall be returned pursuant to Supplier's instructions at Supplier's expense, or, in the absence of such instructions within a reasonable time, may be disposed of by Buyer and/or Buyer Affiliate;

(d) Without limiting its remedies, Buyer and/or Buyer Affiliate may (i) replace or correct any non-conforming Product and Service Parts or Services, and charge Supplier the cost of such replacement or correction, (ii) cancel the Purchase Order for default under Section 21 of the Agreement; (iii) subject Supplier's account to a debit for the damages suffered by Buyer and/or Buyer Affiliate, and/or (iv) cause the removal of Supplier as an approved Buyer supplier; and

(e) No inspection, tests, approval, or acceptance of Product and Service Parts ordered shall relieve Supplier from liability for (i) defects or other failure to meet the requirements of the Purchase Order, (ii) latent defects, or (iii) failure by Supplier to meet its warranty obligations hereunder.

### SECTION 13: **Force Majeure Event**

13.1 Supplier shall not be liable for delays or defaults in furnishing the Product and Service Parts or Services hereunder, and Buyer shall not be liable for failure to accept the Product and Service Parts or Services hereunder, if such delays or failure on the part of either Party are due to a Force Majeure Event, as declared by Buyer in its sole discretion. Upon the occurrence of a Force Majeure Event, the Supplier shall immediately notify Buyer of the occurrence and Buyer may suspend performance for as long as the Force Majeure Event continues.

13.2 In the event that Supplier discovers any fact which may, or could with the passage of time, result in a Force Majeure Event, Supplier (a) shall immediately advise Buyer of such fact and (b) shall do everything possible to take all measures and precautions in order to reduce the effect of the Force Majeure Event upon the needs of Buyer for the Product, Service Parts, and Services. In addition, at any time at the request of Buyer, Supplier shall furnish to Buyer (c) such information as Buyer may request concerning matters the presence or absence of which could result in delays, and (d) assurance or contingency plans with respect to those matters.

13.3 Supplier expressly acknowledges that a strike, lockout, or any labor disturbance shall not be deemed a Force Majeure Event. Supplier shall notify Buyer immediately of any actual or potential labor dispute delaying or threatening to delay timely performance of the Agreement, and shall include all relevant information to Buyer. Supplier shall notify Buyer in writing six (6) months in advance of the expiration of any current labor contract. Prior to the expiration of any labor contract of Supplier, Supplier shall establish, at its expense, a ninety (90) working day supply of Product and/or Service Parts in a neutral warehouse site which shall not be affected

by the labor disturbance and which shall be located in the United States at least fifty (50) miles from Supplier's manufacturing locations. Such supply of Product and/or Service Parts shall be in place at least ten (10) working days prior to the expiration of any labor contract. Supplier shall do everything possible to remain in a position to perform under the Agreement in case of any strike, lockout, or any other labor disturbance affecting the due performance of the Agreement, including such events affecting any sub-supplier and/or any other third party.

13.4 Buyer shall, without any obligation to Supplier, be entitled to obtain the Products, Service Parts, or Services from other sources for the duration of the inability of Supplier to perform due to a delay in delivery, whether or not caused by a Force Majeure Event, and reduce the quantity of the Product, Service Parts, or Services specified in existing Purchase Orders.

#### SECTION 14: **Buyer Intellectual Property/Work Product/Licensing**

14.1 Except as otherwise agreed in the Development Agreement or in the other Contract Documents:

(a) Supplier reserves and maintains exclusive rights to all Supplier Product Intellectual Property Rights, which shall be the sole and exclusive property of Supplier and shall be controlled exclusively by Supplier.

(b) Buyer shall maintain exclusive rights to all Buyer Intellectual Property, which shall be the sole and exclusive property of Buyer and shall be controlled solely by Buyer, except to the extent licensed herein.

(c) Buyer hereby grants to Supplier a limited, nontransferable, nonexclusive right and license to use the Buyer Intellectual Property. Supplier shall have the right to use the Buyer Intellectual Property only to the extent necessary for Supplier to fulfill its obligations under the Agreement, and for no other purpose whatsoever. Buyer also grants Supplier the right to sublicense the Buyer Intellectual Property to its Lower Tier suppliers only to the extent necessary to fulfill their obligations to Supplier in furtherance of Supplier's obligations under the Agreement and subject to each sub-licensee's written agreement to comply with all of the terms of this license to Supplier, and provided that each sub-licensee shall not have the right to grant additional sublicenses to the Buyer Intellectual Property. Upon termination or expiration of the Agreement for any reason, all licenses and sublicenses in Buyer Intellectual Property granted pursuant to this Section 14.1(c) shall terminate effective as of the date of termination or expiration of the Agreement, or at the sole option of Buyer, all sublicenses shall be assigned to Buyer by Supplier.

(d) Work Product.

(i) The Services, the media in which the Services are rendered or embodied, and all products of the Services, including, without limitation, any Buyer Intellectual Property (the "Work Product"), created by or arising in Supplier shall belong exclusively to Buyer.

(ii) Supplier agrees that, to the extent possible, the Work Product is a "work made for hire" for Buyer, as such term is defined in 17 U.S.C. § 101, and that all copyrights in such Work Product shall be, and are, owned solely, completely, and exclusively by Buyer. If for any reason the Work Product does not constitute a "work made for hire," Supplier hereby assigns to Buyer, all of Supplier's right, title, and interest in and to the Work Product, including all Buyer Intellectual Property. Supplier agrees to execute all documents reasonably requested by Buyer to further evidence the foregoing assignment and to provide all reasonable assistance to Buyer in perfecting or protecting Buyer's rights in the Work Product.

(e) All materials which Supplier, its Lower Tier suppliers or their sub-suppliers prepare or develop specifically for Buyer in the performance and completion of the Services hereunder, including documents, calculations, programs, financial or accounting information, maps, sketches, notices, reports, data, models and samples, and any and all inventions and copyrightable material contained therein, shall become the exclusive property of Buyer, subject to Supplier's or its Lower Tier suppliers' rights to use the same to perform the Services under the Agreement. Supplier agrees to execute all documents and to take all steps requested by Buyer, at Buyer's expense, which Buyer deems necessary or desirable to complete and perfect Buyer's said ownership and Buyer's property rights in said material.

14.2 Supplier represents and warrants that the Product and Service Parts sold hereunder shall not infringe upon any United States and/or foreign patent and/or any other third party intellectual property right. The Parties shall advise each other without undue delay when either Party becomes aware of any third party intellectual property claim or right, if any, affecting the use of the Product or Service Parts by Buyer and/or Buyer Affiliate. As of the date of the Agreement, each Party represents and warrants to the other that neither Party has any actual knowledge of any such third party claim or right. The terms of this Section 14.2 shall survive the termination or expiration of the Agreement.

14.3 In the event of any third party intellectual property claims affecting the use of the Product or Service Parts by Buyer, Buyer Affiliate, and/or Daimler, (a) Supplier shall do everything possible to ensure that the Product or Service Parts shall be or remain available for the Vehicle; or (b) Supplier shall, at its expense, either procure for Buyer, Buyer Affiliate, and/or Daimler the right to continue using the Product or Service Parts; replace or modify the Product or Service Parts so that it becomes non-infringing; and refund to Buyer, Buyer Affiliate, and/or Daimler the full purchase price of the alleged infringing goods; and (c) Supplier shall, at its expense, indemnify and hold harmless Buyer, Buyer Affiliate, and/or Daimler from and against any and all loss, damage, expense, or liability (including reasonable legal fees and expenses) that may result by reason of any such infringement or alleged infringement. Additionally, should any

ancillary services be provided as part of any transactions covered by the Agreement, and if such ancillary services are deemed to constitute an intellectual property right or process, then Supplier hereby conveys and grants to Buyer, Buyer Affiliate, and/or Daimler the exclusive right to such intellectual property right or rights. The terms of this Section 14.3 shall survive the termination or expiration of the Agreement.

14.4 In the absence of the prior written agreement of Supplier, Buyer, Buyer Affiliate, and/or Daimler to the contrary, all inventions, products, processes, apparatus, or designs, patentable or non-patentable, conceived, invented, or originated by either Party prior to the date hereof shall remain the property of that Party.

## SECTION 15: **Warranties**

15.1 Supplier shall abide by, and shall pay the full cost and expense arising from the breach of, any and all representations and warranties made by Supplier set forth in this Section 15. Supplier shall comply with and abide by the procedures and other terms and conditions set forth in the current version of the Buyer Warranty Process, located on the Supplier Portal and as may be amended from time to time.

15.2 Supplier warrants and represents to Buyer that all Product and Service Parts (a) shall conform to the Specifications, drawings, samples, and other descriptions upon which any Purchase Order issued under the Agreement is based, and shall be new, fit, and sufficient for the purposes intended; (b) shall be merchantable; and (c) shall be free from defects in material and workmanship in each case as extended by Buyer or Daimler (or in agreement for the account of Buyer or Daimler) to Vehicle purchasers or users, from time to time in the respective markets, for 48 months, unless applicable law requires the warranty period to be longer. An emission warranty of 8 years in accordance with the applicable law will apply, unless applicable law requires the emission warranty period to be longer.

15.3 Supplier further warrants that, on delivery, Buyer shall receive good title to the Product and Service Parts, free and clear of all liens and encumbrances.

15.4 The warranties set forth in this Section 15 are in addition to any warranties express or implied by law or equity or otherwise made by Supplier, and shall survive acceptance and payment by Buyer and termination of the Agreement.

15.5 Supplier acknowledges that the warranties set forth in this Section 15 extend to all Product or Service Parts, notwithstanding the fact that such Product and/or Service Parts may be produced by any of Supplier's Lower Tier suppliers, including, without limitation, Directed Lower Tier suppliers, and, therefore, the warranties and other provisions of this Section 15 shall not be disclaimed or otherwise limited in any way due to the fact that any Product or Service Parts have been produced by one of Supplier's Lower Tier suppliers, including, without limitation, Directed Lower Tier suppliers.

15.6 Each of the warranties set forth in this Section 15: (a) shall run to Buyer, Buyer Affiliate, Daimler, and each of their customers and users of their products; (b) shall be in compliance with all applicable laws and regulations as to form and content, and shall be furnished in copies and

in a manner sufficient to permit Buyer, Buyer Affiliate, Daimler, Suppliers, and retail sellers to comply with applicable laws and regulations; (c) shall not limit in any way other warranty or other representations of Supplier to Buyer, Buyer Affiliate, or Daimler; and (d) shall conform to warranty handling procedures adopted by Buyer, Buyer Affiliate, or Daimler, where appropriate.

15.7 Supplier has provided complete information concerning the handling, use, storage, and function of the Product and Service Parts, including descriptions, instructions, cautions, and warnings, if applicable, on actual or potential dangers in the use or misuse of the Product or Service Parts, necessary or advisable for Buyer or Buyer Affiliate to provide to the users of the Product or Service Parts.

15.8 Supplier shall pay to Buyer the full cost and expense of any warranty claim resulting from a defective or deficient part of any Product and/or Service Parts, including without limitation, the warranties covered in Sections 15.2, 15.3, 15.4 and 15.5 hereof, and in accordance with the current version of the Buyer Warranty Process. Buyer claims for reimbursement and corresponding payments by Supplier shall be processed in line with the process and procedure Buyer has established from time to time in relation to its suppliers.

15.9 Supplier, at its expense, (including, without limitation, costs of removal, packing, transportation, and reinstallation), agrees to promptly replace or correct defects of any Product, Service Parts, or Services not conforming to the warranties herein, when notified of such nonconformity by Buyer or Buyer Affiliate. In the event Supplier fails to promptly correct defects in, or replace, nonconforming Product or Service Parts, Buyer and/or Buyer Affiliate, after reasonable notice to Supplier, may make such corrections or replace such Product, Service Parts, and Services, and charge Supplier for costs of materials, labor, transportation, or other costs incurred by Buyer and/or Buyer Affiliate. In addition to any other remedies it may have, Buyer and/or Buyer Affiliate may reject nonconforming Product and return it to Supplier at Supplier's expense; provided, however, that nonconforming Product or Service Parts may not be replaced without the written authorization of Buyer.

15.10 Supplier shall comply and shall cause all Product and Service Parts to comply, with all applicable international, federal, state, and local laws, rules, regulations, orders, and association and other standards applicable to the manufacture, labeling, transportation, licensing, approval, or certification thereof. If applicable to the Product and Service Parts, Supplier shall certify in writing such compliance at the request of Buyer. Supplier agrees to take all steps necessary to remove from the Buyer and/or Buyer Affiliate facilities any materials provided under a Purchase Order that do not comply with any international, federal, state, or local laws, rules, regulations, or standards relating to the environment or safety.

15.11 Whenever Supplier becomes aware that any component of the Product or Service Parts are or may become harmful to persons or property, or that the design or construction of the Product or Service Parts is defective in any manner which is or may become harmful to persons or property, Supplier shall immediately give notice thereof, including all relevant information with respect thereto, to Buyer, Buyer Affiliate (if applicable), and Daimler.

15.12 Supplier has obtained, or shall obtain, any required approvals by any government or governmental agency for the sale or use of the Product or Service Parts, as applicable from time

to time, and Supplier shall furnish Buyer with copies or other satisfactory evidence of all such approvals. Buyer, at its sole option, may obtain or assist Supplier in obtaining such approvals.

15.13 Supplier also warrants that no part of any Product, Service Parts, goods, or Services provided under the Agreement shall contain any traces of silicone (any of a large class of polymers of R<sub>2</sub>SiO where R is a hydrocarbon).

15.14 Supplier warrants that the prices for the articles sold to Buyer hereunder are no less favorable than Supplier currently extends to any other customer for the same or similar Product, Service Parts, or Services in similar quantities. If Supplier reduces its prices to others for the same or similar Product, Service Parts, or Services during the term of any Purchase Order, Supplier shall reduce the prices to Buyer for such Product, Service Parts, or Services to the same extent. Supplier warrants that prices shown on each Purchase Order are complete, and that no additional charges of any type shall be added without the express written consent of Buyer.

15.15 If Supplier sells any Product and/or Service Parts covered by any Purchase Order to a third party for incorporation into an assembly which is to be sold to Buyer, the price for such Product and/or Service Parts shall be no more than the price provided in the Purchase Order, plus any additional costs actually incurred by Supplier in providing the Product and/or Service Parts to such third party.

15.16 The warranties and representations contained in this Section 15 are specifically for the benefit of Buyer, Buyer Affiliate, DAG, and any entity claiming by or through Buyer, Buyer Affiliate, or DAG.

15.17 The Buyer warranty claim has the following five (5) basic elements, which represent the total expense to the Vehicle incurred by the retailer:

- (a) Labor: The standard repair time to replace or repair a failed part, based on the Vehicle Time Guide, multiplied by the average labor rate.
- (b) Parts: Replacement parts purchased by the retailer from the Parts Distribution Center or Daimler Global Logistics Center at landed cost.
- (c) Parts Handling: A parts handling charge for administration and handling of defective parts is paid to the retailer.
- (d) Sublet: Repairs or services not provided by the retailer (e.g., machine shop, paint shop, etc.).
- (e) Indirect Cost: Consequential damages, e.g., damage caused to other components as result of the defective part (e.g., heater core leak damages the interior). Consequential damages include also the cost for mobility (e.g., loaner cars).

## SECTION 16: **Product Liability**

16.1 Notwithstanding any other provision in the Agreement, Supplier shall indemnify and hold harmless Buyer, Buyer Affiliate, Daimler, and any authorized distributor of the Vehicle against all claims, liabilities, losses and damages (including reasonable legal fees and expenses) asserted against or incurred by Buyer, Buyer Affiliate, Daimler, and/or any authorized distributor of the Vehicle, on the basis of product liability, including, without limitation, consequential damages and lost profits arising from a Recall Campaign, regardless of the legal ground therefor, to the extent a product liability claim relates to or arises out of a given or alleged defect in any Product and/or Service Parts.

## SECTION 17: **Service Parts**

17.1 Buyer and/or its sales and service organization shall service the Product and Service Parts in the scope of its customer service. Supplier shall provide the necessary technical assistance as needed from time to time, commencing with a proposal for a remanufacture and replacement program for the Product and Service Parts. To the extent of exclusive delivery to Buyer or Buyer Affiliate as provided for in Section 3.3 above, Buyer/Buyer Affiliate/Daimler shall have exclusive rights for servicing the Product and distributing Service Parts therefor.

17.2 Supplier shall be obligated to supply Buyer and Buyer Affiliate with Service Parts for the Product and the Buyer service and warranty requirements for a period of fifteen (15) years after the termination or expiration of the Agreement, including any renewal term, or for such longer time as may be required by Buyer after the final Purchase Order has been filled. The price of the part for the Buyer service requirements shall be the price provided in the applicable Purchase Order, plus costs actually incurred for special packaging. All Service Parts shall comply with the requirements of Global Service Parts located on the Supplier Portal, as may be amended from time to time.

17.3 If any Service Part is no longer required for Buyer's or Buyer Affiliate's Vehicle production, then the price of the part for Buyer service requirements shall be no greater than the last price stated in the applicable Purchase Order for the part no longer required for Vehicle production for a period of three (3) years after end of production, plus any additional costs actually incurred by Supplier for special packaging. After the end of the three-year period Supplier must fully document any request for price adjustments due to the production of fewer units. Supplier will document all requests for price adjustments, including, but not limited to, machine productivity, scrap allowance, labor inefficiencies and excess raw material requirements, to Buyer's reasonable satisfaction (Open-Book-Policy).

## SECTION 18: **Recall Campaign**

18.1 In the event Buyer and/or Buyer Affiliate and/or Daimler determine that a Recall Campaign is necessary to remedy a breach of Supplier's warranty or to comply with law, regulations, orders, or other government requirements, the full cost and expense of such campaign shall be borne by Supplier, unless Supplier proves that there was no defect or deficiency in the Product and/or Service Parts, as the case may be.

## SECTION 19: **Status and Financial Reporting by Supplier/Bankruptcy**

19.1 In order to anticipate problems and minimize disruption, Supplier grants to Buyer and/or Buyer Affiliate the right, at all reasonable times, to full and complete access to its books and records concerning the following: (a) Supplier's assets, liabilities, and general financial solvency; (b) Supplier's ability to pay its debts as they come due; (c) all actual, threatened and asserted consensual liens, non-consensual liens and interests in or to any Buyer Owned Equipment, Amortized Supplier Equipment, Supplier Buyer Equipment, Buyer Intellectual Property or Work Product (or tangible embodiments thereof) or any other personal property, real property, inventory, intellectual property, plat or equipment being used or intended to be used, in whole or in part, to produce Products, Service Parts, tools, dies and/or jigs for Buyer; (d) any labor or employment issues that might result in the slowing or stoppage of Supplier's production of Products and/or Service Parts for Buyer; (e) any action by any government, taxing authority or administrative agency that might result in the slowing or stoppage of Supplier's production of Products and/or Service Parts for Buyer; and (f) anything else that might result in the slowing or stoppage of Supplier's production of Products and/or Service Parts for Buyer. Supplier shall pay to Buyer an audit fee, not to exceed \$10,000 annually, to the extent Buyer pays a third-party chosen by Buyer in its sole discretion to obtain or review some or all of this information. Moreover, Supplier shall require each of its Lower Tier sub-suppliers and their sub-suppliers (and so on) to grant Buyer the same rights as set forth in this Section 19.1 of the Agreement, which shall be included in the Lower Tier Acknowledgment and Waiver in accordance with the provisions of Section 37 hereof. Supplier agrees to promptly provide its relevant financial information to Buyer and/or Buyer Affiliate from time to time upon request utilizing Buyer's Financial Quick Check form or other document as applicable.

19.2 If and when Buyer so requests, Supplier shall immediately, upon notice from Buyer, assume and assign its contracts with sub-suppliers to Buyer or any other person or entity that Buyer so designates. Further, Supplier shall not contest any motion by Buyer to lift such stay in order that Buyer may obtain possession and control of any sub-supplier special tooling and equipment in the possession of Supplier, if the special tooling and equipment is required to continue the performance of the Agreement by Buyer as a third-party beneficiary of the sub-supplier contracts.

## SECTION 20: **Term of Agreement**

20.1 The Agreement shall enter into force upon the issuance of any Purchase Order for tooling and/or for any Product or Service Part and shall continue for the program production life of the Vehicle (plus an additional 15 years with respect to Service Parts, as provided in Section 17), unless earlier terminated in accordance with Section 21 below. The Agreement shall consist of the Contract Documents as accepted by Supplier pursuant to Section 2.3.

## SECTION 21: **Remedies/Termination**

21.1 Buyer shall have all remedies available to it provided by each of contract (including, without limitation, the Agreement and all other Contract Documents), statute, common law and otherwise, and all of Buyer's remedies are cumulative. The exercise of one remedy by Buyer does not restrict or waive the exercise of any other remedies by Buyer.



21.2 Notwithstanding any other provision of the Agreement, Buyer may terminate the Agreement and/or any Purchase Order issued under the Agreement at any time with or without cause in whole or in part by written notice, whereupon Supplier shall stop work on the date and to the extent specified in such notice, and terminate all orders and subcontracts that relate to the Agreement and/or the terminated Purchase Order. In such case, Buyer shall have no liability with respect to goods or components procured, or worked on, or supplies partially fabricated, in excess of the authority contained in this Section 21.2. Upon termination pursuant to this Section 21.2, Supplier shall submit all claims resulting from such termination within thirty days after receipt of the termination notice. Buyer shall have the right to verify such claims by auditing the relevant records, facilities, work, or materials of Supplier and/or its subcontractors. Buyer shall pay Supplier for finished work accepted by Buyer, as well as for the documented cost to Supplier of work in process and raw materials allocable to the terminated work which are not in excess of any prior Buyer authorization. Payment made under this Section 21.2 shall constitute the only liability of Buyer for termination under the Agreement, with title and right of possession to all delivered goods and services vesting in Buyer immediately upon tender of payment by Buyer. The provisions of this Section 21.2 shall not apply to any cancellation by Buyer for default by Supplier. In no event shall Buyer be liable for prospective or anticipated profits by reason of such termination, and Supplier shall not assert any claim for loss of prospective or anticipatory profits or consequential damages under any circumstances.

21.3 If Buyer has decided to cancel all activities with respect to the Project, Buyer shall be liable to Supplier only for tooling costs incurred by Supplier up to the applicable maximum amount specified in the applicable Purchase Orders issued for the respective tools.

21.4 Supplier acknowledges that, in entering into the Agreement, Buyer shall become entirely dependent upon Supplier for the timely production of samples and prototypes of the Product, for the potential supply of the Product, for the potential supply of Service Parts relating to the Product, and for the production by Buyer or Buyer Affiliate of the Vehicle in accordance with the schedules contemplated in the Agreement. Supplier further recognizes that failure to timely and fully perform its obligations hereunder may affect the viability of the Project, or the manufacturing of the Vehicle, and that Buyer and/or Buyer Affiliate shall suffer substantial losses and damages which cannot be measured solely in monetary terms. Supplier, therefore, expressly agrees that Buyer shall have the immediate right to compel specific performance of the Agreement by Supplier, or alternatively, to terminate the Agreement upon written notice to Supplier under Section 21.2 above, if Supplier (a) fails to meet any key milestone for the development of the Product and such failure continues for more than 10 days beyond such milestone date; (b) fails to deliver goods or perform services at the times specified herein; (c) fails to perform any other provision hereof and fails to cure such failure within a period of 10 days after receipt of written notice from Buyer specifying such failure; (d) ceases doing business as a going concern, admits in writing its inability to perform its obligations under the Agreement as and when due, becomes insolvent, makes an assignment in favor of creditors, or enters any type of bankruptcy or dissolution proceedings; (e) is merged into another company and/or is expropriated or nationalized; or (f) furnishes any certificate, statement, representation or warranty that proves to be false in any material respect. In any such event, Buyer may cancel the whole or any part of the Agreement without any liability, except for payment due for Product, Service Parts, or Services delivered and accepted. Upon such breach, Buyer shall have the right,

on notice to Supplier, to take title to and possession of all or any part of such work performed by Supplier under any Purchase Order issued under the Agreement. In addition, in any such event Buyer shall be entitled to recover from Supplier all losses, expenses, and damages, including attorney's fees, costs, and incidental and consequential damages which Buyer may suffer as a result of such default by Supplier.

21.5 In the event Supplier fails to provide Buyer with Product as defined herein that meets the quality standards set forth by Buyer and/or Buyer Affiliate, Buyer may terminate the Agreement or seek any additional reasonable remedies for Supplier's continued failure to meet quality standards as expressed to Supplier.

21.6 If the Agreement is terminated by Buyer or if Supplier is otherwise in default under the Agreement, or if Buyer, in its exclusive judgment, determines that Supplier is unable or soon will be unable to deliver timely all of the Product and/or Service Parts needed by Buyer or Buyer Affiliate, Buyer may exercise all rights and remedies available under applicable law and under the Agreement, specifically including, without limitation, the right to take possession immediately (without the necessity of posting a bond) of all Buyer Owned Equipment, Amortized Supplier Equipment, Supplier Buyer Equipment and all tangible embodiments of Buyer Intellectual Property or Work Product in any medium whatsoever and to remove the same from Supplier's premises or wherever the Buyer Owned Equipment, Amortized Supplier Equipment, Supplier Buyer Equipment or any tangible embodiment of Buyer Intellectual Property or Work Product may be located. Supplier shall cooperate with and assist Buyer in connection with its exercise of the foregoing rights and shall in no event seek to oppose or interfere with the exercise by Buyer of such rights. To the extent Supplier Buyer Equipment is multi-use equipment (i.e., used for more than the Services performed hereunder) and cannot be removed from Supplier's facility or wherever such Supplier Buyer Equipment may be located, Buyer or Buyer Affiliate shall have the right to use such Supplier Buyer Equipment on the Supplier's premises or wherever such Supplier Buyer Equipment is located. Buyer shall have access, which access is hereby granted by Supplier, to all Lower Tiers and the right to direct, control and complete all work being performed by all Lower Tiers. In any such event, Buyer shall be entitled to recover from Supplier all losses, expenses, and damages, including attorney's fees and costs and incidental and consequential damages which Buyer may suffer as a result of such default by Supplier. In this regard, Buyer's cost incurred in breaking down, packing, moving, and reassembling the Buyer Owned Equipment, Amortized Supplier Equipment, Supplier Buyer Equipment and/or tangible embodiments of Buyer Intellectual Property or Work Product in order that the Buyer Owned Equipment may be used by Buyer or its assignee shall constitute recoverable damages.

21.7 If the Agreement is terminated by Buyer or if Supplier is otherwise in default under the Agreement, or if Buyer, in its exclusive judgment, determines that Supplier is unable or soon will be unable to deliver timely all of the Product and/or Service Parts needed by Buyer and/or Buyer Affiliate, then, to enable Buyer and/or Buyer Affiliate to have an uninterrupted supply of Product and/or Service Parts from which to assemble and manufacture the Vehicle, Supplier hereby grants to Buyer the right to operate or to have a third party operate one or more lines of production at Supplier's facilities to assemble and manufacture the Product and/or Service Parts that Buyer and/or Buyer Affiliate needs to assemble and manufacture the Vehicle on a timely basis without interruption to Buyer's and/or Buyer Affiliate's production of the Vehicle.

Supplier agrees that to manufacture the Product and/or Service Parts pursuant to this Section 21.7, it will provide Buyer and/or Buyer Affiliate unfettered access to an entire production line or lines, which shall include, without limitation, access to equipment, employees, energy sources, raw materials, inventory, and the like (whether or not Buyer has an interest in such items). Buyer shall be entitled to an immediate court order granting Buyer and/or Buyer Affiliate the operating rights set forth in this Section 21.7. Buyer and/or Buyer Affiliate shall be entitled to operate such line or lines of production in its own name, or through a contractor or a court appointed receiver or trustee. Buyer shall be responsible for paying all of the actual costs of running the line or lines of production (such as wages, raw materials, inventory costs and energy costs), and Buyer may (but is not required to) pay such amounts directly to the party providing the labor, inventory, services or energy; provided, however, that in no event shall Buyer be responsible for paying Supplier's routine costs or overhead. Furthermore, Buyer may elect to set off any payments due pursuant to this Section 21.7 against those amounts owed by Supplier to Buyer.

21.8 In order to enable Buyer and/or Buyer Affiliate to continue with the manufacture of the Product and Service Parts in the event Buyer takes possession of the Buyer Owned Equipment, Amortized Supplier Equipment, Supplier Buyer Equipment and/or tangible embodiments of Buyer Intellectual Property or Work Product pursuant to any Section of the Agreement, Supplier shall ensure in its contracts with its sub-suppliers (including any Lower Tiers) that such contracts can be assigned to Buyer. Furthermore, Supplier shall ensure in its contracts with sub-suppliers (including any Lower Tiers) that, in the event of termination under any Section of the Agreement, Supplier may take possession of the sub-supplier's special tooling and equipment and assign such special tooling and equipment to Buyer as a third party beneficiary. To the extent the sub-supplier special tooling is multi-use equipment (i.e., used for more purposes than in connection with the Services provided hereunder) and cannot be removed from the sub-supplier's facility, Supplier shall ensure that Supplier and/or Buyer shall have the right to use such sub-supplier special tooling and equipment on the sub-supplier's premises or wherever such sub-supplier special tooling and equipment is located.

21.9 Buyer may at any time and without notice deduct or set-off or recoup Supplier's claims for money due or to become due from Buyer or any affiliate of Buyer (including, without limitation, Daimler and DAG) against any claims that Buyer or any affiliate (including, without limitation, DAG) of Buyer has or may have arising out of this or any other transaction. These rights of set-off and recoupment apply equally in any court proceeding, including a determination of how much money Supplier might be owed on a bonded indebtedness. Moreover, to the extent that Buyer has a set-off or recoupment claim or defense against Supplier, the amount of money subject to such claim or defense shall not be owed by Buyer to Supplier.

21.10 All of Buyer's remedies hereunder shall survive the termination of the Agreement. Moreover, to the extent provisions of the Agreement are intended to survive any expiration or termination of the Agreement, these provisions shall remain in effect accordingly.

21.11 All rights granted to Buyer in this Section 21 shall be acknowledged by Supplier's Lower Tier sub-suppliers (and their sub-suppliers, and so on) pursuant to the Lower Tier Acknowledgement and Waiver required under Section 37 of the Agreement.

## SECTION 22: Possession of Buyer Owned Equipment

22.1 At any point during the term of the Agreement, Buyer shall have the right to immediate possession of any of the Buyer Owned Equipment (regardless of whether fully paid for by Buyer), Amortized Supplier Equipment, Supplier Buyer Equipment and/or any tangible embodiment of Buyer Intellectual Property or Work Product in any medium whatsoever, regardless of the location of such Buyer Owned Equipment, Amortized Supplier Equipment, Supplier Buyer Equipment and/or tangible embodiment of Buyer Intellectual Property or Work Product, and to remove the same from Supplier's premises or wherever the Buyer Owned Equipment, Amortized Supplier Equipment, Supplier Buyer Equipment and/or tangible embodiment of Buyer Intellectual Property or Work Product, as the case may be, may be located. To the extent Supplier Buyer Equipment is multi-use equipment (i.e., used for more than the Services performed hereunder) and cannot be removed from Supplier's facility or wherever such Supplier Buyer Equipment may be located, Buyer and/or Buyer Affiliate shall have the right to use such Supplier Buyer Equipment on the Supplier's premises or wherever such Supplier Buyer Equipment is located. If demanded by Supplier, Buyer will post a bond contemporaneously with Buyer removing such Buyer Owned Equipment, Buyer Owned Equipment, Amortized Supplier Equipment, Supplier Buyer Equipment and/or tangible embodiment of Buyer Intellectual Property or Work Product, but only if (i) the Agreement has not been terminated, (ii) Supplier is not in default hereunder, and (iii) Buyer, in its exclusive judgment, has not determined that Supplier is unable or soon will be unable to deliver timely all of the Product and/or Service Parts needed by Buyer. The bond amount will be equal to the cost of the Buyer Owned Equipment, Amortized Supplier Equipment, Supplier Buyer Equipment and/or tangible embodiment of Buyer Intellectual Property or Work Product, as evidenced by the purchase price paid by Buyer pursuant to Section 5.2 above, less any amounts which may have already been paid for such Buyer Owned Equipment, Amortized Supplier Equipment, Supplier Buyer Equipment and/or tangible embodiment of Buyer Intellectual Property or Work Product.

22.2 Buyer's rights pursuant to Section 22.1 above shall be included in the Lower Tier Acknowledgment and Waiver contemplated by Section 37 hereof.

## SECTION 23: Indemnity

23.1 Supplier shall indemnify and hold harmless Buyer, Buyer Affiliate, and Daimler against all claims, liabilities, losses, expenses, fees, and other damages in connection with (a) any breach by Supplier of the Agreement; (b) for injury or death of any person; (c) for any and all disposition of any and all wastes, hazardous and/or non-hazardous, generated as a result of any processing for prototype or pre-production trial or any other process or Product generated as a result of the relationship with Buyer; and (d) for damage or loss of any property in each case allegedly or actually resulting from, or arising out of, any act, omission, or negligence of Supplier or its employees, agents, or subcontractors in connection with performing any aspect of the Agreement, including, without limitation, any claim or defect or alleged defect in the design, materials, manufacture or sale of the Product, Service Parts or Services, and/or any claim, damage or loss relating to computer programs or computer related dates, whether Supplier, its affiliates, employees, or agents are or are not negligent.

23.2 In the event that any claims, demands, or lawsuits are made or brought against Buyer, Buyer Affiliate, and/or Daimler relating to the Product or Service Parts in connection with Supplier Specifications or relating to the trade name, trademarks, copyrights or patents in connection with the manufacturing process, and/or based upon unfair competition by reason of sale or use of the Product or Service Parts by Buyer, Buyer Affiliate, and/or Daimler, Supplier shall indemnify and hold harmless Buyer, Buyer Affiliate, and Daimler against all actions brought against Buyer, Buyer Affiliate, and/or Daimler, pay all costs of any lawsuit, including reasonable legal fees and expenses, and indemnify and hold harmless Buyer, Buyer Affiliate, and/or Daimler for any cost incurred by Buyer or Daimler in connection therewith.

23.3 If Supplier's work under any Purchase Order issued under the Agreement involves operations by Supplier on the premises of Buyer and/or Buyer Affiliate, Supplier shall take all necessary precautions to prevent the occurrence of any injury to person or property during the progress of such work and will, upon written request of the Buyer or Buyer Affiliate's Safety Department, provide information concerning its Experience Modification Rates (EMR), OSHA rates, a description of any serious or fatal injury to any of the employees within the preceding year, and a copy of its written Safety Plan. Supplier shall also comply, to the extent applicable, with Buyer and/or Buyer Affiliate's Expat/Contractor/Supplier Safety & Security Guidelines, as may be amended from time to time. Supplier agrees to indemnify and hold harmless Buyer and/or Buyer Affiliate against all liabilities, claims, or demands for injuries or damage to any property or person including, without limitation, any employees, agents, or representatives of Supplier, growing out of such performance, and to pay Buyer's and/or Buyer Affiliate's reasonable legal costs and expenses in connection therewith.

23.4 Supplier shall provide worker's compensation, comprehensive general liability, automobile, public liability, and property damage insurance in amounts and coverages sufficient to cover all claims hereunder, with insurers acceptable to Buyer. Such policies shall name Buyer and Buyer Affiliate, if applicable, as additional insureds thereunder and shall contain endorsements stating that the policies are primary and not excess over or contributory with any other valid, applicable, and collectible insurance in force for Buyer or Buyer Affiliate. Buyer may require Supplier to furnish evidence of the foregoing insurance, but failure to comply with these insurance requirements does not relieve Supplier of its liability and obligation under this Section 23.4.

23.5 Except as provided herein, in the event of any suit, claim, threatened claim, or notification of a claim which may be the subject of indemnification provided for in this Section 23, the Party receiving such notification shall provide prompt written notice thereof to the other Party.

23.6 The provisions of this Section 23 shall survive the termination or expiration of the Agreement.

## SECTION 24: **Confidentiality**

### 24.1 Confidentiality Obligations

(a) Any and all Proprietary Information which is disclosed by one Party (the

“Disclosing Party”) to any other Party (the “Receiving Party”) pursuant to or in connection with the Project, shall be held in confidence by the Receiving Party as and to the extent provided herein, provided, however, that for purposes hereof, the Receiving Party in the case of Buyer shall be deemed to include Buyer Affiliate, Daimler, and any other of its affiliated companies. However, notwithstanding the preceding, there is no obligation on the part of Buyer to deem information provided by Supplier to be other than public and nonproprietary, or to take other than reasonable precautions concerning its confidentiality and/or disclosure, unless Supplier gives Buyer and/or Buyer Affiliate and/or Daimler specific written notice of any such Proprietary Information (and of any license or other agreement relating to the use or dissemination thereof) embodied in the Product or Service Parts prior to delivery thereof.

(b) The Proprietary Information transmitted to Supplier by Buyer and/or Buyer Affiliate in connection with the performance of any Purchase Order is the property of Buyer and/or Buyer Affiliate and may be covered by one or more Buyer, Buyer Affiliate, or Daimler patents, patent applications, or copyrights. Supplier shall handle all Proprietary Information in such a manner to ensure that it is not used for any purpose detrimental to the interests of Buyer, Buyer Affiliate, or Daimler. Supplier shall secure written approval from Buyer and/or Buyer Affiliate before any Proprietary Information relating to any Purchase Order (other than relating to Supplier’s own standard commercial items) are released to anyone other than those requiring the Proprietary Information for the performance of work under any Purchase Order issued under the Agreement. Supplier shall (in the absence of a written mutual agreement for its use for other purposes) use the Proprietary Information only for the purpose of filling a Purchase Order issued under the Agreement. Upon the expiration of this Agreement or at any time upon Buyer’s request, at Buyer’s option, Supplier shall promptly return or destroy, and certify in writing as destroyed, all Proprietary Information. To the extent the Proprietary Information is in electronic form, Supplier shall delete such information using a technique reasonably contemplated to prevent the recreation or recovery of the electronic Proprietary Information, and shall certify in writing such deletion to Buyer.

24.2 Protection. Subject to Section 24.3 below:

(a) Proprietary Information shall be protected by the Receiving Party with the same degree of care as the Receiving Party uses to protect its own proprietary or confidential information.

(b) Proprietary Information may be used by the Receiving Party only for the purposes of the Agreement.

(c) Proprietary Information shall not be disclosed to others by the Receiving Party without the prior written consent of the Disclosing Party.

(d) Disclosure of Proprietary Information by one Party to the other shall not convey any rights in such Proprietary Information to the Receiving Party other than as expressly set forth in the Agreement.

(e) To the extent represented by or in samples, writings, drawings or other tangibles, Proprietary Information shall be returned to the Disclosing Party simultaneously with the termination under the Agreement or at any time upon demand.

24.3 Exceptions to Confidentiality Obligation. Nothing herein shall affect any Party's right to use or disclose to others any and all information which is now or subsequently:

(a) in the public domain other than as a result of any breach of any obligation under the Agreement by the Party seeking to use or disclose the information;

(b) known to the Receiving Party prior to its disclosure to the Receiving Party by the Disclosing Party, other than as a result of a breach of a duty of confidentiality owed to the Disclosing Party;

(c) disclosed to the Receiving Party by a third party without breach of a duty of confidentiality owed to the Disclosing Party and known to the Receiving Party; or required to be disclosed by applicable law, legal process, or in connection with any judicial process, or other proceedings between the Parties to the extent necessary for a Party to present fairly its position.

24.4 The confidentiality obligations set forth in this Section 24 and elsewhere in this Agreement shall survive the termination of this Agreement indefinitely.

## SECTION 25: **Taxes**

25.1 Product and Service Parts.

(a) Under no circumstances will sales, use, VAT, or other taxes be added to the purchase price of Product or Service Parts. Pursuant to Buyer's direct pay permit authority, which is available upon request, Supplier shall not include any allowance or amount for sales and use tax payment in calculating any payments due, by application for payment, change order or otherwise in connection with the performance of the Agreement. Federal excise taxes charged to Buyer shall be separately stated, or shall be indicated as being included in the unit price.

(b) Supplier shall pay any and all personal property taxes and/or ad valorem taxes assessed or otherwise levied against Product and Service Parts while in the hands of Supplier.

(c) Suppliers who are operating fully or partially pursuant to an IMMEX Maquiladora program approval or permit shall maintain compliance with said permit for the term of this Agreement and shall comply with any IMMEX Maquiladora requirements of Buyer and/or Buyer Affiliate that may be provided on the Supplier Portal. Supplier agrees to indemnify and hold harmless Buyer and/or Buyer Affiliate for all costs and expenses arising from loss or interruption of Supplier's IMMEX Maquiladora status.

25.2 Buyer Owned Equipment.

(a) As the user of the Buyer Owned Equipment, Supplier shall pay sales or use tax or VAT upon its purchase of Buyer Owned Equipment. Supplier will not be reimbursed for such sales or use tax or VAT and such cost shall not be included in the cost of the Buyer Owned Equipment. Upon a request from Buyer, Supplier shall provide proof of payment of sales and use tax or VAT arising upon Supplier's purchase of the Buyer Owned Equipment. Supplier shall not charge or collect sales tax upon Supplier's sale of the Buyer Owned Equipment to Buyer.

(b) From and after the Buyer Owned Equipment Title Transfer Date, Buyer shall file all personal property tax returns with the appropriate taxing jurisdiction where the Buyer Owned Equipment is located, if such Buyer Owned Equipment is located in the United States. From and after the Buyer Owned Equipment Title Transfer Date, Buyer will pay the personal property taxes arising on the Buyer Owned Equipment and the cost associated with such payments of tax shall reduce Buyer's price for Product and Service Parts as provided in Section 8.6(c) for such Buyer Owned Equipment located in the United States.

## SECTION 26: **Notices**

26.1 Unless advised otherwise in writing by the pertinent Party, any notice or other communications made or required to be made pursuant to the Agreement shall be in writing, must be in English, and shall be addressed to the respective Party at the address set forth in the Purchase Order, and shall be deemed duly given on the date received by the addressee. Either Party to this Agreement may, by notice given in accordance with these Master Terms, designate a new address for notices, requests or demands to such Party.

## SECTION 27: **Relationship**

27.1 Neither Supplier nor its subcontractors, or the employees or agents of them, shall be deemed to be Buyer or Buyer Affiliate employees, or agents, it being understood that Supplier and its subcontractors are independent contractors for all purposes and at all times, and Supplier shall be wholly responsible for withholding or payment of all federal, state and local income and other payroll taxes with respect to its employees, including contributions from them, and as required by law.

## SECTION 28: **Gratuities**

28.1 With respect to and in connection with the Agreement or otherwise with Supplier's relationship with Buyer, Supplier shall desist and refrain from all practices which may lead to penal liability due to fraud or embezzlement, insolvency crimes, crimes in violation of competition, guaranteeing advantages, bribery, acceptance of bribes or other corruption crimes on the part of persons employed by Supplier or other third parties. Buyer may, by notice to Supplier, immediately terminate the right of Supplier to proceed or continue under the Agreement if it is found that gratuities (in the form of entertainment, gifts, or otherwise), were offered or given by Supplier, or any agent or representative of Supplier, to any officer or employee of Buyer and/or Buyer Affiliate for the purpose of securing the Agreement or securing favorable treatment with respect to the awarding, or the making of any determinations with



respect to the performance of the Agreement. In the event the Agreement is terminated as provided in this Section 28.1, Buyer shall be entitled to pursue the same remedies against Supplier as it could pursue in the event of a breach of the Agreement by Supplier. The rights and remedies of Buyer provided in this or any other Section shall not be exclusive and are in addition to any other rights and remedies provided by law and equity or under the Agreement. The above notwithstanding, the Supplier is obliged to adhere to all laws and regulations applicable to both itself and the commercial relationship with Buyer.

#### SECTION 29: **Enforcement and Severability**

29.1 The rights and remedies herein reserved to Buyer are cumulative and in addition to any other or further rights and remedies available at law or in equity. The failure of Buyer at any time to enforce any of the provisions of the Agreement or any right with respect thereto, or to exercise any option herein provided, shall in no way be construed to be a waiver of such provisions, rights, or options or in any way to affect the validity of the Agreement. In the event that any one or more of the provisions contained herein shall for any reason be held to be invalid and/or unenforceable, such invalidity/unenforceability shall not affect any other provision of the Agreement. The Agreement shall then be construed as if such invalid/unenforceable provision(s) had never been contained herein and such invalid/unenforceable provision(s) shall be replaced with valid and enforceable provision(s), the commercial effect of which shall be as similar as possible to the invalid/unenforceable provision(s).

#### SECTION 30: **Choice of Law, Jurisdiction, and Compliance with Laws**

30.1 Governing Law. The Agreement and all questions arising out of or in connection with the Agreement shall be governed by and construed in accordance with the laws of the State of Alabama as if entirely performed therein and without giving effect to its conflict of law rules.

30.2 Court Actions.

(a) If the Buyer is MBUSI or MBE, Supplier agrees to litigate all claims and actions arising under or otherwise concerning the Agreement exclusively in a court of competent jurisdiction located in Tuscaloosa County, Alabama. SUPPLIER HEREBY WAIVES ANY RIGHT SUPPLIER MAY HAVE TO A JURY TRIAL ARISING FROM ANY DISPUTES RELATED IN ANY WAY TO THE AGREEMENT. SUPPLIER HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION IN THE STATE OR FEDERAL COURTS LOCATED IN TUSCALOOSA COUNTY, ALABAMA AND WAIVES ANY OBJECTION TO *IN PERSONAM* JURISDICTION IN ANY COURT SITTING IN TUSCALOOSA COUNTY, ALABAMA.

(b) If the Buyer is MBV, Supplier agrees to litigate all claims and actions arising under or otherwise concerning the Agreement exclusively in a court of competent jurisdiction located in Charleston County, South Carolina. SUPPLIER HEREBY WAIVES ANY RIGHT SUPPLIER MAY HAVE TO A JURY TRIAL ARISING FROM ANY DISPUTES RELATED IN ANY WAY TO THE AGREEMENT. SUPPLIER HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION IN THE STATE OR FEDERAL COURTS LOCATED IN CHARLESTON COUNTY, SOUTH CAROLINA AND WAIVES ANY OBJECTION TO *IN PERSONAM* JURISDICTION IN ANY COURT SITTING IN CHARLESTON COUNTY, SOUTH CAROLINA.

30.3 The Parties hereby confirm that they are aware of the Applicable Laws and Buyer's Policies, and, in connection with the activities of the Parties related to this Agreement, Supplier hereby commits to strict compliance with such Applicable Laws and Buyer's Policies and makes the following representations and warranties as of the date of this Agreement and for the duration of this Agreement in connection with its activities related to this Agreement:

(a) Supplier, for itself and on behalf of its Affiliated Persons, represents, warrants and covenants that:

(i) Supplier and its Affiliated Persons are solely responsible for complying, have to their best knowledge complied, and will comply, with Applicable Laws and Buyer's Policies, and have to their best knowledge not taken and will not take or fail to take any action, which act or omission would subject Buyer or its affiliated companies to liability under Applicable Laws or Buyer's Policies;

(ii) neither Supplier nor any of its Affiliated Persons has, to its or their best knowledge, offered, paid, given or loaned or promised to pay, give or loan, or will offer, pay, give or loan or promise to pay, give or loan, directly or indirectly, money or any other thing of value to or for the benefit of any Government Official, for the purposes of corruptly (a) influencing any act or decision of such Government Official in his official capacity, (b) inducing such Government Official to do or omit to do any act in violation of his lawful duty, (c) securing any improper advantage or (d) inducing such Government Official to use his influence with a Government Entity to affect or influence any act or decision of that Government Entity, in each instance to direct business to Supplier or Buyer or its affiliated companies; and

(iii) in case Supplier or any of its Affiliated Persons is or will become a Government Entity or a Government Official whose official duties include decisions to direct business to Supplier, Buyer or its affiliated companies or to supervise, or otherwise control or direct the actions of, Government Officials who are in a position to direct business to Supplier or Buyer or its affiliated companies, Supplier or the respective Affiliated Persons have to make sure, that conflicts of interest will be excluded and to inform Buyer without undue delay about the measures taken.

(b) Supplier shall assist and cooperate fully with the efforts of Buyer to comply with Applicable Laws. In particular, Supplier shall keep accurate books and records and Supplier shall immediately notify Buyer of any information that bribes or other improper payments are being requested, made or offered in connection with this Agreement. Upon request of Buyer, Supplier shall make those records which are necessary for Buyer to verify Supplier's compliance with the Applicable Laws relating to this Agreement available to a sworn auditor who is obligated to observe secrecy and selected by Buyer. If such auditor notices any failure by Supplier to comply with the Applicable Laws Supplier agrees that the auditor may disclose information relating to Supplier's failure to Buyer and, to the extent required by a legal demand by a competent court of law or government body, to third parties.

(c) In no event will Buyer be obligated to Supplier under or in connection with this Agreement to act or refrain from acting if Buyer believes that such act or omission would cause Buyer to be in violation of Applicable Laws. In no event will Buyer be liable to Supplier for any act or omission which Buyer believes is necessary to comply with Applicable Laws.

(d) If Supplier or any of its Affiliated Persons breaches any of the representations, warranties or covenants in this Section each of which is deemed to be material and continuously made throughout the term of this Agreement, then, in addition to any other rights Buyer may have under this Agreement:

(i) Buyer may declare a forfeit of any unpaid amounts owing to Supplier and will be entitled to repayment of any amounts paid or credited to Supplier, in each case, which are prohibited by Applicable Laws; and

(ii) Buyer may immediately terminate this Agreement; and

(iii) Supplier shall, upon first written request by Buyer, indemnify and hold harmless Buyer and/or Buyer Affiliate in regard to any and all cost and claims brought forward against Buyer and/or Buyer Affiliate arising out of any failure of Supplier to comply with its representations, warranties and covenants of this Section.

30.4 Supplier shall also adhere to the standards and requirements of Daimler regarding sustainability and environmental protection as specified in MBST 36/10, located on the Supplier Portal and as may be amended from time to time.

30.5 The 1980 United Nations Convention on Contracts for the International Sale of Goods, to the extent it may be deemed to apply, shall not, pursuant to Article 6 thereof, apply to the Agreement or any transactions pursuant hereto.

30.6 To the extent Supplier procures components or parts for the Product or Service Parts from Mexico, trade benefits arising out of or in connection with sourcing in Mexico, pursuant to the Mexican Decree for Development and Modernization of the Automobile Industry of December 11, 1989 (as amended and/or replaced by similar law), and its implementing regulations, shall accrue to the Buyer Mexican affiliate, as identified by Buyer from time to time. Supplier shall cause its Mexican suppliers to transfer such trade benefits to the Buyer Mexican affiliate, and to meet all requirements to assure that the Buyer Mexican affiliate may make use of such trade benefits.

## SECTION 31: Immigration

31.1 Supplier (i) shall at all times during the term of this Agreement comply, in all respects with all immigration laws, statutes, rules, codes, orders and regulations, including, without limitation, the Immigration Reform and Control Act of 1986, as amended, the Immigration and Nationality Act, as amended, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and all other applicable state or local laws, as amended, and any successor statutes, laws, rules and regulations thereto (collectively, the "Immigration Laws"), (ii) has

properly maintained, and shall at all times during the term of this Agreement properly maintain, all records required by the Department of Homeland Security (the "DHS"), including, without limitation, the completion and maintenance of the Form I-9 for each of Supplier's employees located in the United States, and (iii) has responded, and shall at all times during the term of this Agreement respond, in a timely fashion to any inspection requests related to such I-9 Forms by DHS or by Buyer. During the term of this Agreement, Supplier shall, and shall cause its directors, officers, managers, agents and employees to, fully cooperate in all respects with any audit, inquiry, inspection or investigation that may be conducted by the DHS of Supplier or any of its employees. All agreements and contracts between Supplier and its Subcontractors shall provide, and shall require the Subcontractors to cause all agreements and contracts with Sub-subcontractors to provide, that the Subcontractor or Sub-subcontractor, as the case may be, is subject to all of the terms and conditions of this Agreement, except to the extent expressly stated otherwise in the Contract Documents.

31.2 Supplier will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform any Services. Furthermore, Supplier will not knowingly allow any Subcontractors or Sub-Subcontractors to employ or continue to employ any unauthorized aliens to perform any Services. Prior to performing any Services, Supplier agrees to enroll and maintain enrollment in the federal work authorization program by the DHS commonly known as E-Verify or any subsequent replacement program (the "E-Verify program"), to provide to Buyer evidence of Supplier's enrollment in the E-Verify program, and to utilize the E-Verify program during the performance of the Agreement in accordance with the applicable state and federal rules and regulations. Supplier will retain and make available for inspection by Buyer, or any authorized governmental agency, at the Site (and if requested provide a copy to Buyer), on the first day of employment or upon reasonable notice, a completed I-9 Employment Eligibility Verification Form and an E-Verify confirmation. Upon request, Supplier will provide to Buyer any available copies of associated employment eligibility, identity, and work authorization documentation for each person that Supplier employs on the Site. If Supplier receives actual knowledge of the unauthorized status of one of its Site employees, or if Supplier learns of facts that would lead a reasonable person to infer the unauthorized status of any Site employee, Supplier will immediately remove that employee from the Site, inform Buyer, and shall require each Subcontractor and Sub-Subcontractor to act in a similar fashion with respect to such Subcontractor's or Sub-Subcontractor's employees.

31.3 Supplier shall indemnify, protect, defend, and hold harmless Buyer and its affiliates, including Buyer Affiliate, and its and their respective directors, stockholders, members, managers, officers, employees, agents, consultants, representatives, successors, transferees, and assigns (collectively, the "Buyer Indemnified Parties") from and against any and all damages arising from, relating to or associated with any actual or alleged actions or omissions of Supplier or its employees, agents, representatives, Subcontractors, or Sub-subcontractors, or any employees, agents, representatives or contractors of any of the foregoing, in connection with the performance of the Services hereunder.

31.4 Supplier represents and warrants that each employee and Subcontractor and Sub-Subcontractor employee will have evidence of appropriate immigration authorization to perform the Services at the Buyer jobsite. On-site credentials will not be issued by Buyer for any Supplier

or Subcontractor or Sub-Subcontractor employee unless the employee meets these requirements. Suppliers who fail to present evidence of appropriate immigration authorization to Buyer shall not be allowed to perform work at Buyer in accordance with applicable laws and regulations. The Supplier shall remain responsible for any and all damages incurred for failing to meet the appropriate immigration requirements and failure to remedy will be a breach of contract. It is the responsibility of the Supplier to seek legal counsel and bear all costs for obtaining such immigration authorization for its employees and Subcontractors' and Sub-Subcontractors' employees prior to these employees' assignment to the Buyer jobsite.

31.5 All indemnification obligations in Section 31 of this Agreement shall be enforced to the fullest extent permitted by applicable law for the Buyer Indemnified Parties' benefit, regardless of the causes or alleged causes of the claims.

### **SECTION 32: Advertising**

32.1 Supplier shall not, without the prior written consent of Daimler, in any manner publish the fact that Supplier has furnished or contracted to furnish Buyer and/or Buyer Affiliate with goods and/or services, or use the name or trademarks of Daimler, its products, or any of its associated companies in Supplier's advertising or other publication. Supplier shall not place its or any third parties' trademark or other designation on the part if the part is a Marked Part. Supplier shall sell Marked Parts, and similar goods, only to Daimler and shall not sell Marked Parts or similar goods to third parties without Daimler's prior written consent.

### **SECTION 33: Assignment**

33.1 Both parties acknowledge, understand, and agree that Buyer, in entering into the Agreement, depends upon special trust, confidence, and an ongoing special and unique relationship between the Parties. Supplier hereby acknowledges that the Agreement, by reason of said special and unique relationship, may not be assumed, assigned, or delegated without the prior express written consent of Buyer pursuant to 11 U.S.C. § 365 or any similar statute, state or federal, and hereby expressly waives any and all rights Supplier has under 11 U.S.C. § 365 to assume and assign the Agreement without the express written and prior consent of Buyer. The Agreement, including any rights arising therefrom, may not be assigned or delegated, in whole or in part, by either Party, unless it has received the prior written consent by the other Party. Notwithstanding the foregoing, Buyer may assign the Agreement in whole to any affiliated company that may pursue the Project in its stead.

33.2 The Agreement shall be binding and inure to the benefit of the Parties and, subject to Section 33.1 above, to their respective successors and assigns.

### **SECTION 34: Diversity**

34.1 Buyer seeks to have a diverse supplier base and thus encourages Supplier to have a diverse workforce and diverse supplier base. This may be accomplished by Supplier using its best efforts to contract and sub-contract with business establishments which meet one or more of the following conditions: (i) a small business, as defined in Title 15, Section 632 of the United States Code and related regulations; (ii) a small business owned and controlled by

socially disadvantaged individuals (that is, more than fifty percent (50%) of the business is owned and controlled by one or more socially and economically disadvantaged individuals and the management and daily business operations are controlled by one or more of such individuals); and (iii) a business that is more than fifty percent (50%) owned by a woman or women who also control and operate the business. Supplier shall inform Buyer annually the percentage, based on a dollar value, of the content provided by its suppliers which meet one or more of the preceding conditions for the Product, Service Parts, or Services purchased hereunder, as well as the basis for claiming that such content was provided by a supplier which meets one or more of the preceding conditions.

34.2 Buyer expects the Supplier to use its best efforts to achieve a total of at least five percent (5%) initial content in the Product to come from such businesses.

34.3 Supplier understands and agrees that the Agreement is between Supplier and Buyer, but that Buyer Affiliate or DAG or other affiliates of DAG may act as an agent or representative of Buyer for various purposes under this Agreement and the development and production of the Vehicle. DAG and such affiliates shall be third party beneficiaries under this Agreement.

#### SECTION 35: **Pollution and Waste**

35.1 Supplier agrees to become certified to ISO 14001 no later than the start of production pursuant to this Agreement, or such other date upon which the Parties may mutually agree. Supplier agrees to provide Buyer with annual proof of its ISO 14001 certification.

35.2 Supplier shall notify Buyer in writing upon receipt of a Purchase Order issued under the Agreement if goods sold thereunder are subject to laws or regulations relating to hazardous or toxic substances or, when disposed of, to regulations governing hazardous waste, or to any other environmental or safety and health regulations. Supplier shall furnish all appropriate shipping certification and instructions for shipping, safety, handling, exposure and disposal (including, without limitation, material safety data sheets and TSCA certification) in a form sufficiently clear for use by Buyer's nontechnical personnel and sufficiently specific to identify all actions which the user must take concerning the material. Supplier is responsible for complying with the TSCA requirements in accordance Section 6.9 of the Agreement, and with Buyer purchasing procedures for chemicals and related parts in accordance with Buyer's and/or Buyer Affiliate's, as applicable, Procedure for Hazardous Chemical/Substance Communication Program located on the Supplier Portal and as may be amended from time to time.

35.3 To the extent that Supplier is present on Buyer premises, the Supplier must take all necessary measures to prevent the release of contaminants of all kinds, to prevent any discharge into sanitary sewer system drains, sinks, clean-outs, or sumps, to prevent any discharge into any storm sewer system drain on the Buyer and/or Buyer Affiliate site, and to prevent any chemical spills and/or releases of any kind, including hydraulic oil line failures. The Supplier is required to comply with the Buyer's and/or Buyer Affiliate's Environmental Protection Plan-Supplier's Edition, if applicable to the Buyer and/or Buyer Affiliate, located on the Supplier Portal and as may be amended from time to time.

#### SECTION 36: **Captions**

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36.1 The headings of each section of the Agreement are intended for ease of reference only and shall not be used to limit, interpret, or modify the provisions of the Agreement or the rights and obligations of the Parties.

### SECTION 37: **Acknowledgment**

37.1 Supplier shall require all of its Lower Tier suppliers, whether or not listed on Supplier's Chain of Supply List, to execute a Lower Tier Acknowledgment and Waiver in accordance with the provisions of this Section 37. Supplier shall deliver all fully executed acknowledgments to Buyer to keep on file with Supplier's Chain of Supply List. Buyer is specifically authorized by Supplier to directly engage, contact and communicate with all of Supplier's sub-suppliers, subcontractors and vendors regarding their performance and production of products and/or services for Supplier in connection with its performance under this Agreement.

37.2 In the Lower Tier Acknowledgement and Waiver required hereunder, each Lower Tier shall agree to and acknowledge the following:

(a) All of Buyer's rights and remedies set forth in Sections 5.3, 5.4, 19, 21 and 22 of these Master Terms, and agree that Buyer shall have all of the same rights and remedies against Lower Tier as those it has with respect to Supplier, which are set forth in those Sections.

(b) Except as otherwise set forth in the Development Agreement or other Contract Documents, Buyer owns the Buyer Intellectual Property and Work Product at all times during the term of the Agreement, and that Buyer has granted Supplier a non-exclusive, non-transferable license to use such Buyer Intellectual Property. However, Buyer has agreed to permit Supplier to sub-license the Buyer Intellectual Property to Lower Tier only to the extent necessary for Lower Tier to fulfill its obligations to Supplier in furtherance of Supplier's obligations under the Agreement. Lower Tier shall not grant any additional sublicense in and to the Buyer Intellectual Property. Any sublicense in the Buyer Intellectual Property shall automatically be revoked upon termination of the Agreement. Lower Tier agrees with and shall comply with the terms and restrictions of Buyer's license of Buyer Intellectual Property.

(c) A waiver by Lower Tier, substantially similar to the provisions of Section 10.1 herein, of mechanic's lien, materialmen's lien, laborer's lien and similar rights for payment.

(d) An obligation by Lower Tier, substantially similar to Supplier's obligation set forth in Section 10.2 herein, to keep property free and clear of liens.

### SECTION 38: **Integration Clause**

38.1 The Agreement is the exclusive, complete, and integrated statement of agreement between the Parties with respect to the subject matter hereof, and shall supersede all prior agreements, negotiations, representations, and proposals, whether written or oral, relating to the supply of Product or Service Parts. Except as otherwise permitted by the Agreement, no

provision of the Agreement may be changed or modified except by agreement in writing signed by both Parties.

### SECTION 39: **Absolute Obligation to Supply**

39.1 By acceptance of a Purchase Order, Supplier understands and agrees that its obligations under this Agreement are absolute, and at no time, may Supplier refuse to perform or stop shipment, even if Buyer is in breach of this Agreement. Supplier is entitled to seek damages for any alleged breach by judicial process, in accordance with this Agreement, but Supplier must continue with performance under this Agreement at all time. The parties specifically acknowledge and agree that any actual or threatened cessation of performance by Supplier shall constitute bad faith on the part of Supplier.