



# GENERAL TERMS AND CONDITIONS OF PURCHASE

Rev. 12/20/2006

**1. Scope and Acceptance:** (a) These Terms, and terms and conditions of purchase that can be requested electronically by Seller, apply to all written and oral Purchase Orders and amendments thereto (collectively referred to as "Order") issued by Buyer. All goods and services (whether or not ancillary to a sale of goods) to be provided under an Order are included in the term "Goods." (b) An Order for which written confirmation is requested may be accepted only by returning a copy thereof signed by Seller within 7 days of its date. However, Buyer may elect to consider Seller's oral quotation or acceptance of the Order, Seller's preparation to provide the Goods, or Seller's delivery of the Goods, as acceptance of the Order and its terms (and of no other terms) and enforce the Order. Buyer objects to any additional or contrary terms in Seller's quotation or acceptance, and the terms herein shall be binding upon the parties. An Order is not a firm offer and may be revoked prior to acceptance. (c) An order does not constitute an acceptance by Buyer of an offer to sell, any quotation, or any proposal. Reference in an order to any such offer to sell, quotation, or proposal shall in no way substitute a modification of any of the terms and conditions of the order. A reference to Seller's proposal or quotation in an Order is not an acceptance to Buyer of terms which conflict with forms and documents provided by Buyer and part of an Order. Attempted acknowledgement of an order containing terms and conditions posted electronically on seller's website, is not binding upon buyer unless specifically accepted by buyer in writing, and buyer hereby objects thereto. No course of performance or conduct by buyer shall be construed to waive, modify or otherwise adversely affect Buyer's rights.

**2. Prices.** The prices in an Order shall be complete, and no additional charges of any type shall be added without Buyer's express written consent, including but not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing and crating. All cash discounts shall be computed from the date of receipt of Goods, whichever occurs later.

**3. Delivery.** Delivery must be on or before the date indicated, if any, otherwise as requested by Buyer. If the Order is identified as a "Blanket" Order, deliveries are to be made only in quantities and at times specified in the delivery schedule, in the order or by Buyer. Buyer shall have no liability for payment of Goods delivered to Buyer which are in excess of quantities specified in an Order or in delivery schedules. Buyer may change delivery schedules. Time is of the essence as to delivery.

**4. Marking.** Unless otherwise provided in an Order: (a) All Goods shall be suitably packed, marked and shipped in accordance with the requirements of common carriers in a manner to secure the lowest transportation costs consistent with the requirements hereof. Packing slips identifying an Order, release, and part Numbers must accompany each shipment. (b) Seller shall mark each package as instructed by Buyer and otherwise in accordance with the standards of the Automotive Industry Action Group. Markings shall be in English, Bar code, or other form as determined by Buyer.

**5. Specification Changes.** Buyer reserves the right at any time to make changes in quantities, drawings, specifications, packing, shipment, and other terms of an Order. Any purported change shall be binding on Buyer only if made in writing signed by Buyer. Any difference in price or time for performance necessarily resulting from such changes shall be adjusted equitably and an amendment to the Order or delivery schedule shall be in writing, provided Seller makes demand for such adjustments within 10 days of receipt of Buyer's change. Time is of the essence for such demand. The price shall be adjusted to compensate Seller for increased costs necessarily incurred as a result of the changes. Seller may not substitute materials or change the specifications of the Goods in any way without written authorization from Buyer.

**6. Seller's Quality and Inspection.** (a) Seller shall participate in any supplier quality and development programs at Seller's cost and comply with all quality requirements and procedures specified by Buyer from time to time, including ISO-9001, QS-9000, ISO 14001, APQP and TS-16949. Buyer may inspect the Goods in process at Seller's facilities at reasonable times, but such inspections shall not constitute acceptance of the Goods or a waiver of strict performance. (b) Buyer and Customer shall have a reasonable time, but not less than 30 days after delivery, to inspect delivered Goods prior to accepting Goods. Defective and nonconforming Goods will be held for Seller's instructions at Seller's risk and expense and, if Seller so directs, may be returned at Seller's expense. Goods returned as



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defective or nonconforming shall not be returned to Buyer without Buyer's approval. Payment for the Goods shall not constitute an acceptance. Acceptance shall not release Seller's responsibility for defective or nonconforming Goods. (c) All Goods (including, without limitation, raw materials, components, intermediate assemblies, end products, tooling and accessories) shall be subject to inspection and test by Buyer and its "Customer" (including, without limitation, subsequent original equipment manufacturers and end-users) at all times and places. Records of all inspection work as to a particular Good shall be kept complete, separate and available to Buyer and its Customer during the performance of an Order and for such longer periods as may be specified in an Order, but not less than 3 years after the last delivery of the particular Good to Buyer.

**7. Intellectual Property.** Seller shall keep confidential all technical, process or economic information derived from drawings, specifications and other data furnished by Buyer and shall not use or divulge, directly or indirectly, such information for the benefit of any other party without obtaining Buyer's prior written consent. Upon completion or termination of the Order, Seller shall immediately return to Buyer all information contemplated in this Section. Seller shall defend and indemnify Buyer, its successors, assigns, customers and users of its products, against all suits at law or in equity and from all damages, claims and demands for actual or alleged infringement of any domestic or foreign patent, copyright or other property right by reason of the use or sale of the Goods. Seller grants to Buyer, its subsidiaries and affiliates an irrevocable, paid-up worldwide license to use each copyright of seller that is applicable to any intellectual property whatsoever furnished by Buyer in connection with the Goods. Any developments or materials created during the performance of an order shall be the exclusive property of Buyer.

**8. Warranties.** (a) Seller warrants to Buyer and its Customer that all Goods shall be: (i) merchantable; (ii) free from all defects in design, workmanship and materials; (iii) in strict compliance with the specifications, samples, drawings designs or other requirements (including performance specification) approved or adopted by Buyer (iv) provided with due care. Any attempt by Seller to limit, disclaim, or restrict any such warranties or any remedies of Buyer, by acknowledgement or otherwise, in accepting or performing an Order, shall be ineffective. (b) Seller warrants that performance of an Order shall be in compliance with the provisions of TS-16949 applicable to the obligations of Seller under the Order, whether or not Seller is certified under such standards.

**9. Liability, Indemnity and Insurance.** Seller shall defend, indemnify and hold harmless Buyer, its affiliates, subsidiaries, directors, officers, employees and agents from and against all liabilities, claims or demands for injuries or damages to any person or property arising out of the performance of an Order or breach of Seller's warranties, by Seller, its servants, employees, contractors, agents, or representatives. Seller shall furnish an insurance carrier's certificate showing that Seller has Adequate insurance coverage in the following minimum amounts: workmen's compensation-statutory limits for jurisdiction in which work is to be performed; employer's liability - \$1,000,000; general liability-bodily injury \$1,000,000; automobile liability-bodily injury \$1,000,000 per person and \$500,000 per occurrence and property damage \$1,000,000. Liability coverage shall include completed products and operations coverage. The certificate must certify that the required insurance coverage's are in effect and will not be canceled or materially changed until 30 days after written notice to Buyer. If Seller's work under an Order that involves operations by Seller on the premises of Buyer or one of its customers, Seller shall take all necessary precautions to prevent the occurrence of an injury to persons or damage to property during the progress of such work and except to the extent that any such injury or damage is due solely and directly to Buyer's negligence, shall defend and indemnify Buyer against any claim which may result in any way from any act or omission of Seller, its agents, or subcontractors. Seller shall indemnify Buyer and its employees for any and all damages and reasonable expenses (including reasonable attorney fees) incurred because of property damages, personal injury, or other claims arising out of the condition, labeling, engineering, use, sale, storage, design, safety, etc. of the Goods whether or not incorporated in another product, if damages claimed were not caused solely by Buyer. Seller waives the application of the doctrine of comparative negligence.



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**10. Termination for Convenience.** Buyer may immediately terminate all or any part of an Order of release for Buyer's convenience, at any time and for any or no reason by giving written notice to Seller. Upon such termination, Buyer shall pay to Seller the following amounts without duplication: (i) and Order price for all conforming Goods which have been completed in accordance with an Order or release not previously paid; and (ii) Seller's direct costs of work in process and raw materials incurred in furnishing the goods to the extent such costs are reasonable in amount; less the reasonable value or cost (whichever is higher) of any Goods or materials used or sold by Seller with Buyer's written consent and the cost of any damaged or destroyed Goods or materials. Buyer shall not pay for finished Goods, work in process or raw materials fabricated or processed in excess of those authorized in delivery releases, for any undelivered Goods which are Seller's standard stock or readily marketable, or for any finished Goods which remain undelivered after request by Buyer. Buyer shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment, rearrangement cost or rental, unamortized depreciation costs, and general and administrative burden charges arising from termination of the Order. Buyer or its agent shall have the right to audit and examine all books, records, facilities, work, material, inventories and other items relating to any termination claim of Seller. Buyer shall have no obligation to Seller if Buyer terminated its purchase obligations under the Order or any releases because of default by Seller.

**11. Default and Remedies.** (a) Seller shall be in Default: (1) if Seller fails to perform any obligation within the time specified herein or any extension thereof or upon Buyer's demand if no time has been specified; or (2) if Seller is insolvent or fails to perform any of the other provisions of the Order, or so fails to make progress as to make Buyer reasonably apprehensive about Seller's ability or willingness to perform its obligations; and if in either of these two circumstances Seller does not cure such failure within a period of 5 days or such longer periods as Buyer may authorize in writing after receipt of notice from Buyer specifying such failure. Upon such default, Buyer may by written notice of default to Seller (i) terminate the whole or any part of an Order; and (ii) procure alternative goods or services upon such terms as it shall deem appropriate. Seller shall continue performance of an Order to the extent not terminated and shall be liable to Buyer for any excess costs for such similar supplies or services and other direct, incidental, and consequential damages. As an alternative remedy, and in lieu of termination for default, Buyer at its sole discretion, may elect (x) to extend the delivery schedule; and/or (y) to waive other deficiencies in Seller's performance in which case an equitable reduction in an Order price shall be established by Buyer to compensate Buyer for its damages. If Seller anticipates difficulty in complying with the required delivery date, or in meeting any of the other requirements of an Order, Seller shall promptly notify Buyer in writing. (b) If any Goods ordered are found at any time to be defective in design, material or workmanship, or otherwise not in conformity with the requirements of an Order, Buyer, in addition to such other rights, remedies and choices as it may have under an Order or by Law, at its option and sole discretion may: (i) reject and return such Goods at Seller's expense; or (ii) require Seller to inspect the Goods and remove and replace nonconforming Goods with Goods that conform to an Order. If Buyer elects option (ii) and seller fails to promptly make the necessary inspections, removal and replacement, Buyer may at its option and Seller's cost, inspect and repair or replace the Goods. (c) Seller grants Buyer a security interest in the Goods to secure Seller's performance and return of deposits, and grants Buyer an irrevocable power of attorney to execute and file financing statements. (d) Seller's continued holding of the Goods and Furnished Property (as defined below), after demand has been made by Buyer for delivery, will substantially impair the value of the Goods and Furnished Property, and Buyer shall be entitled to court order for possession. (e) Buyer's remedies herein provided shall be cumulative and additional to any other or further remedies provided in law or equity, including, but not limited to, the recovery of direct, incidental and consequential damages and the entry of injunction relief.

**12. Property Furnished by Buyer and Its Customer.** Unless otherwise agreed in writing, all tooling, equipment or material of every description furnished to Seller by Buyer or its customer, or paid for by Buyer, and any replacement thereof, or any materials affixed or



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attached thereto ("Furnished Property"), shall be and remain the personal property of Buyer or its customer. Furnished Property shall be plainly marked or otherwise adequately identified by Seller as the property of Buyer or its customer and shall be safely stored separate and apart from Seller's property. Buyer may enter seller's premises and inspect Furnished Property and all related records during normal business hours. Seller shall not substitute any of its own property for Furnished Property except in filling and Order. Furnished Property while in Seller's custody or control shall be held at Seller's risk, shall be kept insured by Seller at Seller's expense in an amount equal to the replacement cost with loss payable to Buyer or its customer and shall be subject to removal at Buyer's written request, in which event Seller shall prepare Furnished Property for shipment and shall deliver it to Buyer or its customer in the same conditions as originally received by Seller, reasonable wear and tear excepted, all at Seller's expense. Seller shall not retain possession of Furnished Property to secure payment of amounts owed or for any other reason, as a claim for damages is an adequate remedy.

**13. Required Tooling.** Seller, at its own expense, shall furnish, keep in good condition, and replace when necessary all tooling, jigs, dies, gages, fixtures, mold, and patterns ("Required Tooling") necessary for the production of the Goods. Seller shall fully insure the Required Tooling for the replacement thereof. Buyer may inspect the Required Tooling during normal working hours. Seller grants Buyer an irrevocable option to take possession of and title to the Required Tooling that is special for the production of Goods upon payment to Seller of the book value thereof less any amounts Buyer has previously paid to Seller for the cost of the Required Tooling; provided, however, that this option shall not apply if the Required Tooling is used to produce goods that are standard stock of Seller.

**14. Compliance with Laws.** (a) Seller shall provide to Buyer appropriate installation, operation and maintenance manuals, including all specific warnings or instructions, in English to maximize the useful life and performance of the goods. Seller shall provide Material Safety Data Sheets as appropriate for the Goods. (b) Seller warrants that each chemical substance constituting or contained in the Goods sold is on the list of chemical substances compiled and published by the Administrator of the environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et. seq.) as amended, and that the Goods are not hazardous under any state or federal law except as clearly stated on the shipping and storage containers. Seller shall defend and indemnify Buyer from any claim alleging improper or illegal dispositions of the Goods except for grossly negligent dispositions, (c) Seller warrants that the Goods shall be in compliance with an applicable sections of the Federal Consumer Product Safety Act \*15 U.S.C. Sec. 2051 et seq.) as amended, and the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) as amended, and lawful standards and regulations there under. (d) Seller warrants that the Goods shall be produced in compliance with the Fair Labor Standards Act of 1938, as amended, including Sections 12(a) and Seller shall insert a certificate to that effect on all invoices. (e) Seller warrants that its performance and the Goods shall comply with all applicable industry standards, and federal, state or local laws, rules, regulations and ordinances.

**15. Non-Assignment.** Seller shall not assign or subcontract any right or obligation under an Order without the prior written consent of Buyer.

**16. Set-Off.** Buyer Shall be entitled at all times to set-off any amount owing at any time from Seller to Buyer, or any of its affiliated companies, against any amount payable at any time by Buyer in connection with the Order.

**17. Foreign Purchases.** The following applies to all transactions involving imported Goods: (a) Seller warrants that all sales are or will be made at not less than fair value under the United States Anti-Dumping Law (19 U.S.C. Sec. 160 et. seq.) and seller will indemnify, defend and hold Buyer harmless from and against any costs or expenses. (b) Seller agrees that Buyer will not be a party to the importation of the Goods, that the transaction (s) represented by an Order will be consummated subsequent to importation, and that Seller will neither cause nor permit Buyer's name to be shown as "Importer of Record" on any customs declaration. (c) Upon request. Seller shall provide Buyer Customs Form 7543 entitled "certificate of Delivery" properly executed. Upon request, Seller shall furnish promptly and properly completed all documents required for customs drawback purposes. Unless otherwise stated herein, all



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customs drawback will be credited to Buyer. (d) Upon request, Seller shall furnish promptly certificates of local value added in accordance with applicable government regulations.

**18. Applicable Law and Waiver.** An Order is to be construed and enforced under the laws of Michigan. The Convention on the International Sales of Goods shall not apply. The parties consent to the jurisdiction and convenience of the courts of Michigan, including Oakland Circuit Court. Any declaration of unenforceability of a provision hereof shall be as narrow as possible and shall not void an Order or any other provision.

**19. Publicity.** Seller shall not advertise or publish the fact that Seller has contracted to furnish Buyer the goods or services herein ordered, or use any trademark or trade name of Buyer in Seller's advertising materials, without obtaining the prior written consent of Buyer. In the event of Seller's breach of this Section, Buyer shall have the right to cancel the undelivered portion of any goods or services covered by this order and shall not be required to make further payments except for conforming goods delivered or services rendered prior to cancellation.

**20. Ethical Standards.** Seller shall not: (1) give or offer to give any gift or benefit to said employee; (2) solicit or accept any information, data, services, equipment, or commitment from said employee unless same is (i) required under a contract between Buyer and Seller, or (ii) made pursuant to a written disclosure agreement between Buyer and Seller, or (iii) specifically authorized in writing by Buyer's management; (3) solicit or accept favoritism from said employee; and (4) enter into any outside business relationship with said employee without full disclosure to, and prior approval of Buyer's management. "Gift or benefit" includes money, goods, service, discounts, favors and the like in any form but excludes low value advertising items such as pens, pencils and calendars.

**21. Entire Agreement.** The Order (including these Terms) is intended by the parties as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade may be used by Seller to supplement or explain any term in the Order. All modifications must be in writing signed by Seller and Buyer, except as otherwise provided in the Order.