GEMINI GROUP, INC.

STANDARD TERMS AND CONDITIONS OF PURCHASE

June 2026

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1. **Acceptance**

An Order is Buyer's offer to Supplier. Until it is accepted in accordance with the Terms and Conditions, Buyer may revoke any Order at any time without incurring any liability to Supplier. Supplier's (i) full or partial performance under, or indication thereof, or (ii) acknowledgement of the Order, is acceptance of the Order and all terms and conditions contained in the Order, including the Terms and Conditions. Any terms and conditions proposed in Supplier's acceptance or in any acknowledgment, invoice, or other form of Supplier that add to, vary from, or conflict with the terms herein are hereby rejected. No action or inaction on the Part of Buyer, including acceptance of or payment for any Goods, is an acceptance of any terms other than the Terms and Conditions.

2. **Definitions**

2.1. "Affiliate" means, with respect to any entity, any other entity that directly or indirectly controls, is owned by, controlled by or under common ownership or control with such entity.

2.2. "Agreement" means the master terms agreement, long term agreement, subcontract, or other agreement that references these terms and conditions, and pursuant to which Orders are issued to Supplier.

2.3. "Buyer" means Gemini Group, Inc. ("Gemini") or the Gemini Affiliate that issues an Order referencing these Terms and Conditions, and any successor or assignee of Buyer.

2.4. "Buyer's Customer" means the ultimate owner, lessee, or operator of the Goods and includes the purchaser of an end product incorporating the Goods and/or Services provided by Supplier under the Order.

2.5. "Buyer Systems" means the electronic delivery system established by Buyer through which Orders, delivery schedules, quantities, and other shipping requirements shall be communicated to Suppler.

2.6 "Delivery Date" means the date of delivery for Goods and Services as specified in an Order or through Buyer Systems.

2.7. "Derived Technical Data" means information that is (i) of non-U.S. origin but subject to U.S. jurisdiction, and (ii) in any form necessary for the design, development, production, operation, modification or maintenance of Goods or Services, as set forth in applicable ITC Laws. Derived Technical Data can include, but is not limited to, drawings, specifications, or operation sheets that contain U.S.-origin data or that were developed using U.S.-origin data.

2.8. "Goods" means goods, parts, supplies, software, technology, drawings, data, reports, manuals, other specified documentation, or items that are required to be delivered pursuant to, or in connection with, an Order, and where the context requires such services as are necessary and incidental to the delivery of Goods under any Order. For clarity, changes made by Buyer to the part numbers and/or other description of the Goods as a result of a change under the Changes clause of these Terms and Conditions will continue to be Goods.

2.9. "Intellectual Property" means all inventions, patents, software, copyrights, mask works, industrial property rights, trademarks, trade secrets, know-how, proprietary information and rights and information of a similar nature. Such information includes, without limitation, designs, processes, drawings, prints, specifications, reports, data, technical information, and instructions.

2.10. “ITC Laws” mean the import, customs, export control, sanctions and U.S. anti- boycott laws, regulations, and orders applicable at the time of the import, export, re-export, transfer, disclosure, or provision of Technical Data, Goods or Services including, without limitation, the (i) Export Administration Regulations ("EAR") administered by the Bureau of Industry and Security, U.S. Department of Commerce, 15 Code of Federal Regulations (C.F.R.) Parts 730-774; (ii) International Traffic in Arms Regulations (the "ITAR") administered by the Directorate of Defense Trade Controls, U.S. Department of State, 22 C.F.R. Parts 120-130; (iii) Foreign Assets Control Regulations and associated Executive Orders administered by the Office of Foreign Assets Control, U.S. Department of the Treasury, 31 C.F.R. Parts 500-598; (iv) Internal Revenue Code, 26 U.S.C. § 999, enforced by the U.S. Department of Treasury; (v) International Emergency Economic Powers Act (“IEEPA”), 50 U.S.C., § 1701 et. Seq.; (vi) Customs regulations administered by U.S. Customs and Border Protection, 19 United States Code (U.S.C.) and Title 19 C.F.R.; and (vii) applicable import, customs and export laws and regulations of other countries, except to the extent they are inconsistent with the U.S. laws.

2.11. "Lead Time" means the maximum time within which Supplier agrees to deliver Goods after receipt of a delivery requirement for such Goods. Unless otherwise mutually agreed between Buyer and Supplier, Lead Times are measured based on the date of receipt of the relevant Goods at Buyer's facility.

2.12. "Need Date" means the date Buyer needs delivery of Goods which date is before, or after, the Delivery Date.

2.13. "Party" or "Parties" shall mean Buyer and/or Supplier, individually or collectively, as the context requires.

2.14. "Prime Contract" means the government or commercial sales contract between Buyer and Buyer's Customer.

2.15. "Order" means a paper or electronic document sent by Buyer to Supplier, or where provided for in an Agreement, an entry on Buyer System, to initiate the ordering of Goods or Services, such as a purchase order, a scheduling agreement, or other authorization or Order, and including change notices, supplements or modifications thereto. The phrase "in connection with the Order" includes performance of the Order, performance in anticipation of the Order, and preparation of a bid or proposal for the Order. Where the context permits, the term Order includes Agreement.

2.16 “Quantities” means the firm quantities of Goods to be delivered by the Delivery Dates as communicated to Supplier through Buyer’s Systems or stated on the face of the Order.

2.17. "Services" means any effort performed by Supplier necessary or incidental to the delivery of Goods, including design, engineering, installation, repair and maintenance. The term "Services" shall also include any effort required by an Order.

2.18. "Specifications" means all requirements with which Goods and Services and performance hereunder must comply, including drawings, instructions and standards on a Buyer web site or elsewhere, as such requirements are specified and/or referenced in Orders, as such requirements are modified from time to time by Buyer.

2.19. "Supplier" means the legal entity providing Goods and Services or otherwise performing work pursuant to an Order.

2.20. “Technical Data” means information that is necessary for the design, development, production, operation, modification or maintenance of Goods or Services as set forth in applicable ITC Laws. “Technical Data” includes Derived Technical Data

2.21. "Terms and Conditions" or “Terms” means this document, the Gemini Group, Inc. Standard Terms and Conditions of Purchase, regardless of whether modified or unmodified by the Parties.

3. <u>Quality and Compliance with Specifications</u>

3.1 All Goods and Services, including prototype and production parts, delivered under the Order must strictly comply with all Specifications. Buyer may revise or amend the Specifications on its own initiative or at the request or suggestion of the Supplier. If, during the course of production of any prototype, Supplier develops any changes or improvements that it has verified are suitable for the intended purpose and required quality of the Goods, Supplier must inform Buyer of that change or improvement so that Buyer may consider amending the Specifications accordingly.

3.2 Supplier must comply with the accepted state of the art, as well as the agreed Specification, the agreed quality, environmental, safety, and testing rules and regulations, and the agreed technical data. Any change of the Goods or of materials, tools, or production processes (including the location of manufacture) requires the prior written consent of Buyer, and Supplier acknowledges that it may often also require the prior written consent of Buyer’s customer. Supplier must review the Specifications and notify Buyer immediately of any modifications that may be necessary.

3.3 Supplier shall immediately notify Buyer, in writing, of any failure of the Supplier, the Goods or the Services to comply with the Specifications.

3.4 Buyer reserves the right to make, or require Supplier to make, modifications to the Goods, the Specifications, or the production process at any time. Supplier will, within ten (10) days of the date it is notified of a modification by Buyer, demonstrate the effects of the modification on the price and delivery date through a cost breakdown and other appropriate documentation. If the modification requires any deviation in price or delivery date, Buyer and Supplier will agree on an appropriate adjustment in writing.

3.5 Supplier will control the quality of the Goods in regular intervals and will present the agreed inspection documents to Buyer. Supplier will inform Buyer immediately and in writing of any quality problems with the Goods.

3.6 Buyer has the right upon advance notice to reasonably check compliance with the provisions of this section and to inspect the corresponding records at Supplier's premises. Supplier will support Buyer, make records available, and provide information as required.

3.7 To the extent that any public authority competent for product safety, emissions rules, or the like requests access to the production process and the inspection documents of Buyer, Supplier will, on Buyer's request, grant the authorities the same rights at Supplier's premises and provide all reasonable support.

4. Invoicing and Pricing

4.1. Except as expressly stated on the Order, the price of Goods stated on the Order is a fixed price and represents the total price for the manufacturing and delivery of Goods under the Order. The price of Supplies includes storage, handling, packaging and all other expenses and charges of Supplier, and no surcharges, premiums or other additional charges of any type shall be added without Buyer's express written consent. Supplier may not adjust prices or invoice additional costs of any nature whatsoever. Prices are not subject to increase, unless specifically stated in the Order or an Agreement, and Supplier assumes the risk of any event or cause affecting prices, including without limitation, foreign exchange rates, increases in raw material costs, inflation, increases in labor and other production and supply costs, and any other event which impacts the price or availability of materials or Goods. Prices may be subject to decrease as agreed in the Order or other written agreement

4.2. Supplier will invoice Buyer upon delivery of the Goods. All invoices must reference the Order number, amendment or release number, Buyer's part number, Supplier's part number where applicable, quantity of pieces in the shipment, number of cartons or containers in the shipment, bill of lading number, currency and other information required by Buyer. No invoice may reference any term separate from or different than these Terms or the terms that appear on the face of the Order. Any different terms referenced in an invoice are hereby rejected and are not made part of the Order. Buyer reserves the right to return all invoices or related documents submitted incorrectly.

4.3. Buyer will pay proper invoices complying with all of the terms of the Order, subject to adjustments, set-offs, discrepancies and other unresolved issues. Except as otherwise provided in these Terms, Buyer will pay proper invoices on the payment terms stated in the Order or an Agreement, if any. Such payment terms apply to the date Invoices are received at the facility designated by Buyer when Supplier has complied with all its obligations provided in the Order or, in the case of services, the date that Buyer receives Supplier's invoice following completion of the services. If no payment term appears on the Order or in an Agreement, Buyer will pay Supplier for the Goods on the 60th day (or no later than the Friday following the 60th day) ("Net 60 paid weekly") following Buyer's receipt of the Invoices at Buyer's designated facility when Supplier has complied with all its obligations provided in the Order or, in the case of services, Buyer's receipt of Supplier's invoice following completion of the services.

4.4. The total price includes all duties and taxes except for any governmentally imposed value added tax (VAT) imposed by a non-USA jurisdiction, which must be shown separately on Supplier's invoice for each shipment. Buyer is not responsible for any business activity taxes, payroll taxes or taxes on Supplier's income or assets. Supplier will pay all premium freight costs over normal freight costs if Supplier needs to use an expedited shipping method to meet agreed delivery dates due to its own acts or omissions. Supplier will pay any costs incurred by Buyer, including costs charged by Customer(s) to Buyer, as a result of Supplier's failure to comply with shipping or delivery requirements. Buyer may setoff such costs from Supplier's invoices.

4.5. Supplier may not assign to, or have collected by, third parties of Supplier's claims against Buyer. If Supplier assigns Supplier's claims against Buyer to a third party without Buyer's prior written consent, Buyer may at its choice discharge its obligation either toward Supplier or toward the third party.

4.6. Supplier represents and warrants that the prices are, and will remain, no less favorable to Buyer than any price which Supplier presently, or in the future, offers to any other customer for the same or substantially similar goods and/or services for substantially similar quantities. If Supplier offers a lower price for the same or substantially similar goods and/or services to any other customer during the term of the Order, then Supplier will immediately offer Buyer the same price as offered to Supplier's other customer. If Buyer's customer requires Buyer to reduce Buyer's price during the term of the Order, the Supplier must also reduce its price to Buyer in a proportionate amount.

4.7. Supplier represents and warrants to Buyer that Supplier will fully disclose to Buyer, and give Buyer the full and sole benefit of (unless otherwise agreed in writing by an authorized representative of Buyer), any and all discounts, refunds, rebates, credits, allowances or other financial or related incentives or payments of any kind to be provided or agreed to be provided by Supplier (or any affiliate thereof) to any Customer (or any affiliate of such Customer) and relating in any way to, and/or based on or determined, in whole or in part, with reference to Buyer's purchases of Goods from Supplier under the Order.

4.8. Supplier represents and warrants that it has no agreement for exclusivity of supply with any of Supplier's suppliers relating to the Goods or any portion or component of the Goods. Buyer may purchase goods from Supplier's suppliers without liability and Supplier expressly waives any exclusivity or any claim for tortious or other interference with any agreements between Supplier and its suppliers in the event Buyer purchases from Supplier's suppliers.

5. Quantities and Delivery / Capacity

5.1. Supplier shall use a delivery system unless otherwise specified by Buyer ("Buyer Systems"). Supplier shall only ship in accordance with the rules established by the Buyer Systems, and shall make use of the bar codes and other documentation generated by the Buyer's selected delivery system.

5.2. The Order shall designate if it is a Spot Buy order or an Installment Order. Installment Orders may further indicate they are for a set share of Buyer's requirements for the Goods.

5.3. For any Spot Buy Orders, Supplier shall deliver the Goods in the quantities and by the Delivery Date specified on the face of the Order, or as otherwise communicated to Supplier through Buyer Systems.

5.4. For any Installment Orders, the delivery information in the Buyer Systems shall establish the firm Delivery Dates and Quantities for the Goods and/or Services. Any quantities stated on the face of any Installment Order reflect Buyer's anticipated order quantities and shall not be binding on Buyer or Seller. Any due dates indicated on the face of any Installment Order indicate the duration for which Buyer expects Supplier to fulfill delivery releases communicated through Buyer's System. All firm Quantities and Delivery Dates shall be communicated through Buyer Systems and are binding on both Buyer and Supplier.

5.5. If an Instalment Order indicates it is for 100% of Buyer's requirements, the Order is an exclusive 100% requirements contract. Buyer must order exclusively from Supplier all the Goods that Buyer may need for the duration the Order. Seller must deliver to Buyer all the Goods so ordered, and Buyer must pay for those Goods in accordance with the Order. Supplier must deliver the Goods in the firm Quantities and by the Delivery Dates communicated through Buyer Systems.

5.6. If an Installment Order indicates a set share that is less than 100% of Buyer's requirements (such as "70% Buyer's Requirements") the Order is a requirements contract, and is exclusive to Seller as to the indicated percentage of Buyer's requirements. Buyer will order exclusively from Seller the indicated percentage of the Goods that Buyer may need during the for the duration of the Order. Supplier must deliver to Buyer all of the Goods so ordered, and Buyer must pay for those Goods in accordance with the Order. Supplier must deliver the Goods in the firm Quantities and by the Delivery Dates communicated through Buyer Systems.

5.7. Supplier acknowledges that time is of the essence for all obligations of Supplier under any Order, and Supplier shall deliver Goods and perform Services by the Delivery Date.

5.8. Shipment shall be to the location directed by Buyer on the face of the Order or through the Buyer Systems. Invoicing, delivery terms, shipping, packing and waste reduction instructions shall be provided to Supplier through an attachment to, or printing on the face of, the Order, or incorporated into the Order by reference to a website or the Buyer Systems. Title and risk of loss shall pass to Buyer upon receipt of Goods at Buyer's facility or third party drop shipment point, as determined by the applicable delivery terms.

5.9. Delivery Dates which do not allow sufficient Lead Time shall be considered Need Dates and Supplier shall use all commercially reasonable efforts to meet Need Dates. If Supplier agrees to the Need Date, the Need Date shall be considered the Delivery Date.

5.10. If Supplier is unable to deliver Goods by the Need Date, Buyer may, without liability: (i) reduce or cancel its requirements for any part of the quantity of the Goods that cannot be delivered by the Need Date, (ii) reallocate to another Order, or reschedule, any portion of the Goods that cannot be delivered by the Need Date, or (iii) waive the Need Date and accept Goods on the Delivery Date. In addition to any other rights and remedies that Buyer may have, in the event of Supplier's nonconformance with any of the requirements under this Section or any other delivery obligation, Supplier shall be responsible for all shipping costs and expenses incurred with respect to such nonconformance, including the costs of expediting shipment with respect to late deliveries.

5.11. Any forecasts of quantity and schedule that are set forth by Buyer in any form or manner are estimates, are for planning purposes only, and Buyer has no obligation to Supplier for them.

5.12. Without affecting any other rights of Buyer, Buyer may cancel Orders, in whole or in part, without liability to Supplier, at any time prior to commencement of Lead Time.

5.13. If Supplier delivers Goods in advance of Buyer's firm Delivery Dates, Buyer may either (A) return the Goods at Supplier's expense for proper delivery; or (B) withhold payment for the Goods until the scheduled delivery date and place such Goods in storage, at Suppliers expense until the scheduled Delivery Date.

5.14 Supplier must notify Buyer immediately in writing of any delays that become apparent.

5.15 If it becomes apparent that Supplier will be permanently unable to meet the Delivery Dates, Supplier must, at Buyer's request, surrender all tools and other devices required for production of the Goods so that Buyer may produce or have a third party produce the Goods. Buyer's right to claim damages are not affected by that request, and Buyer expressly reserves all of its repossession rights and remedies, including the right to claim further damages under any security interest, lien, lease, gratuitous bailment, or any other Agreement.

5.16 Supplier must maintain sufficient capacity to satisfy any quantities, including estimated quantities in the Order or communicated through Buyer's Systems.

6. Directed Supplier Relationship

6.1. If an Order derives from a supplier relationship directed or recommended by a Customer ("Directing Customer") by establishing Supplier as a Directed Supplier, Supplier shall comply with all provisions of an Order (including these Terms) even though Supplier may have negotiated economics and other terms with the Directing Customer. A "Directed Supplier" is any seller from which Buyer has been requested or recommended to procure Goods at the direction or suggestion of Buyer's Customer and/or the ultimate original equipment manufacturer customer (including through co-sourcing arrangements), or when, due to a Customer's product description, specification or other limitation, Buyer is limited as a practical matter to such Supplier for the Goods required.

6.2. At Buyer's request, Supplier who is a Directed Supplier shall negotiate performance, pricing, quality, warranty and other contract issues relating to the Goods with the Directing Customer to assure that the Directing Customer's requirements are adequately developed, described and met. Upon Supplier's written request, Buyer shall pass through to Supplier, subject to an appropriate mark-up for Buyer, those commercial terms which seller negotiates with the Directing Customer regarding the Goods, provided such commercial terms are granted to Buyer.

6.3. Supplier is solely responsible to provide in writing all information relating to the Goods, including for example, the Goods' design and performance (as approved by the Directing Customer and Buyer), design for interface of the Goods with Buyer's products, testing data and reports, tooling requirements and timing, and other matters which could affect Buyer's use of the Goods and performance of Buyer's obligations to provide, directly or indirectly, products to the Directing Customer.

6.4. Buyer may require Supplier to comply with: (i) the Directing Customer's terms and conditions of purchase as amended by Directing Customer; and (ii) these Terms, and to the extent there is a conflict with an Order, Buyer may elect the provisions which apply. Supplier shall participate in cost reduction and warranty cost sharing programs of the Directing Customer with Buyer.

6.5. A Supplier that is a Directed Supplier acknowledges the applicability of these Terms notwithstanding the fact that Supplier may have negotiated the price or other provisions with the Customer, and that it is bound by these Terms and an Order, including, without limitation, the payment terms.

7. Inspection, Acceptance and Rejection

7.1. Supplier shall only tender Goods to Buyer that have passed inspection in accordance with the applicable inspection system and that otherwise conform to all requirements of an Order.

7.2. Buyer is not required to perform incoming inspections of any Goods, and Supplier waives any right to require Buyer to do so. Payment by Buyer is not acceptance of nonconforming Goods. Any inspection by Buyer or its customer is not acceptance of the Goods or a waiver of strict performance and does not relieve Supplier of any liability or warranty for the Goods

7.3. Buyer may provide written notice of acceptance of the Goods to Supplier. However, in the absence of Buyer's written acceptance and notwithstanding (i) prior inspection of, (ii) payment for, (iii) use of or (iv) delivery of the Goods, acceptance shall not be deemed to occur until twelve (12) months following Buyer's receipt of Goods ("Inspection Period"). Transfer of title to Buyer shall not constitute acceptance.

7.4. During the Inspection Period, Buyer may, with respect to any Goods: (i) reject all or a portion of any nonconforming Goods; (ii) accept all or a portion of such nonconforming Goods with a price reduction for the cost of repair or the diminution of value; or (iii) accept any conforming Goods and reject the rest.

7.5. Within thirty (30) days of Supplier's receipt of Buyer's notification of a nonconformity, Supplier shall investigate the nonconformity, deliver to Buyer a written report of its investigation and conclusions, and formulate a corrective action plan acceptable to Buyer. Once approved by Buyer, Supplier must then timely implement such corrective action plan.

7.6. With respect to rejected nonconforming Goods, Buyer may at its election and at Supplier's risk and expense (i) hold nonconforming Goods for Supplier, or (ii) return nonconforming Goods to Supplier for, at Buyer's option, either (a) full credit or refund or (b) replacement Goods to be received within 24 hours of nonconformity notification. Title to such rejected Goods returned to Supplier shall transfer to Supplier upon such delivery and such Goods shall not be replaced by Supplier except upon written instructions from Buyer. Goods returned to Buyer hereunder shall be shipped at Supplier's expense and risk of loss. Additionally, rejected nonconforming Goods shall not be tendered again to Buyer for acceptance unless permitted by Buyer and applicable law, and accompanied by a disclosure of Buyer's prior rejection(s).

7.7. Notwithstanding any other provision, in addition to the foregoing, Supplier shall be liable for Buyer's actual costs, expenses and damages related to or arising from nonconforming Goods, including but not limited to labor and other costs related to transportation of Goods, expediting, removal, disassembly, failure analysis, fault isolation, assembly, reinstallation, reinspection, retrofit, and any and all other such corrective action costs incurred by Buyer.

8. <u>Warranty</u>

8.1. Supplier warrants to Buyer and Buyer's successors, assigns, Buyer's Customers, and users of Goods sold by Buyer that all Goods provided under the Order shall be and continue to be: (i) merchantable; (ii) fit for the purpose intended; (iii) new; (iv) free from defects in material and workmanship; (v) free from defects in design if the design is not provided by Buyer; (vi) manufactured in strict accordance and complies with the Specifications; (vii) free from liens or encumbrances on title; and (viii) to the extent the Goods are, or contain, hardware, software, and/or firmware products, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing all times and dates) and are free of viruses and other sources of network corruption (collectively, for this Section 6, "Warranty"). If the Order requires specific Goods to perform as a system, the foregoing Warranty also shall apply to those Goods as a system. These warranties are in addition to all other warranties provided by law.

8.2. Buyer may require Supplier to promptly repair or replace, at Buyer's option, any Goods which breach the Warranty. Buyer may return ship the Goods on the fastest available commercial carrier at Supplier's expense and risk of loss. Goods returned to Buyer hereunder shall be shipped at Supplier's expense and risk of loss and shall be accompanied by notice stating whether they are new replacements or repaired originals, and shall continue to be covered under this Warranty. Supplier shall conduct intake, review, analysis and any other activity required to evaluate whether the returned Goods are covered by the Warranty at no expense to Buyer.

8.3. Notwithstanding any other provision, in addition to the foregoing, Supplier shall be liable for Buyer's actual costs, expenses and damages related to or arising from Goods not conforming to the Warranty, including but not limited to labor and other costs related to transportation of Goods, expediting, removal, disassembly, failure analysis, fault isolation, assembly, reinstallation, reinspection, retrofit, and any and all other such corrective action costs incurred by Buyer.

8.4. Supplier warrants to Buyer that all Services provided under or in connection with an Order: (i) have been, if applicable, and will be performed in a professional and workmanlike manner and in accordance with current, sound and generally accepted industry standards and practices by appropriately licensed, trained, supervised and personnel who are experienced in the appropriate fields; and (ii) do, if applicable, and will conform to and be in compliance with all applicable Specifications, performance requirements and other requirements contained in the Order (the "Service Warranty"). Suppler agrees that should any of the Services be defectively performed by Supplier, Supplier will re-perform or correct such defective Services at no additional charge. Notwithstanding any other provision, in addition to the foregoing, Supplier shall be liable for Buyer's actual costs, expenses and damages related to or arising from the Services not conforming to the Services Warranty.

8.5. Supplier warrants to Buyer that all documentation and certifications by Supplier or Supplier’s subcontractors or business partners related to the Goods, Services and Order, as applicable, are current, complete, truthful, and accurate and have been signed or stamped, as applicable, by individuals authorized and qualified to sign or stamp such documentation and certifications.

8.6. As to each of the Goods, each of Supplier’s warranties begins on the date of delivery to Buyer and continues until the last to occur of the following: (A) the expiration of all warranties made by Buyer to its Customer concerning Buyer’s product incorporating the Goods not to exceed the earliest of ten years or 100,000 miles, if incorporated into a vehicle; (B) the expiration of the longest time period which Buyer or Buyer’s Customer or the original equipment manufacturer in which the Goods may be installed may be required, by contract or law, to repair or replace the Goods or Buyer’s product incorporating the Goods; or (C) the period provided by applicable law for the Goods as sold to a consumer; provided, however, in the event Buyer or its Customer voluntarily or pursuant to a government mandate, makes an offer to owners of vehicles (or other finished products) on which the Goods, or any parts, components or systems incorporating the Goods, are installed to provide remedial action to address a defect or condition that relates to safety or the failure of the product to comply with any applicable law, safety standard or guideline, whether in connection with a Recall Campaign or other customer satisfaction or corrected service action (a "Remedial Action"), the warranty shall continue for such time period as may be dictated by Buyer's Customer or the federal, state, local or foreign government where the Goods are used or provided and Supplier shall fully comply with the requirements of the Remedial Action. The statute of limitations period applicable to any breach of warranty will be the longest statute of limitation period for breach of contract, products liability or indemnity claims in any applicable jurisdiction or, in the case of any Recall Campaign, the longest time period provided by the U.S. federal, state, or foreign government where the Goods are used.

8.7. Supplier shall participate in Buyer's value added/value engineering and warranty reduction programs to lower the price of Goods. Supplier shall promptly advise Buyer in writing of any possible changes to the Goods which would result in cost savings or quality improvement. Maintaining competitiveness of the Goods is of critical importance to the parties' commercial relationship. Supplier shall remain competitive with respect to the Goods in terms of quality, technology, price and delivery with any supplier of the same or similar goods during the term of an Order. Should another supplier demonstrate technology and/or offer other terms which results in similar goods of equal or better quality, performance, lower price, or delivery to Buyer during the term of an Order, Buyer may notify Supplier in writing of such event and request that Supplier replicate such technology and/or terms to the advantage of Buyer, provided that such replication and/or terms would not violate any proprietary rights of any other person. Written notification to Supplier will be accompanied by whatever relevant information is available to Buyer regarding such technology and/or terms which is not proprietary to Buyer or any other person and which Buyer is not prohibited from disclosing. Supplier shall have an appropriate period of time as determined by Buyer after receipt of notice to make the Goods competitive and available for delivery. If Supplier cannot make the Goods competitive and available for delivery within such period or without violating the proprietary rights of others, Buyer may immediately terminate an Order for cause.

8.8 Nothing in this section waives or alters Buyer's rights with respect to any claims for damages or costs according to any applicable statutes or laws, including any claims under product-liability laws, or any indemnity claims by Buyer against Supplier.

9. <u>Liability and Indemnification</u>

9.1. Supplier is liable to Buyer for any breach of the Order or Terms. Supplier's liability includes Buyer's direct, indirect, incidental, and consequential damages, and any other damages or other remedies available under law or equity. Supplier will reimburse Buyer for any attorney's fees, other professional fees, and court costs incurred by Buyer in connection with any breach of the Order or Terms by Supplier or any action by Buyer to enforce its rights under the Order or Terms.

9.2. Supplier must pay Buyer for any loss that is caused by Supplier's breach of the Order or Terms, or that arises from or relates to warranty, product-recall, or product-liability claims asserted by any party against Buyer, or that arises from or relates to any injuries to persons, including death, or damage to property caused by Supplier. But Supplier need not pay for any loss that is caused solely by Buyer's negligence.

9.3. As used in Section 9.2:

(A) A loss means any amount that Buyer is legally responsible for or pays in any form. Amounts include any judgment, settlement, fine, penalty, damages, cost, or expenses, including attorney's or other professional fees. A loss can be tangible or intangible; can arise from bodily injury, property damage, or other causes; can be based on tort, breach of contract, or any other theory of recovery; and includes Buyers' direct, indirect, incidental, and consequential damages and any other damages.

(B) A loss caused by an event if the loss would not have occurred without the event, even if the event is not the proximate cause of the loss.

(C) Buyer includes its affiliated companies and Buyer's and its affiliated companies' directors, officers, employees, subcontractors, and agents.

(D) Supplier includes Supplier's employees, subcontractors, and agents.

9.4. Supplier waives the application of the doctrine of comparative negligence and other doctrines that may otherwise allocate the liability covered by Supplier's obligations under Section 9.1. Those obligations are in addition to Supplier's warranty obligations.

9.5 Buyer will notify Supplier within a reasonable time after Buyer knows of a claim for a loss that Supplier might be obligated to pay. Buyer's failure to give notice within a reasonable time does not terminate Supplier's obligation under Section 15.1, except to the extent that the failure prejudices Supplier's ability to defend the claim or mitigate losses.

9.6 Supplier, at Buyer's option and at Supplier's expense will defend the claim through counsel approved by Buyer. Supplier may not settle the claim without Buyer's written authorization unless the terms of settlement could not materially adversely affect Buyer. In the alternative, Buyer may elect to defend the claim itself, and if Buyer does so, Supplier must reimburse Buyer on a monthly basis for all costs and expenses of defense, including attorney's and other professional fees.

9.7 If any third party asserts any claim against Buyer under liability without fault that arises from the delivery or performance of Supplier and that the third party could also assert against Supplier, Supplier will indemnify Buyer to the extent Supplier would be directly liable to the third party.

9.8 **Limitations on Buyer's liability to Supplier:** Buyer is not liable to Supplier for anticipated profits or for special, incidental, or consequential damages under any circumstances. Buyer's liability for a claim of any kind or for any loss arising out of or in connection with or resulting from each Order, the Goods, or any other agreement between Buyer and Supplier is limited to any amounts due Supplier through a termination claim under Section 16.

9.9 No action by Buyer, including the payment for Goods or acceptance of a later delivery, is a waiver of any of its rights under the Order or Terms, including its rights to pursue any claim against Supplier.

10. Taxes

10.1. Unless otherwise stated in the Order, all payments, prices, fixed or otherwise, sums, payments, fees and monetary amounts mentioned in the Order are exclusive of any and all sales and use taxes, value added taxes, goods and services taxes, taxes levied upon importation, such as customs duties, excises, or any other taxes ("Taxes") levied in regard of any of the transactions covered by the Order.

10.2. When invoicing, Supplier shall (i) include amounts of Taxes, or specific fees Supplier is required by applicable law to add-on to the sales price and collect from Buyer or otherwise is legally due from Buyer, and (ii) separately state each of the Taxes.

10.3. Supplier is solely responsible for the fulfillment of Supplier's obligations under law or statute in respect to collecting and remitting Taxes collected from Buyer under the Order to the proper tax authority. Any penalties, fees or interest charges imposed by a tax authority or other authority as the result of non-payment of Taxes collected by Supplier from Buyer will be borne by Supplier. Supplier shall also pay any Taxes arising out of its willful misconduct or negligence for which Buyer becomes liable.

10.4. Supplier shall not collect Taxes on the supply of Goods and Services pursuant to the Order under circumstances where (i) the transaction is not subject to Taxes, (ii) the liability for payment of Taxes is shifted or reversed by law or statute or otherwise is the legal responsibility of Buyer or (iii) Buyer has been authorized to pay Taxes directly to the appropriate tax authority.

10.5. Supplier shall deliver electronically by way of the Internet all software of any type, including manuals. Supplier shall separately itemize the prices of electronically delivered software, licenses, fees and Services on invoices. Invoices shall clearly indicate the manner of software delivery by inclusion of the phrase, "software delivered electronically to the customer via the Internet." License locations should clearly be stipulated in the Order or Agreement to allow for proper allocation of any Taxes owed.

10.6. Supplier warrants that invoices issued in relation to Goods and Services supplied under the Order are in compliance with any and all requirements as to content and format imposed by tax and/or civil statute that has jurisdiction over the transaction or transactions performed by Supplier.

10.7. Buyer shall withhold any portion of the monies from the amount payable under the invoices issued to it to account for any withholding for taxes that is required to be made by Buyer pursuant to the tax laws in the relevant tax jurisdiction. Any such amount required to be withheld by Buyer on behalf of Supplier shall be deemed a payment on account of the relevant invoices issued to Buyer. Buyer shall provide Supplier with receipts supporting any taxes withheld.

10.8. Buyer is not responsible for any tax based on Supplier's income, payroll or gross receipts.

10.9. Buyer shall report and remit any Taxes relating to property for which Buyer retains title pursuant to the Order or Agreement (as applicable), accruing prior to and after the commencement of the Order or Agreement (as applicable). Where Supplier possesses Buyer-owned property, Supplier shall notify Buyer of any disposal or movement of such property. Supplier shall report and remit any property-related Taxes relating to property for which Supplier retains title pursuant to the Order or Agreement (as applicable), accruing prior to and after the commencement of the Order or Agreement (as applicable).

10.10. Supplier shall, upon receipt from any Tax Authority of any levy, notice, assessment, or withholding of any Taxes for which Buyer may be obligated, notify Buyer in writing directed to: Purchasing Director, Gemini Group, Inc., 175 Thompson Road, Bad Axe, MI 48413.

10.11. Supplier shall cooperate in the equitable resolution of disputes pertaining to any Taxes arising from the Order or Agreement. If Buyer may directly contest any Taxes in its own name, then it may do so and, to the extent permitted by law, withhold payment during contest pendency. If Buyer is not so permitted, Supplier shall in good faith, as requested by Buyer, contest the Taxes. Supplier shall supply Buyer with information and documents as Buyer may reasonably request for Buyer to control or participate in any proceeding to the extent permitted herein.

10.12. If Supplier receives a refund of any Taxes attributable to Buyer; Supplier shall pay such amount to Buyer within thirty (30) days of receipt. Supplier shall indemnify Buyer against any and all losses, costs, and expenses (including reasonable attorneys' fees) which result from Supplier's violation of its obligations under this section.

11. <u>Inspection and Audit Rights</u>

11.1. Supplier (which, for the purposes of this Section, includes Supplier and its suppliers, subcontractors and business partners) shall at any time, and after reasonable notice by Buyer, (i) grant to Buyer, Buyer's Customers and/or to any competent regulatory authority, unrestricted access to (or if requested by Buyer, provide to Buyer copies of) Supplier's books, records and documentation (including, without limitation, those pertaining to quality, inspection and testing of Goods and Services, security and data protection procedures, ethics and compliance programs, trade compliance records, and any other requirement or obligation under the Order), but excluding financial books and records, wherever such books and records may be located (including third-party repositories and at facilities of Supplier’s suppliers, subcontractors, and business partners used in connection with the Order), and (ii) provide Buyer, Buyer's Customers and/or any such authority the right to access, and to perform any type of inspection, test, audit or investigation at Supplier's premises, including, without limitation, manufacturing and test locations and the facilities of Supplier’s suppliers, subcontractors and business partners used in connection with the Order for the purpose of enabling Buyer to verify compliance with the requirements set forth in the Order or for any other purpose indicated by Buyer's Customers and/or said authority in connection with the design, development, certification, manufacture, sale, use and/or support of the Goods. Supplier and its suppliers, subcontractors and business partners shall cooperate with Buyer and Buyer’s Customers and/or any such authority to furnish all reasonable facilities for and assistance with the safe performance of inspections, tests, audits and/or investigations in connection with any Order and Goods and Services thereunder.

11.2. Supplier shall maintain complete inspection records for all Goods which shall be available to Buyer during performance of an Order and until the later of: (i) four (4) years after final payment, (ii) final resolution of any dispute involving the Goods delivered hereunder, (iii) the latest time required by an Order, (iv) the latest time required by applicable laws and regulations, or (v) as otherwise directed by Buyer.

11.3. Any corrective action requested by Buyer, Buyer's Customers and/or any said authority following any such inspection, test, audit or investigation shall be implemented by Supplier at Supplier’s cost.

11.4. In addition to any other inspection or audit rights granted to Buyer hereunder, Buyer may inspect and audit, on reasonable notice, Supplier's financial books and records if the Order: (i) is a time and material order, (ii) is a cost-based order, or (iii) provides for advance or progress payments based on costs incurred by Supplier.

12. Product Support Obligation

Supplier shall maintain the ability to provide, and shall provide, product support for the Goods, which shall include, without limitation, assuring that subcomponents and materials are available, maintaining tooling and other production capability and re-engineering components or systems to address obsolescence until the later of fifteen (15) years after the last Order is placed by Buyer for Goods or less than five (5) end products incorporating Goods are in operation anywhere in the world.

13. Buyer Items

13.1. All tools, parts, templates, matrices, measures, devices, jigs, gauges, fixtures, other appurtenances, and related drawings and forms (collectively, “Tooling”), equipment, material, or information that (A) is provided to Supplier by Buyer, Buyer’s customer, or Buyer’s ultimate end customer; (B) has been paid for or is to be paid for directly or through amortization by Buyer; or (C) is required to be furnished to Supplier under the Order (each "Buyer Items") are the property of Buyer, its customer, or its ultimate end customer, unless agreed otherwise, and are held by Supplier on a bailment basis only.

13.2 Buyer Items shall be delivered as specified in the Order or through Buyer's System, or, if not specified, in sufficient time to enable Supplier's timely performance. Buyer shall have no liability to Supplier for any delays or failures in the delivery of Buyer Items. If Buyer Items are not delivered to Supplier in sufficient time to enable Supplier to meet Delivery Dates, Supplier may notify Buyer of the delay and shall be entitled to an extension of such schedule equal to the period of the delay. Such adjustment shall be Supplier's sole and exclusive remedy.

13.3. Buyer Items shall be used only for the purposes of the Order. Supplier shall not use Buyer Items on any other order without Buyer's written permission. Supplier shall, at its own expense: (i) establish and follow a preventative maintenance calibration and repair program for, (ii) safely store (separated from other material where practicable), (iii) maintain in good, workable condition, (iv) and replace if, if necessary, all Buyer Items.

13.4. Title to any Buyer Items shall remain with Buyer. Buyer, in order to protect its interests, may require Supplier to execute documents that are related to Buyer Items, including, Uniform Commercial Code financing statements or any similar documents. Supplier shall plainly mark and adequately identify Buyer Items as being Buyer's property. Supplier shall not substitute any property for or modify Buyer Items.

13.5 Supplier bears the risk of loss and damage to Buyer Items while the Buyer Items are in Supplier's possession and control. Supplier must insure the Buyer Item in the event of loss to an amount equal to the replacement cost that would have to be paid to Buyer, its customer, or Buyer's ultimate end customer, all at Supplier's cost. Supplier assigns all claims for payment against the insurer to Buyer, and Buyer accepts this assignment. Supplier must treat the Buyer Items carefully and safely and must hold Buyer harmless for any claim, liability, costs, or damages arising from or related to the assembly, use, safekeeping, or repair of Buyer Items. Buyer, Buyer's customer, or Buyer's ultimate end customer is entitled to enter Supplier's premises during regular business hours and to inspect the Buyer Items and any records relating to it.

13.5. Upon Buyer's request, Supplier shall provide an annual written inventory of Buyer's Items, including certification of compliance with this Section and proof of adequate insurance covering full replacement cost of Buyer Items.

13.6. Buyer may remove the Buyer Items or demand its surrender at any time and without any reason and without any payment, regardless whether Buyer has terminated any Order with Supplier. Upon a demand by Buyer that Supplier surrender any Buyer Items, Supplier must immediately surrender the Buyer Items and prepare it for shipping (in accordance with the requires of the carrier and Buyer) or deliver it to Buyer or elsewhere, as directed by Buyer. If Buyer chooses to remove the Buyer Items from Supplier's premises itself, Supplier will fully cooperate with that removal. If Buyer directs that Supplier deliver the Buyer Item to Supplier or elsewhere, Buyer will reimburse Supplier for reasonable delivery costs. Supplier may not retain the Buyer Item, either from outstanding payment demands or for any other reason, and its cooperation with delivery and removal of Buyer's property is not contingent on final payment.

13.7 Supplier shall, upon discovery, provide notification to Buyer if any Buyer Items are lost, damaged or destroyed. Upon completion or termination of the Order, or at any time upon Buyer's request, Supplier shall, at its own expense, dispose of Buyer Items in accordance with Buyer's instructions.

13.8 Supplier affirmatively waives any lien, whether based in statute or common law, that it might otherwise have on any Goods or Buyer Items for any work done on the goods or Buyer Items or for any other reason. Supplier assigns to Buyer any claims Supplier has against any third party relating to any Buyer Items.

13.9 If the Buyer Item is in the possession of any third party, including any sub-supplier or service provider such as a repair shop, Supplier's obligation to cooperate with Buyer's removal of the Buyer Items or to surrender the Buyer Items under this Section 13 includes an obligation to secure the Buyer Item's release by the third party. Supplier's obligation to secure the Buyer Item's release includes the immediate payment of any claims made by the third party and the immediate payment of any amounts necessary to remove, at its own cost, any lien asserted by the third party for any reason. In other words, Supplier will immediately take all steps necessary to place the Buyer Item in Buyer's possession, including the payment of any amount.

14. <u>Changes</u>

14.1. Buyer's authorized procurement representative (which does not include Buyer's engineering and technical personnel) may unilaterally make changes within the general scope of the Order, including changes in whole or part to: (i) shipping, waste reduction or packing instructions, (ii) place of delivery, (iii) any designs, Specifications and drawings, (iv) the statement of work, (v) the method or manner of performance, (vi) Buyer Items, facilities, equipment, or materials, (vii) Prime Contract flowdown requirements and/or (vii) quality requirements (collectively "Change(s)"). Supplier shall perform any Changes ordered by Buyer. Any Order terms that incorporate flexibility for variations or modifications shall not be considered Changes within the meaning of this Section.

14.2. Except as set forth herein, or as otherwise agreed, if any Change under this Section causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment shall be made in price or delivery schedule or both ("Adjustment Claim"), and Buyer shall modify the Order accordingly. Supplier must submit an Adjustment Claim in writing in the form of a complete change proposal, fully supported by factual information, to Buyer's procurement representative no later than fifteen (15) days after Supplier's receipt of the Change. Supplier acknowledges and agrees that certain changes in delivery/performance schedule are normal and anticipated in the course of the program. Supplier further agrees that the cost of such changes is included in the prices provided under the Order. Accordingly, Supplier shall not be entitled to a price adjustment hereunder for any Change to the delivery schedule when deliveries are rescheduled within twelve (12) months of the delivery schedule in existence at the time of the Change. If any Change ordered by Buyer as a result of an order by Buyer's Customer causes an increase or decrease in the cost of or the time required for performance of any Order or the Agreement, Supplier will receive an equitable adjustment in price or delivery schedule or both, but only if and to the proportional extent Buyer receives such an adjustment from Buyer's Customer, and provided all applicable requirements are followed by Supplier as set forth in the Change and the Order.

14.3. If the cost of property or material made obsolete or excess as a result of a Change is included in the Adjustment Claim, Buyer may direct the disposition of such property or material. Notwithstanding any pending Adjustment Claims, Supplier shall diligently proceed with the performance of the Order, as directed by Buyer.

14.4. If Supplier considers that Buyer's conduct constitutes a Change, Supplier shall notify Buyer's authorized procurement representative immediately in writing as to the nature of such conduct and its effect upon Supplier's performance. Supplier shall take no action to implement any such Change without written direction from Buyer's authorized procurement representative.

15. Stop Work Order

Buyer may, from time to time, require Supplier to stop all or any portion of the work called for by the Order for a period of up to 120 days at each such time, or such longer period of time as may be required by Buyer’s Customers ("Stop Work Period"). Upon receipt of written notice detailing the length and scope of the Stop Work Period, Supplier shall immediately comply with its terms at no charge. Within the Stop Work Period, Buyer may either: (i) cancel the stop-work order and Supplier shall resume work; or (ii) terminate the work covered by the stop-work order, for default or convenience, as the context requires, in accordance with the provisions of the Order. If Buyer has not exercised its rights set forth in either (i) or (ii) above prior to the expiration of the Stop Work Period, then at least thirty (30) days prior to said expiration, Supplier shall notify Buyer of its intent to resume work under the applicable Order and shall obtain Buyer's written consent prior to resuming work.

16. Termination for Default

16.1. Buyer may, by written notice, terminate the Order (which, for the avoidance of doubt, includes the Agreement) or any portion thereof, for default without any liability or obligation whatsoever to Supplier for the portion terminated, in the following circumstances: (i) Supplier fails to perform any obligation hereunder, including a delivery obligation; (ii) when Buyer has reasonable grounds for insecurity, and Supplier fails to provide adequate assurances of performance within ten (10) days following Buyer's demand or, (iii) should Supplier (a) become insolvent, (b) become unable to pay its debts as they mature, (c) make a general assignment for the benefit of creditors, (d) have a receiver appointed for the whole or any substantial part of its assets, or (e) become in any way the subject of a bankruptcy petition.

16.2. Buyer shall have no liability in relation to those Goods terminated for Supplier's default. Supplier shall be liable to Buyer for any and all expenses, costs, and damages including increased reprocurement costs, requalification costs, and other non-recurring costs, except in the circumstance of any failure or delay constituting an "Excusable Delay" as set forth in the Section herein entitled "Force Majeure."

16.3. If the Order is entirely or partially terminated under this Section other than pursuant to Section 15.1(iii), Buyer, in addition to any other rights Buyer may have, may require Supplier, at no charge to Buyer, to: (i) deliver to Buyer all information, data, know-how, and other Intellectual Property, including proprietary and manufacturing information, utilized by Supplier in performing the Order; (ii) deliver any Buyer Items necessary to make or have made the Goods and provide technical and transition assistance; and (iii) provide to Buyer a worldwide, perpetual, non-exclusive, fully paid, irrevocable, license, with the right to grant sublicenses, to Supplier's information, data, know-how, and other Intellectual Property, including proprietary and manufacturing information, to the extent necessary, to enable Buyer to make, have made, use, sell and license the Goods.

16.4. Supplier grants Buyer the irrevocable option to acquire possession and title to any tools and equipment that are necessary for, and specific to, the production of the Goods ("Necessary Tools"). To exercise this option, Buyer must pay to Supplier the Necessary Tools' net book value, less any amounts already paid to Supplier by Buyer or amortized via the purchase price of the Goods. Supplier warrants to Buyer that it is not using the Necessary Tools for production of goods to any customer other than Buyer.

16.5 Supplier will provide Buyer with any technical information required by Buyer in order to install, assemble, or use the Necessary Tools. Technical information includes: design, component, and installation drawings; technical documentation, test logs and results, and data; and any other information relating to Goods and Necessary Tools. Subject to Supplier's patent rights, technical information may be used and published by Buyer without any limitation. Design or production information that is subject to any intellectual property right of Supplier may be used by only Buyer for its own purposes.

16.6. In addition to and not in lieu of other rights to Intellectual Property otherwise set forth in the Agreement or these Terms and Conditions, Supplier hereby grants to Buyer a worldwide, perpetual, non-exclusive, fully paid, irrevocable, license ("Additional License"), with the right to grant sublicenses, to Supplier's information, data, know-how, tooling, test equipment and other Intellectual Property, including without limitation proprietary and manufacturing information to enable Buyer to make, have made, use, sell and license the Goods, subject to the following restriction. Buyer hereby agrees not to exercise such rights under this Additional License except in the event Supplier (i) becomes insolvent, (ii) becomes unable to pay its debts as they mature, (iii) makes a general assignment for the benefit of creditors, (iv) has a receiver appointed for the whole or any substantial part of its assets, or (v) becomes in any way the subject of a bankruptcy petition, whether or not the Order is terminated. As part of such Additional License, Supplier shall upon Buyer's written request and at no charge to Buyer, promptly (a) deliver to Buyer all information, data, know-how, and other Intellectual Property, including proprietary and manufacturing information, utilized by Supplier in performing the Order, and (b) deliver the tooling and test equipment necessary to make or have made the Goods and provide technical and transition assistance in order to ensure Buyer's continuing requirements for Goods.

16.7. If, after notice of termination under this Section, it is determined that Supplier was not in default, the rights and obligations of the Parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience Section. In such case, Supplier shall not be entitled to any remedy other than as provided for in the Termination for Convenience Section.

17. Termination for Convenience

17.1. Buyer may, at any time, terminate all or part of the Order (which, for the avoidance of doubt, includes the Agreement), for its convenience upon written notice to Supplier.

17.2. Upon termination, in accordance with Buyer's written direction, Supplier will immediately: (i) cease work and place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the Order; (ii) prepare and submit to Buyer an itemization of all completed and partially completed Goods and/or Services; (iii) deliver to Buyer any and all Goods completed up to the date of termination at the pre-termination Order price; and (iv) if requested by Buyer, deliver any work-in-process.

17.3. In the event Buyer terminates for its convenience after performance has commenced, Buyer will compensate Supplier only for the actual and reasonable work-in-process costs incurred by Supplier on Goods required to be delivered within the Lead Time period, calculated from Buyer's issuance of the notice of termination. If the Order does not specify Lead Time, Lead Time shall be the reasonable average lead time for the Goods in accordance with Buyer data. Supplier shall use reasonable efforts to mitigate its own and Buyer's liability under this Section. In order to receive compensation, Supplier's termination claim must be submitted within ninety (90) days from the effective date of the termination.

17.4. Buyer shall not be liable to Supplier for costs or damages other than as described above, and in no event for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the price allocated to the portion of the Order terminated.

18. Intellectual Property Rights

18.1. "Background Intellectual Property" shall mean all Intellectual Property other than Foreground Intellectual Property.

18.2. "Foreground Intellectual Property" shall mean all Intellectual Property and tangible work product conceived, created, acquired, or first reduced to practice in connection with the Order.

18.3. Each Party retains its existing rights in Background Intellectual Property.

18.4. Buyer shall own all Foreground Intellectual Property. Supplier shall disclose to Buyer all Foreground Intellectual Property. If not expressly required to be delivered in the Order, Supplier shall deliver to Buyer all Foreground Intellectual Property upon written request from Buyer. Supplier hereby irrevocably assigns and promises to assign to Buyer all right, title and interest to all Foreground Intellectual Property. Supplier agrees to do all things reasonably necessary to enable Buyer to secure and perfect Buyer's Foreground Intellectual Property rights, including, without limitation, executing specific assignments of title in Foreground Intellectual Property by Supplier to Buyer and cooperating with Buyer at Buyer's expense to defend and enforce Buyer's rights in any such Foreground Intellectual Property. All Foreground Intellectual Property shall be considered Buyer's Proprietary Information (defined hereinafter). Supplier agrees that, for any works of authorship created by Supplier or any employees or any others used by Supplier in the course of the Order, those works that come under one of the categories of "Works Made for Hire" in 17 U.S.C.§101 shall be considered "Works Made for Hire." For any works of authorship that do not come under such categories, Supplier, warranting that it has the right to do so, hereby assigns and promises to assign all right, title, and interest to any copyright in such works to Buyer and will execute, or cause to be executed at Buyer's expense, any documents required to establish Buyer's ownership of such copyright.

18.5. Supplier represents and warrants that Supplier has sufficient rights in all Goods, Services, and Intellectual Property and other items that Supplier uses or transfers to Buyer in connection with the Order to allow Supplier to lawfully comply with the Order.

18.6. Supplier hereby grants and promises grant to Buyer and Buyer's Affiliates a worldwide, non-exclusive, perpetual, fully-paid, irrevocable, transferable license to Background Intellectual Property (i) to use, sell, offer for sale, import, export, copy, adapt, embed, modify, make derivative works, make and have made Goods and Services, and (ii) to enable Buyer to practice the Foreground Intellectual Property.

18.7. Supplier hereby irrevocably waives and promises to waive all moral rights to the extent permissible by law, all rights of privacy and publicity, and the like, in all Goods provided to Buyer and in all activities in connection with the Order.

18.8. Supplier represents and warrants that Supplier shall not provide, in the performance of the Order, any software, including without limitation source code, compiled code, embedded software, firmware, free software, open source software, freeware, general public license-governed software, or any electronic hardware, including without limitation free hardware designs, or open source hardware designs, in any form that is subject to any obligations or conditions that may provide a legal right to any third party to access such software, and/or electronic hardware, or that could otherwise impose any limitation or condition on Buyer’s use, reproduction, modification, distribution or conveyance of such software or electronic hardware.

18.9. Except as expressly authorized herein, nothing in the Order shall be construed as Buyer granting Supplier a license in or any right to use any of Buyer's Intellectual Property other than in the performance of work under the Order.

19. Intellectual Property Indemnification

19.1. Supplier shall indemnify and hold harmless Buyer, Buyer's Customers, Affiliates, and subsidiaries, their agents, directors, officers, and employees, and each subsequent purchaser or user, from any losses, costs, damages, and liabilities, including, without limitation, any attorney's fees, court costs and fines, arising from any potential or actual claim, suit, injunction, action, proceeding, or investigation alleging infringement or violation of any Intellectual Property rights or license, related to the manufacture, use, sale, offer for sale, import, or other exploitation of any Goods or Services delivered or performed in connection with the Order ("Claim").

19.2. Supplier shall not be liable for any Claim based on Supplier's compliance with any Specification created by Buyer, unless: (i) Supplier could have complied with Buyer's Specification using a solution that was non-infringing; (ii) the relevant portion of the Specification was derived from, recommended by, or provided by, Supplier; or (iii) Supplier knew or should have known of a Claim or potential Claim and did not promptly notify Buyer in writing.

19.3. Supplier shall, upon written notice from Buyer of a Claim, promptly assume and diligently conduct the entire defense of a Claim at its own expense. Insofar as Buyer's interests are affected, Buyer shall have the right, at its own expense and without releasing any obligation of Supplier, to participate and intervene in a Claim. Buyer shall have the right to reasonably reject counsel selected by Supplier. Supplier shall not enter into any settlement without Buyer's prior written consent, which shall not be unreasonably withheld

19.4. Buyer may supersede Supplier in the defense of any Claim, and assume and conduct the defense at Buyer's sole discretion. In such an event, Supplier shall be released from any obligation to pay for attorneys' fees and court costs, but not settlement or damages, and any such release is expressly conditioned on Supplier's complete cooperation with Buyer in Buyer's defense of such Claim at Buyer's expense. Buyer shall not enter into any settlement without Supplier's prior written consent, which shall not be unreasonably withheld.

19.5. If the manufacture, use, sale, offer for sale, import, export, or other exploitation of any Goods or Services is enjoined by a court, if delivery is precluded by a government entity, or should Supplier refuse to provide or supply any Goods or Services to avoid a potential third party claim, Supplier shall avoid any disruption to Buyer and shall (i) secure for Buyer the right to provide, use or sell such Goods or Services; (ii) modify or replace such Goods or Services with equivalent non-infringing Goods or Services; or (iii) provide such other solution acceptable to Buyer. Supplier shall reimburse Buyer for Buyer's costs incurred in obtaining all internal, external and Buyer's Customer approvals, qualifications, certifications, and the like, necessary for making, using, providing and selling alternate non-infringing Goods or Services. Supplier shall refund to Buyer the purchase price of any such Goods or Services that Buyer is prohibited from providing, using4, selling, offering for sale, importing, exporting, or otherwise exploiting.

20. <u>Proprietary Information</u>

20.1. In order to deliver the most effective and efficient Goods and Services possible and meet Buyer’s requirements for those Goods and/or Services, Buyer and Supplier anticipate the need to exchange Proprietary Information (as defined below) for the design, development, testing, manufacture and/or repair of Goods and/or Services, as applicable in connection with such Order and/or the Agreement. In recognition of the value of that Proprietary

Information, as well as to protect Buyer's goodwill and reputation in its products, Supplier agrees to the terms and conditions of this Section 18.

20.2. "Proprietary Information" shall mean all information, knowledge or data (including without limitation financial, business, and product strategy information; product specifications; product designs; procedures; studies; tests; and reports) in written, electronic, tangible, oral, visual or other form, (i) disclosed by, or obtained from, Buyer or (ii) conceived, created, acquired, or first reduced to practice in connection with the Order. If Buyer furnishes sample products, equipment, or other objects or material to Supplier, the items so received shall be used and the information obtained from said items shall be treated as if they were Proprietary Information disclosed in connection with the Order.

20.3. Unless Supplier has received Buyer's express written consent to the contrary, Supplier shall (i) use the Proprietary Information solely for the purposes of the Order, and not for any other purpose (including, without limitation, designing, manufacturing, selling, servicing or repairing equipment for entities other than Buyer; providing services to entities other than Buyer; or obtaining any government or third party approvals to do any of the foregoing); (ii) safeguard the Proprietary Information to prevent its disclosure to or use by third parties; (iii) not disclose the Proprietary Information to any third party; and (iv) not reverse engineer, disassemble, or decompile the Proprietary Information.

20.4. Supplier may disclose the Proprietary Information to employees, officers, directors, or contract labor personnel of Supplier who have a need to know such Proprietary Information for the purposes of performing the Order and who have executed a written agreement with Supplier obligating such person to treat such information in a manner consistent with the terms of this Section.

20.5. The Order shall not restrict Supplier from using or disclosing any information that, as proven by written contemporaneous records kept in the ordinary course of business: (i) is or may hereafter be in the public domain through no improper act or omission of Supplier or a third party; (ii) is received by Supplier without restriction as to disclosure by Supplier from a third party having a right to disclose it; (iii) was known to Supplier on a non-confidential basis prior to the disclosure by Buyer; or (iv) was independently developed by employees of Supplier who did not have access to any of Buyer's Proprietary Information.

20.6. If Proprietary Information is required to be disclosed pursuant to judicial process, Supplier shall promptly provide notice of such process to Buyer and, upon request, shall fully cooperate with Buyer in seeking a protective order or otherwise contesting such a disclosure. Disclosure of such requested Proprietary Information shall not be deemed a breach of the Order provided that the obligations of this Section are fulfilled by Supplier.

20.7. Buyer shall have the right to audit all pertinent documentation of Supplier, and to make reasonable inspection of Supplier's premises, in order to verify compliance with this Section.

20.8. Obligations in this Section regarding Proprietary Information shall continue until such time as all Proprietary Information is publicly known and generally available through no improper act or omission of Supplier or any third party.

20.9. Unless required otherwise by law or the Order, Supplier shall promptly return, or otherwise dispose of Proprietary Information as Buyer may direct. Absent contrary instructions, Supplier shall destroy all Proprietary Information one (1) year after termination or completion of the Order and provide written acknowledgement to Buyer of such destruction.

20.10. Supplier agrees to cause all information regardless of form (including, for example, electronic, magnetic and optical media, software, and compilations), containing or derived in whole or in part from Proprietary Information to bear the following legend:

20.11. Notwithstanding any proprietary or confidential labels or markings, all information of Supplier disclosed to Buyer relating to the Order will be deemed non-confidential and the content of the Order may be disclosed by Buyer to Buyer's Affiliates, or to Buyer's Customer or Buyer's subcontractors and potential subcontractors provided that Buyer's Customer or subcontractors have a need to access or know such information.

20.12. Supplier agrees that it will not accept from any third party, or use, any information that appears to be similar to Proprietary Information without first obtaining Buyer's express written consent, except that Supplier may receive solicitations or purchase orders issued by a partner or higher-tier supplier of Buyer that expressly reference a Buyer Purchase Order and contain obligations no less stringent than this Section. Supplier shall promptly notify Buyer if Proprietary Information is offered to Supplier by a third party or of the suspected possession of Proprietary Information by a third party.

20.13. Supplier shall not make accessible or sell completed or partially completed or defective Goods manufactured using or containing Proprietary Information to any unauthorized third parties. Goods not provided to Buyer shall be disposed of in a manner that prevents disclosure of Proprietary Information (including by reverse engineering)

20.14. For Proprietary Information exchanged in connection with the Order, the terms of this Section 18 shall supersede any provisions regarding the protection of proprietary information in any other agreements between the Parties.

20.15. Supplier shall not input, upload, transmit, expose, or otherwise make available any Protected Data— including Buyer's Proprietary Information, Technical Data, Specifications, personal information, or any other non-public information obtained in connection with the Order — to any artificial intelligence, machine learning, generative AI, automated decision-making system, or similar technology ("AI/ML Technologies"). This prohibition applies regardless of whether the AI/ML Technologies claim to anonymize, aggregate, or not retain input data.

20.16. If Supplier becomes aware that Protected Data has been entered into or exposed to any unapproved AI/ML Technology, Supplier shall immediately notify Buyer in writing and cooperate fully in Buyer's mitigation, containment, and remediation efforts.

21. Security for GEMINI Information Stored by Supplier

21.1. Buyer wishes to ensure that Supplier has effective information security to ensure the secure storage and/or processing of GEMINI Information (as defined below) at Supplier's facility and to facilitate the exchange of information between Buyer and Supplier. As used in this provision, "GEMINI Information" means (i) Proprietary Information owned by GEMINI or a GEMINI Affiliate (each such entity, a "GEMINI Entity"); (ii) information managed by GEMINI or a GEMINI Entity; (iii) information that GEMINI or a GEMINI Entity is obligated to manage and protect on behalf of others; and (iv) personally-identifiable information relating to an identified or identifiable employee of GEMINI or a GEMINI Entity or others that is protected by various privacy laws (current or future) as applicable throughout the world including, without limitation, Social Security Number, address, telephone number, gender, birth date, medical records, trade union membership, driver's license number, financial account number, credit or debit card number (all subsection (iv)) defined as "PII").

21.2. Supplier agrees to install and implement security hardware, software, procedures and policies that will provide reasonable and effective information security. Supplier agrees to update such hardware, software, procedures and policies as may be needed from time to time to utilize improved technology and to respond to more sophisticated security threats in order to maintain a level of security protection appropriate for the information involved and the current state of security solutions.

21.3. Supplier further agrees to:

21.3.1. Provide to Buyer a copy of its current information security policy, including its policy regarding physical security for access to devices that may access GEMINI Information. Supplier shall annually provide Buyer with its then current policy and indicate any plans, including a timetable for implementation, of planned upgrades to comply with the policy. Supplier shall implement those reasonable requests for modification of such policy requested by Buyer.

21.3.2. Allow Buyer or its designee at any time to conduct (or have conducted) a remote network audit. If the GEMINI Information is stored in a shared environment per the agreement of Buyer, then Buyer shall use a third party to conduct such audits. The audits shall include any facilities with GEMINI Information including backup storage facilities.

21.3.3. Segregate all GEMINI Information into a separate database only accessible by Buyer, its agents and those employees of Supplier necessary to maintain the equipment and the program on which it runs, unless otherwise agreed by Buyer. Logical segregation of data, if approved by Buyer, may be an acceptable alternative to this requirement. Except for Buyer and its agents, Supplier shall use reasonable efforts, as measured by the available technology at the time, to prevent anyone other than its authorized employees from accessing the GEMINI Information.

21.3.4. Assure that all GEMINI Information and applicable software is appropriately backed up and recoverable in the event of a disaster.

21.3.5. Provide information and cooperation to Buyer in response to any subpoena, investigation or the like seeking GEMINI Information and provide information and assistance for Buyer to seek certification and the like relative to its information including information in the possession of Supplier. Supplier shall promptly notify Buyer upon the receipt of any request requiring that GEMINI Information be supplied to a third party.

21.3.6. Comply, within a reasonable period of time, with GEMINI Information security policies as amended from time to time.

21.4. Supplier shall not provide GEMINI Information to any other entity without the prior written approval of Buyer, except to the extent expressly permitted under Section 18 hereof. A request for Buyer approval shall include agreement by Supplier and such other entity that all of the requirements of this provision are applicable to their performance and that Buyer shall have the right to perform the audits described above.

21.5. Should Supplier fail to meet the then current standards for information security, or should Supplier fail to pass a Buyer audit on information protection, then Buyer may immediately terminate the Agreement and/or any Order in accordance with Section 14 without prejudice to any other rights or remedies and shall have no further obligation to Supplier.

21.6. The foregoing provisions do not otherwise diminish or limit Supplier's obligations regarding the receipt, use, protection and/or disclosure of Buyer Proprietary Information otherwise set forth hereunder

22. <u>Offset</u>

22.1. Buyer may use all or any part of the value of the Order, including the value of any subcontracts placed by Supplier for the Order, for satisfying international offset obligations of Buyer, Buyer's Affiliates, or any entity that Buyer transfers such value to. Supplier may use the offset credit generated by the Order or the subcontracting of the Order only upon Buyer's written approval.

22.2. Supplier shall support Buyer in meeting Buyer's offset requirements in proportion to the value of the Goods supplied by Supplier to the value of the end item sold by Buyer into the particular country.

22.3. Upon Buyer's request Supplier shall (i) report all subcontract sources outside the United States utilized in the fulfillment of the Order, including the name and location of each such source, amounts paid and committed thereto and identification of the Goods or Services procured, and (ii) require its subcontractors, including those at all lower tiers, to maintain records of the above information.

23. Insurance

23.1. Without limiting Supplier's duty to hold harmless and indemnify hereunder, Supplier agrees to secure and carry as a minimum the following insurance with respect to all work to be performed and Goods to be produced under the Order for the duration of the Order: (i) Workers' Compensation Insurance, inclusive of an alternate employer endorsement, in an amount sufficient by virtue of the laws of the U.S., foreign country, state, or other governmental subdivision in which the work or any portion of the work is performed and Employer's Liability Insurance in the minimum amount of $1,000,000 for any one occurrence; (ii) Commercial General Liability Insurance including Premises Liability and contractual Liability, in which the limit of liability for property damage and bodily injuries, including accidental death, shall be at a minimum, a combined single limit of $5,000,000 for any one occurrence; (iii) if Supplier vehicles are used on Buyer's premises and/or used to accomplish work under the Order or otherwise on behalf of Buyer, Automobile Liability Insurance in which the limit of liability for property damage and bodily injuries, including accidental death, shall be a combined single limit of $1,000,000 for any one occurrence; (iv) if Supplier or its subcontractors have Buyer's materials or equipment in its care, custody or control, Supplier shall have and maintain All-Risk Property Insurance in an amount sufficient to meet or exceed the value of such material; and (v) if Supplier is performing professional services on behalf of Buyer, Supplier shall maintain Professional Liability Insurance with a limit of no less than $5,000,000 (vi) Product Recall Insurance with limits sufficient to cover recall expenses, including but not limited to notification, transportation, removal, replacement, disposal, testing, investigation, crisis response, and related costs arising out of or connected to any actual or suspected defect in the goods.

23.2. The certificate of insurance shall identify the contract number or work to be performed and shall acknowledge that such coverage applies to liabilities incurred by Supplier, its employees, invitees or agents under the Order and that such insurance shall not be invalidated by any act or neglect of Supplier whether or not such act or neglect is a breach or violation of any warranty, declaration or condition of the policies.

23.3. Supplier shall require its subcontractors to maintain insurance in the amounts and types required by this Section.

24. Compliance with Laws

24.1. Supplier shall comply with all applicable national, state, provincial, and local laws, ordinances, rules, and regulations applicable to the performance of the Order, except to the extent inconsistent with U.S. antiboycott laws, including (i) the manufacture or provisioning of Goods, (ii) the shipping of Goods and (iii) the configuration or content of Goods for the use intended by Buyer.

24.2. Supplier shall, at the earliest practicable time, notify Buyer in writing if Supplier is subject to any federal, state, or foreign government criminal proceeding alleging fraud or corrupt practices, once initiated by the filing of a formal charging document in a court of law; and further notify Buyer of any subsequent felony convictions or deferred prosecution agreement(s) related to the foregoing

24.3. Supplier represents that it shall not furnish "counterfeit goods" to Buyer, defined as Goods or separately-identifiable items or components of Goods that may without limitation: (i) be an unauthorized copy or substitute of an original equipment manufacturer or original component manufacturer (collectively, "OEM") item; (ii) are not traceable to an OEM sufficient to ensure authenticity in OEM design and manufacture; (iii) do not contain proper external or internal materials or components required by the OEM or are not constructed in accordance with OEM design; (iv) have been re-worked, re-marked, re-labeled, repaired, refurbished, or otherwise modified from OEM design but are represented as OEM authentic or as new; or (v) have not passed successfully all OEM required testing, verification, screening, and quality control processes. Counterfeit goods shall be deemed non-conforming, and in addition to any other rights Buyer may have at law or pursuant to an Order, the Agreement or these Terms and Conditions, Supplier shall disclose the source of the counterfeit good to Buyer and cooperate with Buyer with respect to any investigations or remedial actions undertaken by Buyer.

24.4. Supplier shall provide to Buyer, upon Buyer's reasonable request, the identity of its suppliers and/or the location of manufacture of the Goods or any subcomponents of the Goods, as applicable, to confirm compliance with legal and regulatory requirements, the Agreement, the Order and/or these Terms and Conditions.

25. Applicable Law and Forum

25.1. The Order shall be interpreted in accordance with the plain English meaning of its terms and the construction thereof shall be governed by the laws in force in the State Michigan, USA without regard to conflicts of law principals. Buyer may, but is not obligated to, bring any action or claim relating to or arising out of the Order in the appropriate court, or arbitration forum, if arbitration is required by law or the Order, in the jurisdiction described above, and Supplier hereby irrevocably consents to personal jurisdiction and venue in any such court, hereby appointing the pertinent Secretary of State or other applicable government authority as agent for receiving service of process. If Supplier or any of its property is entitled to immunity from legal action on the grounds of sovereignty or otherwise, Supplier hereby waives and agrees not to plead such immunity in any legal action arising out of an Order or the Agreement.

25.2. Any action or claim by Supplier with respect hereto shall also be brought in the appropriate court in the jurisdiction described above, if Buyer so elects. Accordingly, Supplier shall give written notice to Buyer of any such intended action or claim, including the intended venue thereof, and shall not commence such action or claim outside of such jurisdiction if Buyer, within thirty (30) days from receipt thereof, makes its election as aforesaid. If Buyer and Supplier mutually agree to participate in alternative dispute resolution, Supplier agrees that all alternative dispute resolution proceedings shall take place in Bad Axe, Michigan.

26. News Releases/Publicity/Other Disclosures

Supplier shall not make or authorize any news release, advertisement, or other disclosure that relates to the Order or the relationship between Buyer and Supplier, denies or confirms the existence of the Order or makes use of Buyer's name or logo, without the prior written consent of Buyer.

27. Assignment

Any assignment by Supplier of the Order, in whole or in part, without Buyer's prior written consent shall be null and void, and shall constitute a material breach of the Order.

28. Setoff

Buyer and its Affiliates may withhold, deduct and/or set off all money due, or which may become due to Supplier arising out of Supplier's performance under the Order or any other transaction with Buyer or its Affiliates.

29. Covenants Against Kickbacks and Political Contributions

29.1. Supplier has not offered or given and shall not offer or give anything of value (in the form of entertainment, gifts, or otherwise) to Buyer's employees or representatives for the purpose of obtaining the Order or favorable treatment under the Order.

29.2. Supplier represents and warrants that it has not made, nor will it make, or offer to make any political contributions, or pay, or offer to pay any fees or commissions in connection with these Terms and Condition, the Agreement or any Order.

30. Duty to Proceed

Except as expressly authorized in writing by Buyer, no failure of Supplier and Buyer to reach any agreement regarding a dispute related to the Order shall excuse Supplier from proceeding.

31. Change in Control

Prior to a potential change of control of Supplier and at least ninety (90) days prior to the proposed effectiveness of such change of control, Supplier will promptly notify Buyer in writing thereof, and provide the identity of the potential new controlling party and information on such party and the transaction as Buyer may request, consistent with applicable law and confidentiality restrictions. In the event there is a change in control with respect to Supplier or in the event that Buyer's competitor acquires an interest in Supplier, Buyer shall have the right to terminate the Order in whole or in part upon thirty (30) days written notice with Buyer's only obligation to pay for those conforming Goods and Services actually received prior to the expiry of such thirty (30) day period. A change in control of Supplier is deemed to have occurred if there is a change in the beneficial ownership, directly or indirectly, of twenty-five percent (25%) or more of the ownership interests in Supplier.

32. Partial Invalidity/Unenforceability

If in any instance any provision of the Order shall be determined to be invalid or unenforceable under any applicable law by any competent court or arbitration tribunal, such provision shall be ineffective only to the extent of such prohibition or unenforceability. The remaining provisions shall be given effect in accordance with their terms. The provision declared invalid or unenforceable shall be deemed to be restated to reflect as nearly as possible the meaning and essence of such provision without rendering such amended provision invalid or unenforceable.

33. Survival

All rights, obligations, and duties hereunder, which by their nature or by their express terms extend beyond the expiration or termination of the Order, including but not limited to Warranties, indemnifications, Intellectual Property (including rights to and protection of Intellectual Property and proprietary information), and product support obligations shall survive the expiration or termination of the Order

34. No Waiver

No failure of any Party to exercise any right under, or to require compliance with, the Order, or knowledge of past performance at variance with the Order, shall constitute a waiver by such Party of its rights hereunder. No concession, latitude or waiver allowed by either Party to the other at any time shall be deemed a concession, latitude or waiver with respect to any rights unless and only to the extent expressly stated in writing, nor shall it prevent such Party from enforcing any rights in the future under similar circumstances.

35. Remedies

Except as expressly provided herein, the rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the Parties may have at law or in equity.

36. Order of Precedence

The order of precedence provision in an Agreement, if any, shall prevail over this Section. If there are any inconsistencies or conflicts in the provisions applicable to the Order, precedence shall be given in the following descending order: (i) the face sheets of the Order including the price, price adjustment terms, specifications, shipping, quality requirements, drawings, work statements, and modifications to the Agreement and/or these Terms and Conditions that specifically reference the section being modified; (ii) regarding product support obligations, the terms of any product support agreement entered into by the Parties; (iii) terms of the Agreement under which the Order is issued; and (iv) these Terms and Conditions.

37. Delays

Whenever there is an actual delay or threat to delay the timely performance of the Order, Supplier shall immediately notify Buyer in writing of the probable length of any anticipated delay and take, and pay for, all activity to mitigate the potential impact of any such delay.

38. Force Majeure

38.1. Supplier shall be liable for any failure or delay in performance in connection with the Order, except where such failure or delay results from causes that are, at one and the same time, unforeseeable, unavoidable, outside of its control and without its fault or negligence, provided Supplier gives Buyer, within three (3) days of Supplier's learning of such cause, written notice to the effect that a failure or delay by Supplier will occur or has occurred (an "Excusable Delay"). If a failure or delay in performance is caused by an event affecting any of Supplier's suppliers, such failure or delay shall not be excusable unless such event is an Excusable Delay as defined above and the good or service to be provided by such supplier is not obtainable by Supplier from other sources in time for timely delivery of the Goods to Buyer. Buyer may cancel without liability to Supplier its purchase of any Goods affected by Supplier's failure or delay in performance and, if the delay is expected to last for a period that could impact deliveries to Buyer's Customers, Buyer may cancel, without liability, any portion of or the entire Order.

The change in cost or availability of materials or components based on market conditions, supplier actions, or contract disputes or any labor strike or other labor disruption applicable to Supplier or any of its subcontractors or suppliers, will not excuse Supplier's performance (under theories of force majeure, commercial impracticability or otherwise), and Supplier assumes these risks.

38.2. Buyer shall be excused for any failure or delay in performance due to any cause beyond its reasonable control, including any cause attributable to Buyer's Customers.

38.3. Notwithstanding anything to the contrary in these Terms and Conditions or the Agreement, Buyer shall not be liable to Supplier for any costs or damages whatsoever for a termination for convenience with respect to a particular aircraft program of any of Buyer's Customers, if the termination is due to the cancellation, in whole or in part, of such aircraft program by Buyer's immediate customer(s) or Buyer's ultimate customer(s) or the bankruptcy or insolvency of such customer(s).

39. Dispute Resolution

39.1. Except as provided below, prior to a Party initiating a formal legal proceeding relating to a dispute under an Order as between Buyer and Supplier, that Party must provide the other with a written request for dispute resolution. Each Party shall, within five (5) calendar days after such written request is received, designate a representative who will be responsible for negotiating, in good faith, a resolution of the dispute. Should the representatives fail to reach agreement within ten (10) calendar days of receipt of the request, the Parties may employ appropriate legal action consistent with the terms of this Agreement.

39.2. Between Buyer and Supplier, either Party may (i) resort to a formal legal proceeding for equitable relief at any time and (ii) institute litigation in order to avoid the expiration of any applicable limitations period or to preserve a superior position with respect to other creditors.

39.3. The dispute resolution procedures set forth herein do not supersede, delay or otherwise affect any rights of termination that are expressly set forth in these Terms and Conditions.

40. Relationship of the Parties

The relationship between Supplier and Buyer will be that of independent contractors and not that of principal and agent, nor that of legal partners. Neither Party will represent itself as the agent or legal partner of the other Party nor perform any action that might result in other persons believing that it has any authority to bind or enter into commitments on behalf of the other.