



DETROIT MANUFACTURING SYSTEMS, LLC

**TERMS AND CONDITIONS OF PURCHASING OF DETROIT
MANUFACTURING SYSTEMS, LLC AND ITS SUBSIDIARIES
AND AFFILIATES**

(DIRECTED SUPPLIERS)



**TERMS AND CONDITIONS OF PURCHASING OF DETROIT MANUFACTURING SYSTEMS,
LLC AND ITS SUBSIDIARIES AND AFFILIATES**

DIRECTED SUPPLIERS

WHEREAS, Detroit Manufacturing Systems, LLC (“DMS”) is a Tier 1 supplier to DMS’ Customer.

WHEREAS, DMS’ Customer has required DMS to purchase certain supplies, components, materials, or other goods and services from Seller (as defined below).

WHEREAS, in conjunction with same, a Three-Party Agreement (as defined below) may exist by and between DMS’ Customer, DMS, and Supplier setting forth certain terms and conditions including, without limitation, a certain RASIC.

WHEREAS Parties intend that the terms and conditions contained herein are to govern the relationship between DMS and Supplier and, to the extent a Three-Party Agreement exists, supplement such Three-Party Agreements.

1. **Definitions.** For purposes of the Agreement, the following terms shall have the following meanings:

A. “DMS” means Detroit Manufacturing Systems, LLC and/or its affiliate or subsidiary as the case may be.

B. “DMS Data” means all data and information which is collected, transmitted, stored, processed, derived from or used by, or on behalf of, or relating to, DMS, including, but not limited to, (a) the Goods and Tech Products, and (b) DMS operations, production, vehicle-related data.

C. “Competition Laws” means any law that prohibits, restricts, or regulates actions having the purpose or effect of monopolization, restraint of trade, or lessening of competition.

D. “Copyleft Materials” means materials subject to any license that requires as a condition of use, modification, or distribution thereof, that such materials, or materials combined or distributed with such materials, be (1) disclosed or distributed in source code or similar form, (2) licensed for the purpose of making derivative works, or (3) redistributable at no charge.

E. “Customer” means DMS’ customer for which DMS is providing the Goods or Services provided by Seller.

F. “Customer Data” means all data and information which is collected, transmitted, stored, processed, derived from or used by, or on behalf of, or relating to, DMS’ Customer (as defined below), including, but not limited to, (a) the Goods and Tech Products, and (b) Customer’s operations, production, vehicle-related data.

G. “Customer Master Terms and Conditions” means the terms and conditions, including any policies or manuals, issued by DMS’ Customer.

H. “Diverse Business” means an entity that meets one or more of the following criteria: (a) a small business, as defined in Title 15, Section 632 of the United States Code and related regulations; (b) a business, generally a small business but not necessarily, owned and controlled by socially disadvantaged individuals (at least fifty-one percent (51%) percent of the business is owned and controlled by one or more socially and economically disadvantaged individuals and the management and daily business operations are controlled by one or more such individuals); (c) a business that is at least fifty-one percent (51%) owned by a woman or women who also control and operate the business.

I. “Error States” means Goods, Services, or Tech Products that do not function for their intended use, resulting in a warranty claim.

J. “Field Service Action” means a recall or other service action performed by DMS and/or Customer, including their respective dealers or other authorized repair facilities. DMS and/or Customer may initiate a Field Service Action required by a Government (either mandated or voluntarily agreed upon by DMS and/or Customer) or on their own for customer and/or Customer’s satisfaction or other reasons independent of any Government action.

K. “Goods” or “Services” means such goods or services, as the case may be, provided to DMS by Seller pursuant to a Purchase Order.

L. “Government” means an entity that claims a right to investigate or regulate the Goods, Services, and/or Tech Products, the vehicles into which the Goods, Services, and/or Tech Products may be installed, DMS, the Seller, or any of their Related Companies. The term Government includes the United States Environmental Protection Agency, the United States National Highway Traffic Safety Administration, and the Commission of the European Union.

M. “Government Requirement” means any law, rule, regulation or requirement of a Government, including those that apply to new motor vehicles in general or the Goods, Services, or Tech Products installed in them, or parties that may provide them. These requirements include emissions control, safety, hazardous materials, recycling, end-of-life disposal, U.S. and other applicable export controls, sanctions, and anti-boycott regulations. A Government Requirement may include specific warranty periods or terms of coverage, or a period of time during which DMS may be required to conduct a Field Service Action.

N. “Information” means all information that would reasonably be regarded as being of a confidential nature and includes, at minimum, all DMS Data, drawings, reproductions, Specifications, designs, engineering instructions, photographs, reproducible copy, parts lists, plans, reports, working papers, computations and other information whatsoever and in any form or medium furnished, directly or indirectly, by DMS, or anything derived therefrom.

O. “Items” means any materials, machinery, equipment, tools, dies, jigs, fixtures, patterns, drawings, specifications, samples and other facilities, including any replacements thereof, furnished by DMS to Seller, obtained by Seller at DMS’ expense and/or which are to become the property of DMS under a Purchase Order.

P. “Laws” means all federal, state, local and foreign Laws, ordinances, rules, regulations, orders, conventions, ordinances, Executive Orders, standards, and all amendments thereto.

Q. “Party(ies)” means each of DMS and Seller or, collectively, DMS and Seller.

R. “Purchase Order” means any and all purchase orders issued to Seller by DMS.

S. “RASIC” means a certain responsibility, accountability, support, consultation, and informed document by and between DMS, Customer, and Seller.

T. “Recall” means (i) in the absence of an order issued by the United States Secretary of Transportation (the “Secretary”) or any other applicable governmental agency or authority of the United States or any other country, notification by Customer to the Secretary, governmental authority of such other foreign country and to owners, purchasers, and dealers as required under section 151 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (the “Act”) or comparable federal or provincial law of a foreign country, that any motor vehicle or item of replacement equipment contains a defect related to motor vehicle safety or that such vehicle or item of replacement equipment fails to comply with an applicable federal, state or provincial motor vehicle safety standard, or such other notification as may be required under any other federal, state or provincial applicable law and/or (ii) an order by the Secretary pursuant to section 152(b) of the Act [15 USCS §1412(b)] with respect to any motor vehicle or item of replacement equipment which fails to comply with an applicable federal motor vehicle safety standard or contains a defect which

relates to motor vehicle safety, or an order by any other applicable United States or foreign governmental agency or authority requiring notification and remedial action on the part of DMS or Customer with respect to any motor vehicle or item of replacement equipment.

U. “Related Company” is any parent company of DMS or the Seller, as appropriate, and any subsidiary or affiliate in which any of them owns or controls at least 25% of the voting stock, partnership interest, or other ownership interest.

V. “Release” means DMS’ authorization for shipment of the Goods, Services, or Tech Products, which authorization may be electronic or in writing and which (i) shall specify the quantity of the Goods, Services, and Tech Products and the delivery dates and (ii) may authorize Seller to procure raw materials and/or components.

W. “Seller” means the entity listed on the face of a Purchase Order or the other Party executing these Terms and Conditions.

X. “Software” means software application, Commercial Software, Developed Software, and respective updated and enhanced versions, support and maintenance.

Y. “Specifications” means all drawings, specifications, samples and other descriptions furnished, specified or adopted by DMS.

Z. “Supplied Data” means any data or metadata, including but not limited to digital data, that is related to Seller’s production, delivery, logistics, quality, volume or similar business information regarding the Goods and Tech Products.

AA. “Tech Products” means Software, Software as a Service, Customer Data, DMS Data, and Supplied Data.

BB. “Terms” and “Terms and Conditions” means these Terms and Conditions.

CC. “Three-Party Agreement” means a certain Agreement by and between DMS, its Customer, and Supplier with respect to the Goods and Services Seller is providing to DMS at the direction of DMS’ Customer.

2. **Incorporation of Three-Party Agreement.** To the extent one exists, Parties incorporate by reference herein and ratify all the terms of the Three-Party Agreement between DMS’ Customer, DMS, and Seller, including any supplier guides set forth therein. In the event of any irreconcilable conflict between these Terms and Conditions and the Three-Party Agreement, the Three-Party Agreement shall control.

3. **Incorporation of DMS’ Customer Master Terms and Conditions.** Seller has access to on a continual basis, and has otherwise reviewed, DMS’ Customer’s Master Terms and Conditions. Seller agrees that, as a directed supplier, Seller shall not undertake any action, refrain from taking any action, or otherwise permitting any action or inaction on behalf of Seller or its suppliers, which would cause DMS to breach the DMS’ Customer Master Terms and Conditions and shall indemnify and hold DMS harmless for any Losses caused, in whole or in part, by Seller or its supplier’s actions or inactions. Any amendments to the DMS’ Customer Master Terms and Conditions shall automatically be incorporated by reference herein.

4. **Acceptance of Purchase Order.** Any acceptance of a Purchase Order is limited to acceptance of the express terms of DMS’ offer as set forth in these Terms and Conditions and the Purchase Order. Any proposal for additional or different terms or any attempt whatsoever by Seller to vary any of the terms of a Purchase Order (whether in Seller’s quotation form, acknowledgement form, invoice or otherwise) shall be deemed material and is hereby objected to and rejected. Any exception, deviation, amendment, modification, or waiver of any provisions of these Terms and Conditions, whenever made, shall only be binding on DMS if it has been made (1) in writing and (2) approved by DMS’ then-current Commercial Director (or its designated agent). Seller’s written acceptance of the Purchase Order, Seller’s tendering of an invoice, or its earlier commencement of (i) work on the Goods subject to a Purchase Order or shipment

of the Goods, whichever occurs first, or (ii) performance of all or any portion of the Services for which a Purchase Order has been issued, shall constitute acceptance of DMS' offer contained in a Purchase Order. In addition to any other rights of DMS, DMS may cancel a Purchase Order at any time prior to DMS' actual knowledge of Seller's acceptance. The term of any Purchase Order shall be for the duration of the term identified on any Purchase Order or, if no dates are identified, begin on the date of its acceptance and shall continue until the earlier of (a) the life of the program for which the Purchase Order is fulfilling or (b) until terminated pursuant to the terms of these Terms and Conditions.

5. **Labeling, Packing and Shipping**. All Goods are to be suitably prepared for shipment and must be labeled, packed and shipped in accordance with DMS' specifications as set forth on any Three-Party Agreement, Purchase Order, and in the Detroit Manufacturing Systems Supplier Requirements Manual and Label Quality Procedure (which can be found at www.dmsna.com) as the same may be amended from time to time (including the marking of all cases, packages, boxes or other containers with the number of the related Purchase Order, and enclosing therewith or attaching thereto a shipping notice showing the contents thereof, together with the name of the Seller and, if different, the name of the shipper).. Goods shipped in advance of Release's (as defined hereinafter), in excess of the quantity ordered, or not shipped in accordance with these Terms and Conditions shall be at Seller's risk. Upon such occurrence, DMS may (1) return such Goods to Seller, with all transportation charges both to and from the original destination payable by the Seller, or (2) Seller shall be liable for any excess costs occasioned thereby including, without limitation, DMS' storage and transportation fees with respect to such Goods.

6. **Delivery and Delays**.

A. Time is of the essence with regard to performance under any Purchase Order and/or Releases.

B. Deliveries are to be made both in the quantities and at the times specified in a Purchase Order or if not specified therein, in such quantities and at such times as may be indicated in DMS' Releases or other instructions. If Seller is unable to make shipments as specified in a Purchase Order or in a Release or other instructions from DMS, then Seller will immediately notify DMS and, to the extent a Three-Party Agreement exists, DMS' Customer, and DMS and/or its Customer shall have the right to cancel such Purchase Order without liability and without prejudice to DMS' and/or its Customer's right to claim from Seller any losses or damages occasioned thereby. Prior to Seller's first production shipment on a new or revised part number (drawing or revision level or revised supplier process) Seller shall provide an AIAG warrant with PPAP in accordance with AIAG and the Detroit Manufacturing Systems PPAP checklist. Unless otherwise agreed, DMS is not responsible for any costs associated with returnable containers.

C. For purposes of a Purchase Order, notwithstanding any agreement concerning payment of freight expenses, delivery shall not have occurred and the risk of loss shall not have transferred to DMS until delivery of the Goods pursuant to the shipping terms contained in the Purchase Order. DMS shall not be required to make payment for Goods delivered to DMS which is in excess of quantities specified in DMS' delivery schedules.

D. DMS may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which shall entitle Seller to a modification of the prices for the Goods so long as the quantities in any Purchase Order are not exceeded.

E. Title to any Goods shall pass to DMS from the earlier of the date upon which DMS has made payment for such Goods or delivery of such Goods to DMS and no reservation of title clause proposed by the Seller shall be effective against DMS, except if expressly accepted in writing by DMS. The Seller shall assure that no reservation of title clause shall be asserted by its subcontractors for any element delivered by them and which is part of the Goods and/or Services.

F. Transfer of risk of loss related to the Services shall be upon their final acceptance by DMS

as set forth in these Terms.

G. Seller shall pay, for any delay in the delivery or the performance of supply, a late delivery charge equal to \$250 per delivery and a \$350 administrative fee per delivery. The late delivery charge is in addition to all other rights or remedies of DMS and is not an election of remedies. DMS retains all other rights and remedies available to it in law or equity.

H. In the event that Supplier's failure to make deliveries as contemplated by a Purchase Order or Release results in the imposition of Losses by DMS' Customer against DMS, Supplier agrees to indemnify and hold DMS harmless for all such Losses.

I. In the event Seller's Goods, Services, or Tech Products are allocated by DMS' Customer to a person or entity other than DMS, Seller shall immediately, but no later than 48 hours after receipt of notice of such allocation, notify DMS of such allocation and shall identify any and all actual or potential delays in the satisfaction of any Purchase Order or Releases which such allocation may cause.

7. **Production Capacity and Flexibility.**

A. Requirement Contracts. Purchase Orders which specify "Requirements" (or with such similar language) represent a commitment to purchase all of the specified part numbers from the Seller which DMS may need with respect to its production pursuant to a Three-Party Agreement, or if no Three-Party Agreement shall exist, with respect to a particular contract between DMS and its Customer, and not for DMS' general operations. Any "Requirements" shall specifically exclude: (i) any similar Goods, Services, and Tech Products which are not used with respect to DMS' production pursuant to a Three-Party Agreement, or if no Three-Party Agreement shall exist, with respect to a particular contract between DMS and its Customer, (ii) engineering samples, (iii) engineering validation, or (iv) prototypes, (v) engineering changes, or (vi) other similar variations.

B. Specific Quantities. Purchase Orders which specify a specific quantity of Goods or Services represent a commitment to purchase that specific number of Goods or Services from Seller.

C. Quantity Ranges. Purchase Orders which specify a range of quantities (or with such similar language) represent a commitment to purchase not less than the minimum number of Goods and Services and not more than the maximum number of Goods and Services from the Seller.

D. Quantity Changes. In the event that Customer imposes an increase in vehicle production for which the Goods, Services, and/or Tech Products are required, the Seller agrees to fulfill upon DMS' request any additional requirements for Goods, Services, and/or Tech Products at the agreed pricing in the Purchase Order. In the event that Customer imposes a reduction or stoppage of vehicle production for which the Goods, Services, and/or Tech Products are required, DMS shall have the right, without any liability whatsoever:

i. With respect to a reduction in production to adjust the quantities ordered from the Seller accordingly, without additional cost; and

ii. With respect to stoppage of production, to terminate any related Purchase Order(s) and related agreements without cause and as an event of force majeure without cost to DMS.

iii. In the event of such termination or reduction, except to the extent compensated by Customer, each of the Parties shall bear its own costs resulting from such circumstances.

E. In the event Seller believes that requested volumes of Goods exceed the agreed manufacturing capacity, Seller shall tender DMS immediate notice setting forth the reason for the belief and the quantities which may be produced. Such notice shall not relieve Seller of its

obligation to timely deliver unless such requested volumes exceed the agreed manufacturing capacity and Seller cannot reasonably meet such volumes.

F. Allocations. Without limiting Seller's obligations hereunder, in the event of any supply allocation by Seller, Seller shall give preference to DMS for all of the Goods, Services, and/or Tech Products ordered from Seller.

8. **Conforming and Non-Conforming Goods, Services and Tech Products.**

A. Delivery of Conforming Goods, Services, and Tech Products. Seller will only deliver Goods, Services, and Tech Products which confirm in all respects to the Specifications and with all warranty obligations. DMS is not required to, but may, engage in any inspections of the Goods, Services, or Tech Products to determine their adequacy. DMS shall not be required to accept conforming Goods, Services, or Tech Products in excess of any quantities specified by DMS.

B. Notification of Defects. DMS may, using commercially reasonable methods, inform the Seller of any apparent defects in the Goods which should be detectable in the ordinary course of DMS' operations. DMS' failure to assert a claim or reserve such claim at the time of delivery and/or payment for Goods shall not be considered as a final acceptance of the Goods delivered, nor as an acceptance of the amount invoiced, and shall not, under any condition, be deemed as a waiver by DMS of its right to assert any claim in the future in accordance with all applicable Laws.

C. Services. Services shall be accepted by DMS only upon completion of performance which shall occur either:

- i. upon the date provided in the Purchase Order or other written agreement, and only if Services are satisfactory without reservation; or
- ii. upon the date on which all reservations have been withdrawn by DMS as evidenced by DMS' execution and delivery of a corresponding completion certificate.

DMS reserves the right to reject the Services if:

- i. at the completion date of the Services, the Services are not satisfactory without reservation, by reason of other than immaterial nonconformity or defect; or
- ii. DMS' reservations have not been withdrawn within the time limits established by the Parties by reason of other than immaterial nonconformity or defect; or
- iii. the Seller has failed to comply with the Service delivery schedule or completion deadlines.

D. Defective and/or Nonconforming Goods, Services, and/or Tech Products. If any of the Goods, Services, and/or Tech Products fail to meet the warranties contained in these Terms, any applicable law or any other written agreement between the Parties, DMS shall have at any time, without prejudice to the right of DMS to terminate or to claim compensatory damages, the option, to:

- i. have such Goods repaired or replaced immediately by and at the sole expense of the Seller, who shall have no right to raise any objections or claims regarding the production or delivery schedule or as to Services have such Services performed again immediately by and at the sole expense of the Seller, who shall have no right to raise any objection;
- ii. have such nonconforming Services performed by a third party designated by DMS, at the sole expense of the Seller who shall have no right to raise any objection;
- iii. have the purchase price for the Goods or payment for Services promptly refunded promptly upon demand of DMS; or

- iv. otherwise satisfactorily deal with the defective or nonconforming Goods, Services, and/or Tech Products (including, to the extent applicable, participation in Recall, claims adjustment and other similar programs) in a manner acceptable to DMS in its sole discretion, at Seller's sole expense.

Any rejected Goods must be recovered by the Seller at its sole expense and risk within eight (8) calendar days following notice of rejection by DMS. It is expressly agreed that after such time, DMS may, without any liability whatsoever, at the Seller's sole cost, expense and risk, either destroy the rejected Goods, or return them to the Seller.

E. Failure to timely cure. Should Seller fail or otherwise be unable to cure any such breach or nonconformity within the time-frame or other parameters required by DMS (and whether or not such time-frame or other parameters are communicated to Seller) (i) DMS may cancel in whole or part any Purchase Order as to the particular defective or nonconforming Goods, Services, and/or Tech Products, or (ii) DMS may, in DMS' sole discretion, (and without any obligation to do so), assume control over the correction, repair, replacement or other rectification efforts, processes and programs, in which case Seller shall pay or reimburse DMS for all associated costs and expenses (including DMS' internal handling, reworking and administrative time, labor and materials). After notice to Seller, all defective or nonconforming Goods shall be held at Seller's risk. DMS may, and at Seller's direction, shall return such Goods to Seller at Seller's risk, and all sorting and handling charges, as well as transportation, freight and delivery charges (both to and from the original destination) and any other related expenses, shall be paid by Seller. Any payment made by DMS to Seller for such defective or nonconforming Goods, Services, and/or Tech Products shall be immediately refunded by Seller, unless and to the extent that Seller promptly corrects, repairs, replaces or otherwise satisfactorily corrects such nonconformity. Seller's warranties shall also apply to such corrected, repaired, or replaced Goods, Services, and/or Tech Products.

9. Invoices. Seller shall send the original invoice(s) which shall comply with all applicable legal requirements (plus two additional copies) and bill(s) of lading to accounts.payable@dmsna.com (or any successor email address designated by DMS). Seller's invoice(s) shall show the number of the Purchase Order and all items invoiced, with quantities, unit prices and taxes (if any) listed separately. The words final invoice (or similar terminology) shall appear on Seller's last invoice covering the completion of the Purchase Order. If DMS expressly agrees to be responsible for transportation, freight or delivery charges (if not included as part of the price on the face of the Purchase Order) such costs shall be invoiced separately, with receipted copies of freight bills attached. Any cash discount period available to DMS shall commence on the day of DMS' receipt of an invoice or final invoice that meets the requirements set forth above, provided that the Goods have been received by DMS and/or the Services rendered by Seller. Where the Goods, Services, and/or Tech Products are provided on an international basis, Seller shall supply, without additional charge, such number of additional certified copies of invoices and customs or other documents as may be requested or specified by DMS from time to time. Note that goods received that are settled via the Evaluated Receipt Settlement (ERS) process does not require the Seller to submit invoices.

10. Delays.

A. If Seller fails to perform as required under a Purchase Order or fails to make deliveries as contemplated by a Purchase Order, DMS may:

- i. terminate all or any part of any Purchase Order with Seller pursuant to these Terms and Conditions;
- ii. direct expedited routing and charge Seller for all excess costs incurred thereby and all additional handling charges and other expenses resulting therefrom;
- iii. source all or any part of the Goods, Services, or Tech Products from any other supplier; and

iv. undertake any other commercial reasonable action.

B. DMS may delay delivery or acceptance of the Goods or performance of the Services, in which case Seller shall hold the Goods and/or delay performance of the Services, at DMS' direction.

C. If, a Purchase Order constitutes a requirements contract, such grant of rights shall not restrict DMS' ability to absolute entitlement to procure Goods, Services, and/or Tech Products which are the same as or similar to the Goods, Services, and/or Tech Products from third parties in the event of (and throughout the period of) a delay and, at DMS' option, to reduce a Purchase Order by such quantities without liability to Seller.

11. **Transportation Charges; Customs Duties and Taxes.**

A. Unless otherwise stated in a Purchase Order (or any Three-Party Agreement to the extent one exists),

i. all transportation up to the delivery point set forth in a Purchase Order, insurance, storage, parking, detention, freight, and delivery charges shall be at Seller's expense; and

ii. the prices are inclusive of all customs duties and expenses and all Federal, State, local and foreign taxes (including import, excise, sales and/or Goods, Services, and/or Tech Products taxes) applicable to the sale of the Goods, Services, and/or Tech Products.

B. Any reduction in Seller's costs resulting from a reduction in transportation, freight and delivery charges, customs duties, import taxes, excise taxes and/or sales taxes from those in effect on the date of the Purchase Order shall be credited or paid to DMS by way of a reduction of the price of the Goods, Services, and/or Tech Products.

C. With respect to any Mexico Value Added Tax Law ("VATL") (or any similar law), Seller shall state any VATL taxes expressly and separately from any other item, including the price, on all bills of lading. Seller's invoices and any other documentation concerning DMS' purchases or sales must state the VATL in an express and separate form.

D. To the extent DMS is required by law to withhold tax based upon the Seller's income or revenue, DMS may deduct such tax from the amounts payable to the Seller and remit to the appropriate Government authorities provided that: (i) DMS may only deduct such tax to the extent the income or revenue pertains to amounts paid by DMS to the Seller; (ii) such deduction is in accordance with the tax Laws and regulations of the applicable countries; and (iii) DMS shall subsequently provide the Seller with a receipt showing the payment of such tax. For the avoidance of doubt, any taxes, withheld or otherwise, imposed on the Seller's income or revenue will be the sole financial responsibility of the Seller.

E. Upon request, Seller shall furnish promptly all certificates and other information of domestic value added, properly completed in accordance with applicable governmental regulations.

12. **Import Compliance; Customs Drawback Documents.**

A. Regardless of the stated delivery term, any importation or exportation of Goods to reach DMS' facilities must comply with all DMS import/export procedures and Government Requirements for the countries of import and export. All Goods and Tech Products must be valued, classified, and be processed under the correct import/export classification, type of shipment or trade agreement.

B. Seller will be responsible for any damages which arise from Seller's failure to comply with such procedures and regulations and shall defend and hold DMS harmless from any costs, fines, expedited freight, or production line stoppages arising from such failure.

C. For Seller shipments into the USA:

i. if Seller is listed on the Bureau of Industry and Security website as a Denied Person/Party at any point in time during the business relationship, DMS shall have the right to immediately terminate all Purchase Orders in whole or part for cause and without further liability or obligation to Seller.

ii. if Seller ships Goods by sea-freight at any time, this mode of transportation requires an Importer Security Filing (ISF) to be provided to the US CBP at least 48 hours in advance of shipment.

D. Seller is responsible to ensure the required documentation is accurate and available including but not limited to: Required documentation Customs Form 7501, Commercial Invoice, Manufacturers Affidavit (MA), Certificate of Origin (COO), Importer Security Filing Invoice, Importer Security Filing (ISF), NAFTA Certificate, Declaration of Foreign Shipper, and Importer Declaration.

E. Whether DMS or Seller is listed as the Importer of Record (IOR), for international shipments, Seller shall in all events be responsible to ensure compliance with all importation and applicable Laws, rules and guidelines are met. If Seller utilizes a third-party freight broker Seller shall remain responsible for ensuring compliance with all legal requirements.

F. Upon request, Seller shall furnish promptly all documents and other information required for customs drawback purposes, properly completed in accordance with applicable governmental regulations. Unless otherwise stated in a Purchase Order, all customs drawbacks shall be reserved and retained for, or credited or paid to, DMS.

13. **Value Added.** Upon request, Seller shall furnish promptly all certificates and other information of domestic value added, properly completed in accordance with applicable Government Requirements.

14. **Payment.** Unless otherwise provided in these Terms and Conditions or stated on the face of a Purchase Order, (or any Three-Party Agreement to the extent one exists), net invoices (subject to applicable withholding taxes, charge-backs and other matters, if any) shall be paid within 5 days of (i) with respect to Goods and/or Services, 75 days after the end of the week in which the Goods were delivered and/or Services were accepted, or (ii) with respect to DMS' Items, 75 days after receipt of payment for DMS' Items from its Customer. Notwithstanding the foregoing, (a) in the event that Customer fails to pay DMS for any Goods, Services and/or Tech Products DMS shall have no obligation to pay Seller for such Goods, Services, and Tech Products until such time as DMS receives payment for DMS' Items from its Customer, and (b) in the event that Customer sets off or otherwise fails to pay all amounts owed for any Goods and/or Services delivered and/or performed by Seller as a mandated supplier, then DMS shall reduce Seller's payment in a proportional manner. For Goods, Services, and/or Tech Products manufactured and/or performed within the United States, payment shall be tendered in US Dollars. For Goods, Services, and/or Tech Products manufactured and/or performed outside the United States, payment shall be tendered in US Dollars or a local currency utilized in the country of manufacture as determined by DMS. In the event of any conflict as to the country of manufacture or performance of Goods, Services, and/or Tech Products, DMS good-faith determination shall be binding for all purposes.

15. **Setoff; Subcontracts.**

A. In addition to any right of set-off provided by law, all amounts due or to become due to Seller from DMS shall be considered net of indebtedness of Seller (and/or Seller's affiliates) to DMS (and/or DMS' affiliates), and DMS may deduct or set-off at any time any such indebtedness from any amounts due or to become due to Seller (and/or Seller's affiliates) from DMS (and/or DMS' affiliates).

B. For purposes of any Purchase Order, Seller shall not enter into any subcontract or sub-purchase orders for other than standard commercial supplies or raw materials, except with the

express prior written approval of DMS.

16. **Changes.**

A. DMS and its Customer, reserve the right to make changes to:

- i. Specifications;
- ii. designs or part numbers (or any other type of identifications);
- iii. processes and procedures; or
- iv. sub-suppliers.

B. In the event that any such change causes an increase or decrease in the price of, or the time required for, the delivery of the Goods, Services, and/or Tech Products, Seller shall request any pricing adjustments from DMS within 30 days following the notification of the change. Seller shall have the burden of evidencing a change in its costs and acknowledges that not every engineering change shall result in an adjustment to the pricing for such Goods. Such adjustment, if any, shall relate solely to the costs related to the changes implemented by DMS. If Seller does not submit its written request within said 30 days, Seller shall be deemed to have waived any adjustment to the pricing for such Goods. DMS shall be entitled to audit Seller's records to confirm the Seller's claims with regard to any such request. Until such time as DMS approves a pricing adjustment, Seller (and, to the extent a Three-Party Agreement exists, Customer) shall continue to provide the Goods Services, and Tech Products pursuant to the existing Purchase Agreement.

17. **Seller's Representations and Warranties.**

A. Seller warrants that all of the Goods, Services, and/or Tech Products, including any packaging, special tools, dies, jigs, fixtures, patterns, raw materials, machinery, and equipment obtained by Seller at DMS' expense and/or which are to become the property of DMS under a Purchase Order:

- i. shall conform to and fulfill all Specifications;
- ii. shall be merchantable, free from any defects in design (but only to the extent designed by Seller), material, and workmanship;
- iii. shall be free of all liens, claims and encumbrances whatsoever;
- iv. shall comply with all Laws and Government Requirements of the countries in which the Goods, Services, and/or Tech Products are installed and/or are to be sold as directed by DMS;
- v. Are free of Error States and defects in design to the extent furnished by the Seller and/or its subcontractors, irrespective of whether the design has been approved by DMS and/or Customer;
- vi. Are not governmental or commercial surplus, used, remanufactured, or reconditioned;
- vii. Be suitable for their intended use by DMS and Customer, including the specified performance in the component, system, subsystem, and vehicle location specified by DMS and the environment in which the Goods, Services, and Tech Products are or reasonably may be expected to perform; and
- viii. Do not infringe any proprietary rights (including patents, copyrights, trademarks, trade secrets).

B. With respect to any Tech Products, Seller warrants that it has the right to license the Tech

Products to DMS and Customer and that Seller is in compliance with the licenses of any free or open-source software contained in the Software. No Tech Products will contain Software (A) constituting Copyleft Materials, or (B) not in compliance with the applicable notice, disclaimer, or other licensing requirements thereof.

C. With respect to any Supplied Data, Seller warrants that (i) all Supplied Data is timely and accurate, (ii) all Supplied Data was obtained legally by Seller, (iii) Seller has the unrestricted right to use, sell, provide, license, or include in DMS and Customer products such Supplied Data, and (iv) all Supplied Data will comply with all security and privacy Laws, including the provision of notice and obtaining any consent required to provide the Supplied Data and advising of any limitations on its use.

D. If the Goods constitute special tools, dies, jigs, fixtures, patterns, raw materials, machinery or equipment, Seller further warrants that such Goods will operate and perform successfully on a commercial scale in accordance with DMS' usual requirements and methods of operation. Additionally, Seller acknowledges that Seller knows the particular purpose for which DMS intends to use the Goods, Services, and/or Tech Products and Seller warrants such Goods, Services, and/or Tech Products shall be fit and sufficient for such particular purpose. Seller's warranties herein are available to, and are granted for the benefit of, DMS, DMS' affiliates and their respective successors, assigns, customers and users of products incorporating the Goods, Services, and/or Tech Products.

E. These warranties shall be in addition to all other warranties and conditions, express, implied, statutory, or otherwise, available under applicable law. Seller shall indemnify and save DMS, DMS' affiliates and their respective successors, assigns, customers and users of products incorporating the Goods, Services, and/or Tech Products, harmless from any breach of these warranties and, for greater certainty, no limitation on DMS' rights or remedies in Seller's documents, if any, shall operate to reduce this indemnification.

F. Seller will indemnify and hold DMS harmless from all liability, damages and associated costs and expenses (including any lost profits, Recall costs and other direct or indirect, consequential, or special damages) imposed upon DMS resulting from the acts, omissions, or negligence of Seller in respect of the Goods, Services, and/or Tech Products and/or Seller's breach of these warranties.

18. **Goods and Services Warranties and Support.**

A. Unless a different warranty period is set forth in any Three-Party Agreement (including any Customer Supplier Guides incorporated therein), the warranty period shall equal the greater of: (i) five (5) year(s) from the later of the date of delivery of the Goods or final run-off for machines, equipment, spare parts and/or Services; or (ii) any warranty period that has been agreed to by DMS and Seller, documented in writing and signed by DMS; or (iii) 100,000 miles on the vehicle in which the Goods, Services, or Tech Products are incorporated; or (iv) DMS' warranty granted to Customer; or (v) as provided by applicable law or pursuant to any Government Requirement.

B. Support relating to Tech Products.

i. To the extent that Seller provides Goods and/or Services which contain Tech Products, Software, or Software as a Service, or otherwise provides any Tech Products, Seller shall include all support, updates, and enhancements which are available from the Seller in accordance with the support services specified on the Purchase Order. In the event that there are no support services specified, Seller will provide to DMS and Customer support services, including updates and enhancements, which it makes generally available. In addition, as part of the support program, Seller shall provide DMS with on-line end user materials, FAQ's, techniques, and general product usage information.

ii. In the event Seller discontinues its maintenance and support of the Goods and Tech Products, files a petition, or is subject to an involuntary petition under the Bankruptcy Code, Seller shall provide to DMS and/or Customer, as directed by DMS, an unrestricted license to use and modify the then current version of the source code for the affected Goods, Services, Tech Products, Software, and/or Software as a Service supplied to DMS. Seller shall deliver to DMS and/or Customer, as directed by DMS, complete copies of all source code and related technical documentation to enable DMS to continue its use of the Goods, Services, Tech Products, Software, and/or Software as a Service in accordance with these Terms.

iii. DMS may: (i) export all DMS Data and Customer Data relating to the Goods, Services, Tech Products, Software, and/or Software as a Service; or (ii) request Seller to provide a copy of all DMS Data and Customer to DMS and/or Customer, as directed by DMS, in a mutually agreeable and industry standard format.

iv. The Goods, Services, Tech Products, Software, and/or Software as a Service may be copied by DMS, Customer, and their respective agents for use in understanding the Goods, Services, Tech Products, Software, and/or Software as a Service, for backup or archive purposes, and for purposes of installation and running the Goods, Services, Tech Products, Software, and/or Software as a Service. Unless otherwise agreed on the Purchase Order, DMS and Customer may modify any Goods, Services, Tech Products, Software, and/or Software as a Service for their own uses and may integrate the Goods, Services, Tech Products, Software, and/or Software as a Service into Goods, Services, Tech Products, Software, and/or Software as a Service, provided that all copies and modifications of the Goods, Services, Tech Products, Software, and/or Software as a Service will be destroyed upon termination or expiration of this license.

19. **Information, Advice, and Warnings.** As a specialist in its business the Seller shall, regardless of DMS' ability and/or know-how, provide DMS with all information, advice, and warnings necessary or useful for the Goods, Services, and/or Tech Products provided by Seller. Most particularly, the Seller must:

- A. Provide DMS with any information and advice essential to the proper storage and use of the Goods;
- B. Inform DMS of any risk of quality shortfall or other deficiency in the Goods of which DMS should be aware; and
- C. Immediately warn DMS in case of discovery of a defect in the Goods, Services, and/or Tech Products, particularly if such defect could endanger the safety of property or persons.

20. **Recalls.** Unless a different terms are set forth in any Three-Party Agreement (including any Customer Supplier Guides incorporated therein), upon the occurrence of a Recall and/or Field Service Action, where one of the potential causes for the Recall and/or Field Service Action is determined in DMS' reasonable judgment to be attributable to Seller, Seller will indemnify and hold DMS harmless for the costs of any services or other actions undertaken to correct or to remedy any Recall. DMS' remedies under this Section shall include, but not be limited to, a claim for actual, consequential, and incidental damages (including, without limitation, attorneys' fees and administrative costs and expenses) arising out of, resulting from, or related to, any such Recall and/or Field Service Action. Any decision on the part of DMS or Customer, which shall be in their sole discretion, to contest in a legal proceeding any determination by the Secretary, or any other United States or foreign governmental agency or authority, with respect to a Recall and/or Field Service Action order shall not waive or diminish in any manner any rights of DMS under the provisions of this Section. DMS' rights under the provisions of this Section shall be cumulative and additional to any other or further remedies provided by law or in equity.

21. **Quality Control and Inspection.**

A. DMS' Supplier Requirements Manual, as the same may be amended or updated from time to time, is incorporated herein by this reference. Seller shall be and remain, as directed by DMS, QS 9000, IATF or TS 16949, ISO 9000, ISO-14001, registered and compliant for any period of time Seller supplies Goods, Services, and/or Tech Products to DMS and shall comply in all respects with DMS' Supplier Requirements Manual. Seller agrees to comply at all times with DMS' most recently adopted quality control/assurance specifications and manuals and inspection standards and procedures as made available by DMS (including, without limitation, as posted on DMS' website, www.dmsna.com), additional copies of which are available upon request. Seller shall, whenever requested by DMS, furnish certificates indicating such compliance. To the extent that Seller's Goods, Services, or Tech Products cause, in whole or in part, DMS to not meet Customer's standards with respect to quality (as such term may be defined in any standard applicable to DMS), Seller agrees to participate in any improvement processes dictated by DMS or its Customer and will indemnify and hold DMS harmless for any and all expenses relating to such improvement process except only for those expenses which Seller proves, by a preponderance of the evidence, are not incurred, in whole or in part, as a result of Seller's quality. During the time in which Seller participates in any such improvement processes, Seller remains responsible for meeting all applicable quality standards and DMS shall, at all times, be responsible for control over the processes, governance, and improvements consistent with DMS' standards and obligations under any Purchase Order and these Terms.

B. Unless a Three-Party Agreement exists, in which case this provision shall not apply, at DMS' option, DMS may, from time to time and with at least twenty-four (24) hours' notice, review and inspect Seller's components, materials, workmanship, testing, inspection, quality control and reliability procedures, or any other matters relating to the Goods, Services, or Tech Products. If any such inspection or testing is made on Seller's premises or on the premises of any authorized subcontractor or agent of Seller, Seller or such authorized subcontractor or agent, as the case may be, shall provide, without additional charge, all reasonable facilities and assistance. The inspection shall not unnecessarily interfere with the Seller's performance of the Agreement. As part of the inspection, DMS may take random samples of the Goods manufactured or being manufactured by the Seller in order to confirm compliance with quality standards and to confirm that the Goods will conform to all Specifications. Further, DMS may review and inspect DMS' data breach, disaster recovery, and incident response plans (including any related policies and procedures) with respect to the provisioning of Goods, Services, and Tech Products. In no case whatsoever shall (i) any inspection or testing by DMS (or Customer) of the materials and workmanship utilized in the performance of any Purchase Order, (ii) any review or inspection by DMS of Seller's testing, inspection, quality control or reliability procedures (or related data), or (iii) any acceptance by DMS of the Goods, Services, and/or Tech Products, relieve Seller from the strict and complete performance of all of Seller's obligations and warranties under any Purchase Order. In no event shall any inspection be deemed to constitute acceptance by or on behalf of DMS of any nonconforming Goods, Services, and/or Tech Products.

C. To the extent that Seller's Goods, Services, or Tech Products cause, in whole or in part, DMS to not meet Customer's standards with respect to quality (as such term may be defined in any standard applicable to DMS), Seller agrees to participate in any improvement processes dictated by DMS or its Customer and will indemnify and hold DMS harmless for any and all expenses relating to such improvement process except only for those expenses which Seller proves, by a preponderance of the evidence, are not incurred, in whole or in part, as a result of Seller's quality. During the time in which Seller participates in any such improvement processes, Seller remains responsible for meeting all applicable quality standards and DMS shall, at all times, be responsible for control over the processes, governance, and improvements consistent with DMS' standards and obligations under any Purchase Order and these Terms.

22. **DMS' Items.** DMS' Items shall become, from the date of Seller's acceptance of Purchase Order and remain the sole and exclusive property of DMS, with the absolute right of possession in, DMS, free from any liens or claims of any type or nature whatsoever by Seller or any other party claiming by or through Seller, and Seller shall indemnify and defend DMS against any and all such claims, including bonding, if necessary or expedient, to ensure DMS' possession when demanded. Seller shall hold the Items as a bailment only. Seller shall use the Items only in the performance of work for DMS and not otherwise. All Items in the custody and control of Seller or Seller's authorized subcontractors or agents shall be held at Seller's risk, shall be kept insured by Seller, at Seller's expense, against loss or damage in amounts equal to the full replacement value thereof and shall be subject to immediate removal at DMS' written request, in which event Seller shall prepare the Items for shipment and shall deliver them to DMS in accordance with DMS' instructions. Seller shall promptly notify DMS of the location of the Items, if the Items are located at any place other than the Seller's premises and shall not change the location of such Items without the advance written consent of DMS. Seller shall, at Seller's expense, maintain all Items in at least as good condition and repair as when originally received by Seller, reasonable wear and tear excepted, and shall, if and as necessary, replace any items that are used, worn, damaged or destroyed as a result of Seller's intentional or negligent conduct or omissions. DMS does not provide any representations, assurances, warranties or conditions whatsoever (and whether express, implied, statutory or otherwise) with respect to the Items. Upon the completion or termination of a Purchase Order, all Items shall be retained by Seller, at Seller's expense, until disposition directions are received from DMS.

DMS shall have the option at any time to purchase any and all molds, tools, tooling, dies, jigs, fixtures, and other equipment used in the manufacture of Goods or delivery of Services for DMS not already owned by DMS, at the then current book value, less any costs for repair or refurbishment.

Each tool, tooling, mold, die, jig, fixture or piece of equipment is to be clearly stamped or stenciled with the following and no other markings:

- A. DMS' Tool (or Capital Equipment) Identification Number;
- B. DMS' product number; and
- C. Labeled "PROPERTY OF _____" (with Seller to insert "Detroit Manufacturing Systems" or the name of Customer, as directed by DMS in writing).

Notwithstanding any agreed-upon incremental or advance payments, Items will be approved for final payment only after the successful completion and approval of the Production Part Approval Process (PPAP) sample submission by DMS and its Customer, successful audit and payment for such Items to DMS by Customer. Subject to compliance with the foregoing, payment terms for approved amounts shall be 90 days after PPAP approval and successful audit. DMS shall have the right to deduct 5% from a tooling payment in the event Seller's PPAP sample submission is more than fifteen (15) calendar days late from its scheduled due date. For PPAP sample submissions submitted forty-five (45) or more calendar days after their scheduled due date, DMS shall have the exclusive option to cancel any Purchase Order in whole or part, without any liability or obligation to Seller from DMS. Approved tooling invoices will be paid by DMS after payment for such approved tooling from Customer. Approved tooling invoices shall mean those invoices approved by DMS after an audit of Seller's records by DMS. Seller acknowledges and agrees that a tooling Purchase Order and the compensation to be paid thereunder is subject to a successful audit by DMS. DMS shall have the right to audit Seller's books and records for a period of two years after PPAP submission by DMS to its Customer and in the event that Seller determines that any amount was not properly payable may debit DMS' accounts for such amounts.

Prior to Seller's first production shipment, Seller must submit to DMS in writing a listing of the Identification Numbers for all molds, tools, tooling, dies, jigs, fixtures, and other capital equipment, detailed descriptions and locations for each item with an Identification Number, tooling biographies and confirmation that each is properly marked as detailed above.

All molds, tools, tooling, dies, jigs, fixtures, and other equipment shall not be scrapped or made available to third parties (for any purpose including but not limited to production purposes) without the prior written consent of DMS.

All molds, tools, tooling, dies, jigs, fixtures, and other equipment shall be secured, fully insured, and maintained production ready at all times by Seller on behalf of DMS, at Seller's sole expense.

Upon DMS' request, all or any portion of DMS' property in the possession of Seller, Seller's agents or Seller's subcontractors, shall be immediately released to DMS or delivered to DMS by Seller, either (a) for international shipments Delivered Duty Paid (DDP) at DMS' plant (Free Carrier (FCA) DMS' plant for all other shipments) properly packed and marked in accordance with the requirements of the carrier selected by DMS to transport such property, except where stated differently on the Purchase Order or (b) to any location designated by DMS, in which event DMS shall pay to Seller the reasonable and documented costs of delivering such property to such location.

Where permitted by law, Seller waives any possession rights, lien rights, requirements for the posting of bond or other surety, or other rights that Seller might otherwise have in any of such molds, tools, tooling, dies, jigs, fixtures, and other equipment or other of DMS' property for work performed on such property, goods manufactured with such property or otherwise.

Except where stated differently on the Purchase Order, the Seller shall bear all risk of loss and of damage to DMS' Items until risk of loss is transferred to DMS in accordance with the delivery provisions set forth in these Terms.

23. Proprietary Rights.

A. Seller represents and warrants to DMS that no Goods, Services, Tech Products and no article, machine, product, component, material or services provided or used by Seller in connection with a Purchase Order shall be a misuse or misappropriation of any trade secret or infringe any patent, copyright, trademark, trade secret, industrial design right utility model, or other proprietary right not owned or controlled by Seller, and that neither the normally anticipated uses thereof by DMS, nor any specified methods of using same known by Seller to be contemplated by DMS, will infringe any patent, copyright, trademark, industrial design right or other proprietary right in accordance with applicable law. Seller shall, upon notice of any possible violation of this section, investigate, indemnify, defend and hold and save DMS, Customer, DMS' affiliates and their respective successors, assigns, customers and users of products incorporating the Goods, Services and Tech Products, harmless from all losses and/or liabilities of any nature or kind, including damages, court costs, representation expenses (both internal and external, including lost management and employee time and out-of-pocket expenditures) and legal fees, arising or existing because of the infringement or alleged infringement of any patent, trademark, copyright, industrial design or process of manufacture for or on account of the manufacture, sale or use of any of the Goods, Services, and/or Tech Products, or products incorporating the Goods, Services, and/or Tech Products, except where strict and complete compliance by Seller with the specifications prescribed by and originating with DMS constitutes the sole basis of the infringement or alleged infringement. In the event a claim of infringement is asserted, Seller may replace or modify the Goods, Services and Tech Products to make them non-infringing at no cost to DMS, provided that DMS and Customer approves such replacement or modification and agrees in writing that such replacement or modification achieves the substantive results of the original version of such Goods, Services, and Tech Products and any related cost incurred are paid by Seller, or Seller may procure at its expense a license for DMS and/or Customer, as directed by DMS, to use the allegedly infringing Goods and Tech Products.

B. Seller hereby grants to DMS, DMS' affiliates and their respective successors and assigns, and, with DMS' express written consent, to customers and users of products incorporating the

Goods, Services, and/or Tech Products, a non-exclusive, royalty free, paid-up, irrevocable, worldwide license (i) to use any patents, industrial designs and processes of manufacture relating to the Goods, Services, and/or Tech Products, including such a license to make, repair, rebuild, relocate, and sell, and to have made, repaired, relocated, and sold, the Goods, Services, and/or Tech Products, and (ii) to use any copyrighted or copyrightable works of authorship fixed in any tangible medium of expression (including drawings, prints, manuals and specifications) furnished by Seller to any such party in the course of Seller's activities under a Purchase Order, including the right to reproduce, distribute and display such works and to prepare derivative works based thereon, subject to the other provisions herein.

C. Any work of authorship created by Seller or Seller's employees under a Purchase Order will be considered as a "work made for hire" and all copyrights for such works of authorship will belong to DMS by operation of law. In the event that any work of authorship or portion thereof created by Seller under a Purchase Order does not qualify as a "work made for hire," Seller hereby assigns to DMS all right, title, and Seller hereby assigns to DMS all right, title and interest in all copyrights and moral rights therein. If Seller has failed to previously secure ownership of all copyrights in any such work of authorship or portion thereof, Seller will obtain title and assign all copyrights and moral rights in such work to DMS.

24. **Data.**

A. **DMS Data and Customer Data.** DMS retains all right, title, and interest in and to all DMS Data; Customer retains all right, title and interest in and to all Customer Data. Seller has no rights in or to any DMS Data or Customer Data unless expressly assigned through a separate instrument. During the term of the applicable Purchase Order, DMS hereby grants to Seller a limited, non-exclusive, non-transferable, revocable license to strictly collect, transmit, store, or otherwise process DMS Data and Customer Data (but only to the extent permitted by Customer), for the sole purpose of providing the Goods, Services, and Tech Products to DMS. Seller shall not use DMS Data or Customer Data, whether in aggregated, anonymized, or de-identified format or not, for any business or other commercial purpose of Seller or any other person. Without limiting the foregoing, Seller shall not use DMS Data which is aggregated, anonymized, or de-identified and attempt to use it in manner which, either alone or in combination with other information, would make such DMS Data or Customer Data identifiable.

B. **Data Incidents.** Seller shall be responsible for, and shall indemnify DMS and Customer from, all reasonable and necessary data incident notifications, forensics, credit protection services, and other data mitigation services resulting from Seller's failure to protect DMS Data and Customer Data.

C. **Supplied Data.** Upon DMS' or Customer's request, Seller shall provide to DMS and Customer any and all Supplied Data at no additional cost. Supplied Data shall not include any DMS Data or Customer Data provided by DMS to Seller. Seller shall deliver all requested Supplied Data to DMS and/or Customer with right for DMS and/or Customer to use Supplied Data in analytics, in operations, related to providing products and services, in manufacturing, with third parties, or merged with other data assets. DMS reserves the right to designate and amend such designation at any time in the future, the formatting, and specifications of all Supplied Data.

D. **Cyber Security; Disaster Recovery.** Seller shall maintain and implement all appropriate data recovery, cyber security, and business continuity policies and procedures which are necessary and beneficial to the provisioning of Goods, Services, and Tech Products to DMS, but under no circumstances less than commercially reasonable and industry standard policies and procedures so as to ensure the uninterrupted provisioning of Goods, Services, and Tech Products to DMS. Further, Seller shall indemnify and hold DMS harmless for any and all costs and losses with respect to any incidents involving cyber security, disaster recovery, and/or data incident events (as any of such

terms may be defined pursuant to industry practices).

25. **Confidentiality.** Unless set forth in a separate non-disclosure or confidential information agreement, which terms shall control over these provisions, Seller shall consider and treat all Information as confidential and shall not disclose any Information to any other person or use any Information for any purpose other than pursuant to and as required by a Purchase Order unless Seller obtains the prior written permission from DMS' authorized representatives to do so. DMS retains all rights to and interests in and to the Information, and Seller shall not allow any Information to be reproduced, communicated, or used in any way in connection with services or goods furnished to others without the specific prior written permission of DMS' authorized representatives. Seller shall not advertise or otherwise disclose the fact that DMS has contracted to purchase Goods, Services, and/or Tech Products from Seller, nor shall any information relating to a Purchase Order or to the Goods, Services, and/or Tech Products be disclosed, without, in each case, the prior written permission of DMS' authorized representatives. This confidentiality obligation shall continue during the performance of a Purchase Order and for a period of five (5) years after its termination. This Section is intended to supplement any existing confidential information agreement. In the event of any inconsistency between this Section and such existing agreement the existing agreement shall prevail.

26. **Compliance with Laws and Ethics.**

A. Seller warrants its compliance with all Laws, including environmental, health, safety, transportation, competition, and labor Laws, and shall furnish DMS with certificates of such compliance where required thereunder or when requested by DMS.

B. Seller shall import, license, approve, certify, transport, package and label the Goods and their containers, including, in particular, those which constitute a health, poison, fire, explosion or other safety hazard, in accordance with all applicable Laws in effect in the place to which the Goods are shipped or as otherwise specified by DMS including, without limitation, all export control and sanction Laws. Without limitation, such obligations shall include the proper preparation and provision of applicable material safety data sheets (MSDS) and other prescribed documentation and/or information.

C. **DMS and Seller shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that Parties take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.**

D. Seller shall import, license, approve, certify, transport, package and label the Goods and their containers, including, in particular, those which constitute a health, poison, fire, explosion or other safety hazard, in accordance with all applicable Laws in effect in the place to which the Goods are shipped or as otherwise specified by DMS including, without limitation, all export control and sanction Laws. Without limitation, such obligations shall include the proper preparation and provision of applicable material safety data sheets (MSDS) and other prescribed documentation and/or information. In the event that any Goods have an export control classification number ("ECCN") or United States Munitions List ("USML") category classification other than EAR99, is an ITAR Defense Service, or that is otherwise export controlled under the Laws of any applicable jurisdiction, Seller shall so notify DMS in writing before delivering any Goods.

E. To the extent a Three-Party Agreement exists, Seller will comply with all of DMS' Customer's social and ethical policies and procedures.

F. DMS may, from time to time and at DMS' discretion, require Seller to certify in writing

Seller's compliance with the terms of this Section. Upon default of any obligation in this Section, or upon DMS' notification of any potential default of any obligation under this Section which is not addressed by Seller to DMS' satisfaction, DMS shall have the right to terminate any Purchase Orders or any portion thereof.

27. **Indemnification and Insurance.**

A. Seller's representatives, employees or agents shall be under the exclusive direction of the Seller. If Seller's representatives, employees, subcontractors, or agents enter upon any premises owned or occupied by DMS in the performance of Seller's obligation hereunder, Seller shall: (i) indemnify, defend, and hold and save harmless DMS, DMS' representatives, employees, agents, and invitees, from and against all liabilities, demands, claims, losses, costs, damages and expenses by reason or on account of property damages, death and/or personal injury of whatever nature or kind except as a result of DMS' intentional or grossly negligent acts or omissions, (ii) ensure that Seller is in compliance with all requirements under all applicable Laws including but not limited to workers' compensation legislation of the jurisdiction in which DMS' premises are located, and (iii) ensure and remain responsible for the compliance by Seller's representatives, employees and agents with DMS' rules and regulations (pertaining to safety and other occupancy requirements). Seller agrees that all of Seller's efforts in the performance of any Purchase Order shall be made as an independent contractor and that the persons engaged in such performance shall not be considered employees of DMS. Seller further agrees to remove and/or substitute any of Seller's employees when so requested by DMS (in DMS' sole discretion) and to ensure that any labor or union affiliations of the employees of Seller are compatible with the requirements of DMS.

B. Seller shall maintain and carry adequate insurance, on a commercially reasonable basis, on Seller's own plant and equipment for the full insurable value thereof, as well as comprehensive commercial general liability insurance, including public liability, property damage liability, product liability and contractual liability coverage, automobile liability for all owned, non-owned and hired automobiles for bodily and property damages, and workers' compensation and employees' liability insurance covering all employees engaged in the performance of any Purchase Order in amounts required by law and employer's liability insurance. Seller shall have DMS named as an additional insured on its insurance policies. Seller shall, on DMS' request, furnish certificates or other acceptable forms of proof of insurance confirming the foregoing coverages. The receipt or review of such certificates or other forms of proof of coverage by DMS shall not relieve Seller from Seller's insurance obligations hereunder or reduce or modify such insurance obligations.

C. Seller agrees to indemnify, defend, protect and hold harmless DMS, DMS' affiliates and their respective successors, assigns, agents, employees, customers and users of products incorporating the Goods, Services, and/or Tech Products from and against any and all claims and alleged claims for personal injury, property damage, economic loss, cost or expense, including reasonable attorney fees and expense, and/or consequential or special damages arising out of, resulting from or related to (i) improper, unsafe or defective materials, workmanship or design of the Goods, Services, and/or Tech Products, except where strict and complete compliance by Seller with the Specifications prescribed by and originating with DMS constitutes the sole basis of the claim or alleged claim; (ii) breach of any provisions of any Purchase Order, including but not limited to any of the representations or warranties provided herein; or (iii) Seller's failure to comply with all applicable Laws.

28. **Termination.**

A. For convenience.

i. DMS may terminate a Purchase Order in whole or in part at any time by written notice stating the extent and effective date of such termination. Upon receipt thereof, Seller

shall (i) stop work on the termination date and to the extent specified in the notice and terminate all orders and subcontracts to the extent they relate to the terminated work, (ii) promptly advise DMS of the quantities of applicable work and material on hand or purchased prior to termination and the most favorable disposition that Seller can make thereof; (iii) in accordance with DMS' instruction manufacture and deliver not less than a five (5) week bank of Goods at the pricing set forth in the applicable Purchase Order; and (iv) comply with DMS' instructions regarding the protection, transfer and disposition of title to and possession of such work and materials. Seller shall submit to DMS any claims relating to such termination as soon as possible, but in any event within 30 days (unless DMS agrees otherwise) from the effective date of such termination. The failure of Seller to submit its claim within this time period shall be an absolute waiver of any right of compensation. Seller hereby grants DMS the right to audit and inspect Seller's books, records, and all other documents relating to Seller's termination claims.

ii. Unless otherwise authorized in writing by DMS, Seller shall not make commitments for materials or fabricate in advance of the time necessary to permit shipment(s) on the delivery date(s) specified in DMS' Releases. DMS shall in no event be liable or responsible for any such costs or amounts incurred by Seller in breach of this provision.

iii. If the parties cannot agree within a reasonable time upon the amount of fair compensation for termination by DMS under subparagraph 28(A), DMS shall, in addition to making payment of the contract price for the Goods, Services, and/or Tech Products delivered or performed and accepted by DMS prior to the effective date of termination, pay to Seller, without duplication, only the following costs and expenses: (i) the contract price for Services performed or Goods completed in accordance with the terms of the Purchase Order but not previously paid for, and (ii) the actual direct costs incurred and paid by Seller for any engineering and development work authorized in a writing signed by DMS and properly allocated or apportioned to the terminated portion of a Purchase Order, all of the foregoing subject to audit and verification by DMS in accordance with generally accepted accounting principles. In all events, compensable costs hereunder shall not include, by example but not limitation, program management costs, costs incurred for capital equipment, tooling or fixture enhancements, or other costs whether or not set forth in Seller's quotation or any Quotation Analysis Form, unless such costs were specifically identified as compensable in the relevant Purchase Order.

B. Upon Default.

i. DMS may terminate a Purchase Order in whole or in part for default occasioned by Seller's failure to perform in accordance with the requirements of a Purchase Order (including the obligations arising under these Terms) or Release. Such termination shall be without liability to DMS, except for completed Goods delivered and accepted or Services performed and accepted by DMS. Seller shall be liable for all direct, indirect, special, and consequential damages, including but not limited to lost profits, caused by, or resulting from, Seller's default.

ii. DMS may terminate a Purchase order in whole or in part, in the event of a change in control/ownership of the Seller or the sale by Seller of a material part of its assets used to perform under a Purchase Order. Any such termination shall be a termination for cause and shall be without cost to DMS.

iii. Seller may terminate a Purchase Order only for non-payment of the purchase price for Goods which are thirty (30) or more days past due and in a material amount. Seller may not request such termination unless prior to such termination (i) Seller first provides DMS

written notice specifying in detail the amounts past due (including the relevant Purchase Order and invoice numbers); and (ii) DMS, within sixty (60) days of actual receipt of such notice, does not either: (a) pay the past due amounts, or (b) notify Seller that the amounts claimed to be unpaid are disputed by DMS. If DMS fails to either pay such amounts or notify Seller of the disputed amounts, Seller may thereafter deliver a termination notice to DMS setting forth the termination of such Purchase Order. Seller may not terminate or cancel any Purchase Order for any reason except as permitted under this Section. Seller may not suspend performance under a Purchase Order for any reason.

C. Upon Insolvency or Bankruptcy. DMS may terminate a Purchase Order, without liability, in the event of the insolvency, bankruptcy, reorganization, arrangement, receivership or liquidation by or against the Seller; or if Seller fails to provide adequate written assurance of adequate performance after demand by DMS; or if the Seller makes an assignment for the benefit of creditors or ceases to carry on business in the ordinary course.

29. **Remedies.** The remedies reserved in these Terms and at law are cumulative, and not alternative, and may be exercised separately or together, in any order or combination, and, in the case of DMS only, are in addition to any other rights and remedies provided for or available to DMS at Law, in equity or otherwise. Seller hereby waives any claims that it may have against DMS in tort, under statute or in equity, and confirms that Seller's complete rights and remedies as against DMS, including the right of indemnity and measure of damages in the event of DMS' breach or default, are limited to those expressly conferred by or provided for in these Terms.

In the event that Seller takes action (or fails to act) in a manner that disrupts or threatens to disrupt DMS' ability to produce and deliver to Customer on schedule, DMS shall have the right to seek specific performance of a Purchase Order in a court of DMS' choosing without application of principles of conflicts of law.

Notwithstanding the termination of a Purchase Order, in whole or part, whether for cause or convenience, and whether such termination is claimed by DMS or Seller, so long as during the Transition Period, as defined hereinafter, and provided that DMS timely pays the pricing set forth on the Purchase Order for such Goods, Services, and/or Tech Products the Seller shall have the absolute obligation to continue to provide the Services or produce and deliver the Goods in accordance with the terms of the Purchase Order for a reasonable period of time so as to permit DMS the opportunity to procure a replacement supplier, so as to permit an orderly transition of the production of the Goods, Services, and/or Tech Products and so as to avoid any interruption of production at DMS' facilities or the facilities of Customer. Such period shall only be of such a length so as to reasonably provide DMS the opportunity to transition, under commercially reasonable terms and conditions, the supply of Goods, Services, and/or Tech Products without an interruption of production at DMS' facility or at the facilities of Customer, such period being referred to herein as the "Transition Period". This Transition Period shall not be a cure period and shall terminate by DMS giving not less than five days' notice of its intention to terminate the Transition Period. Seller shall not have the right to terminate the Transition Period except in the event that DMS fails to pay for conforming Goods, Services, and/or Tech Products timely delivered or provided by Seller during the Transition Period in accordance with the Purchase Order and Releases issued for such Goods, Services, and/or Tech Products and without regard to whether or not such Purchase Order has been terminated in whole or in part. Seller further acknowledges that the Goods, Services, and/or Tech Products provided hereunder are unique and that rights set forth herein are in addition to any rights granted under any state law including but not limited to §2-716 of the UCC as adopted by the jurisdiction governing the transactions contemplated hereunder.

The Parties further agree that any breach of these Terms or a Purchase Order that would have the effect of interrupting production at DMS or Customer, would result in irreparable harm to DMS, its customers and the business and reputation of each of them, and that money damages would not be a sufficient remedy for

any such breach. The Parties agree that in such event DMS shall be entitled to equitable relief, including injunction and specific performance, requiring further production of Goods or the provision of Services, as a remedy for any such breach or claimed breach. During the term of any Purchase Order, Seller consents to the entry of an order for specific performance for the production of goods in accordance with UCC §2-716 or similar statute. Seller further waives any requirement or finding that a Purchase Order constitutes a requirements contract or the securing or posting of any bond in connection with any such remedy. Seller further acknowledges and consents to the entry of injunctive or similar relief in order to enforce the obligations of the Parties under these Terms and Conditions and any Purchase Order or other document governing the purchase of goods from Seller by DMS whether at law or in equity. The remedies of DMS shall not be deemed to be the exclusive remedies for a breach by Seller but shall be in addition to all other remedies available at law or equity.

30. **Waiver and Modification; Inconsistency.**

A. The Three-Party Agreement (if any), DMS' Purchase Order(s) and Release(s) and these Terms and Conditions, together with DMS' documents specifically referenced herein constitute the entire agreement between the Parties and supersede all prior or contemporaneous agreements, representations, and understandings of the Parties with regard to the subject matter of a Purchase Order. In the event of an inconsistency between these documents the order of priority shall be the Three-Party Agreement (if any), a Release, the Purchase Order, the Terms and Conditions and thereafter such other manuals or documents as are referenced herein. There are no terms that are not specifically set forth in these Terms and Conditions or the Purchase Order.

B. Either party's failure to insist on the strict and complete performance by the other party of any term or condition hereof or failure to exercise any right or remedy reserved herein shall not constitute a waiver of any such provision or affecting the validity of these Terms or of the right to subsequently claim the application of such provision or of the Terms themselves. In addition, either party's waiver of any breach or default hereunder by the other party, shall not, thereafter, waive any other terms, conditions, rights, remedies, breaches, or defaults, whether of the same or a similar nature or type.

C. No modification of a Purchase Order, or waiver of, or addition to, any Purchase Order's terms and conditions, shall be binding upon DMS, unless made in writing and signed by DMS' representatives. In the event of a conflict between the printed conditions appearing in a Purchase Order and any notations, modifications, waivers or additions made or expressly accepted by DMS' authorized representatives, the latter shall supersede and prevail.

D. The Seller acknowledges receipt of all documents referenced in the present Terms and Conditions or that the Seller has reviewed all such documents at www.dmsna.com.

31. **Assignment.** Seller shall not assign a Purchase Order or any portion thereof or any work thereunder or any interest therein, except that Seller may, with the prior written consent of DMS, make an assignment of monies due or which may become due Seller to a bank, or other financial institution: provided, however, that any such assignment shall be subject to set-off, recoupment or any other lawful means of enforcing any present or future claim or claims which DMS may have against Seller. Where used in a Purchase Order, the terms Seller includes Seller and Seller's heirs, executors, legal representatives, successors and permitted assigns, as the case may be. DMS shall have the right to freely assign a Purchase Order or DMS' interest herein to any third party.

32. **Governing Law, Dispute Resolution; Anti-Competitive Practices.**

A. **Customer Disputes.** Seller agrees to participate in good faith with any dispute resolution processes, terms, and conditions as directed by Customer.

B. **Negotiation Period.** In the event of any dispute between DMS and Seller, or between DMS

and Customer (to the extent that such dispute involves, in whole or in part, Seller), DMS, Seller, and, to the extent involved, Customer, shall negotiate in good faith with respect to a fair and equitable resolution of the dispute provided, however, that such negotiation may be terminated by either Party upon 14 days' notice or as otherwise provided by any agreement between DMS and Customer.

C. Mediation Period. At any time prior to the end of such negotiation period, DMS, Seller, or Customer may elect to engage in non-binding mediation by delivering notice to the other Party(ies). In the event of such non-binding mediation, the Parties shall agree upon the identity of the mediator and shall split all costs equally. Any such mediation shall be completed within 90 days from the date of such notice unless agreed to by all Parties or otherwise provided by any agreement between DMS and Customer.

D. Arbitration. In the event of any dispute between DMS and Customer, which involves, in whole or in part, Seller, Seller acknowledges and agrees that DMS or Customer may elect to resolve such matters pursuant to binding arbitration. To the extent that Seller is notified of the pendency of any such arbitration proceeding, Seller agrees to submit to binding arbitration pursuant to the terms and conditions of such arbitration as agreed to by DMS and Customer and waives any and all rights to pursue such matters in any other forum.

E. Choice of Law. These Terms and any Purchase Order shall be interpreted and enforced in accordance with the Laws of the State of Michigan, exclusive of the choice of law rules thereof. For greater certainty, the U.N. Convention on Contracts for the International Sale of Goods shall not apply to the Terms of any Purchase Order.

F. Forum Selection. Except with respect to any dispute involving Customer, any action or proceedings with respect to these Terms and/or any Purchase Order must be brought in the United States District Court for the Eastern District of Michigan, Southern Division in Detroit, Michigan and/or the Circuit Court for the County of Wayne (or, to the extent a Three-Party Agreement exists, the County of Oakland) and Parties irrevocably consent to jurisdiction and venue therein and irrevocably waive all other forums. In the event of any dispute involving Customer, Seller shall irrevocably submit to the jurisdiction and venue of such dispute between DMS and Customer and irrevocably waive all other forums. No Party may assert, and each Party expressly waives, any objection to jurisdiction and venue including any objection based on the inconvenience of any forum agreed to herein. Seller waives, and covenants not to assert or receive, any awards of punitive, exemplary, or multiple of damages other than as expressly permitted by these Terms.

G. Anti-Competitive Practices. If the Seller admits or is found to have, violated or infringed a Competition Law with respect to any Goods, Services, or Tech Products delivered to DMS, , including pursuant to a Government antitrust leniency program, the Seller shall: (a) produce to DMS all documents, data, and other information produced to all Government authorities globally that is related to an investigation of a Competition Law violation, within 4 weeks of a finding or admission; and (b) participate in binding arbitration to resolve any DMS claims related to the violation. If, during arbitration, Seller is found to have violated competition Laws with respect to DMS, the Seller agrees to pay DMS 15% of the purchase price of all Goods, Services, and Tech Products impacted by the anticompetitive conduct, regardless of the location of DMS' principal place of business. If the Seller is found to have violated the Sherman Act in the United States, DMS shall be entitled to treble the amount otherwise payable under this Section for all purchases governed by the Sherman Act. The payment required by Section 32.G shall not be the sole or exclusive remedy of DMS for Competition Law violations, and DMS is entitled to any available statutory damages at arbitration. The location of the arbitration shall be Michigan, unless DMS and Seller agree otherwise. The rules and procedures to be followed in the arbitration will be the CPR Rules for Non-Administered Arbitration of Business Disputes. The arbitration rules current as of

the time the arbitration is initiated will apply.

H. **Battle of the Forms.** The Parties agree that the “battle of the forms” provisions of Section 2207 of the Uniform Commercial Code as enacted in Michigan or similar provisions of any other potentially applicable law shall not apply to these Terms and Conditions and any Purchase Order. In the event of any purported inconsistency between the Purchase Order and these Terms and Conditions on the one hand and any acceptance by Seller on the other hand, the Purchase Order and these Terms and Conditions shall govern.

I. **Entire Agreement.** THESE TERMS AND THE DOCUMENTS REFERENCED HEREIN EMBODY THE ENTIRE AGREEMENT BETWEEN DMS AND SELLER, AND NO NEGOTIATIONS, UNDERSTANDINGS OR AGREEMENTS, VERBAL, COLLATERAL OR OTHERWISE IN RELATION HERETO EXIST BETWEEN DMS AND SELLER, EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS OR A PURCHASE ORDER.

33. **Limitations of Remedies, Liability, and Damages.** DMS’ entire liability to Seller for any loss, liability or damage, including attorneys’ fees, for any claim arising out of or related to the Goods, Services, and/or Tech Products provided to DMS, regardless of the form of action, will be limited to Seller’s actual direct out-of-pocket expenses which are reasonably incurred by Seller, and only to the extent that sufficient and acceptable documentary evidence of such damages is presented to DMS. Seller’s recovery will not in any event exceed the total amount of purchases by DMS during the three (3) month period immediately preceding such claim. IN NO EVENT WILL DMS BE LIABLE TO SELLER OR ANY THIRD PARTY FOR LOST PROFITS, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES, HOWSOEVER ARISING OUT OF OR RELATED TO THE GOODS, SERVICES, AND/OR TECH PRODUCTS PROVIDED TO DMS, REGARDLESS OF THE BASIS OF SUCH CLAIM.

34. **Service and Replacement Parts.** During serial production, Seller will sell to DMS all Goods necessary for it to fulfill its current model service and replacement parts requirements at the price(s) set forth in the Purchase Order issued for the production Goods. If the Goods are systems or modules, Seller will sell the components or parts that comprise the system or module at price(s) that shall not, in the aggregate, exceed the price of the system or module less assembly costs. During the 15-year period after DMS completes current model purchases, Seller will sell Goods to DMS to fulfill DMS’ past model service and replacement parts requirements unless Seller is notified prior to the expiration of such 15-year period that a longer term is required by DMS or Customer. Unless otherwise agreed to by DMS in writing, the price(s) shall be those in effect at the conclusion of the then current model purchases.

2. **Excusable Delay.**

A. **Excusable Events.** Neither Party will be liable for a delay or failure to perform directly due to an Excusable Event. An Excusable Event is a cause or event beyond the reasonable control of a Party that is not attributable to its fault or negligence. Excusable Events include extreme natural events such as fire, flood, or earthquake; acts of God; war, acts of terrorism, riots, or civil disorders; or strikes, lockouts, and slowdowns regardless of their lawfulness. In every case the failure to perform must be beyond the reasonable control, and not attributable to the fault or negligence, of the party claiming the Excusable Event. Excusable Events also include delays or nonperformance of a subcontractor, agent or supplier of a party only if and only to the extent that the cause or event would be an Excusable Event as defined in this Section Excusable Events do not include the failure to comply with applicable law or to take actions reasonably necessary to schedule performance in anticipation of any customs, export-import, or other Government Requirement of which public notice has been given; fluctuations in the price of labor or materials; fluctuations in the availability of labor or materials; or delays associated with a Party’s failure to have sufficient labor or material resources available for the satisfaction of their obligations hereunder.

- B. Notice of Excusable Event. The party claiming an Excusable Event will provide the other party with Written Notice of its occurrence and its termination as soon as practicable.
- C. Work-In-Process. In the event of an Excusable Event, DMS, at its option, may acquire possession of all finished Goods, work-in-process, and raw materials produced or acquired for the work under the Purchase Order.
- D. Right to Substitute and Reduce Quantity. DMS reserves the right to acquire the Goods elsewhere for the duration of the Excusable Event and for a reasonable time afterwards to minimize production disruptions until the Seller's facilities are producing the Goods in the quantities required by the Purchase Order or Releases and to reduce accordingly any quantity of Goods ordered under an outstanding Release.
- E. Right to Terminate. The DMS may terminate a Purchase Order, in whole or in part, upon written Notice to the Seller if an Excusable Event has occurred resulting in a failure or delay to perform that has lasted for more than 3 consecutive months after the date of written notice by the party claiming an Excusable Event is effective.
3. Advertising. Seller shall not advertise or otherwise make any public statements with respect to their engagement with DMS under any Purchase Order, or use DMS' name, logo, or any quote attributable to DMS, except with DMS' prior written consent. Without limiting the generality of the foregoing, Seller shall not (1) disclose the value, length, or other terms of any Purchase Order or (2) use Customer's name, logo, or other information except in conformity with such Customer's approval and all relevant policies and procedures.

ADDENDUM FOR SELLERS FROM MEXICO.

For shipments from Sellers organized and existing under the Laws of Mexico the following modified Terms and Conditions shall apply and shall modify or replace as applicable below, the related provisions set forth in the main body text above; provided, however, that these provisions shall not apply to the enforcement of the Terms and Conditions against a Seller's US affiliate, if any:

1. Section 19 above is replaced in its entirety with the following:

19. **RECALL; RECALL LIABILITY:** Upon the occurrence of a Recall, where one of the potential causes for the Recall is determined in DMS' reasonable judgment to be attributable to Seller, Seller will indemnify and hold DMS harmless for the costs of any services or other actions undertaken to correct or to remedy any Recall. DMS' remedies under this Section shall include, but not be limited to, a claim for damages and lost profits, actual, consequential and incidental damages (including, without limitation, attorneys' fees and administrative costs and expenses) arising out of, resulting from or related to any such Recall. The term "Recall" shall mean (i) in the absence of an order issued by the Secretary of Communications and Transports (the "Secretary"), the Secretary of Economy or any other applicable governmental agency or authority of Mexico or any other country, notification by Customer to the Secretary, governmental authority of such other foreign country and to owners, purchasers, and dealers as required under Mexican law, that any motor vehicle or item of replacement equipment contains a defect related to motor vehicle safety or that such vehicle or item of replacement equipment fails to comply with an applicable federal, state or provincial motor vehicle safety standard, or such other notification as may be required under any other federal, state or provincial applicable law and/or (ii) an order by any competent authority with respect to any motor vehicle or item of replacement equipment which fails to comply with an applicable federal motor vehicle safety standard or contains a defect which relates to motor vehicle safety, or an order by any other applicable authority requiring notification and remedial action on the part of DMS or Customer with respect to any motor vehicle or item of replacement equipment. Any decision on the part of DMS, which shall be in its sole discretion, to contest in a legal proceeding any determination by the Secretary, or any other Mexican or foreign governmental agency or authority, with respect to a Recall order shall not waive or diminish in any manner any rights of DMS under the provisions of this Section. DMS' rights under the provisions of this Section shall be cumulative and additional to any other or further remedies provided by law.

2. Section 29 above is replaced in its entirety with the following:

29 **REMEDIES:** The remedies reserved in these Terms and at law are cumulative, and not alternative, and may be exercised separately or together, in any order or combination, and, in the case of DMS only, are in addition to any other rights and remedies provided for or available to DMS at Law or otherwise. Seller hereby waives any claims that it may have against DMS in accordance with Mexican law or any international agreement executed by Mexico, and confirms that Seller's complete rights and remedies as against DMS, including the right of indemnity and measure of damages in the event of DMS' breach or default, are limited to those expressly conferred by or provided for in these Terms.

In the event that Seller takes action (or fails to act) in a manner that disrupts or threatens to disrupt DMS' ability to produce and deliver to Customer on schedule,

DMS shall have the right to seek specific performance of a Purchase Order in a competent court.

Notwithstanding the termination of a Purchase Order, in whole or part, whether for cause or convenience, and whether such termination is claimed by DMS or Seller, so long as during the Transition Period, as defined hereinafter, and provided that DMS timely pays the pricing set forth on the Purchase Order for such Goods, Services, and/or Tech Products the Seller shall have the absolute obligation to continue to provide the Services or produce and deliver the Goods in accordance with the terms of the Purchase Order for a reasonable period of time so as to permit DMS the opportunity to procure a replacement supplier, so as to permit an orderly transition of the production of the Goods, Services, and/or Tech Products and so as to avoid any interruption of production at DMS' facilities or the facilities of Customer. Such period shall only be of such a length so as to reasonably provide DMS the opportunity to transition, under commercially reasonable terms and conditions, the supply of Goods, Services, and/or Tech Products without an interruption of production at DMS' facility or at the facilities of Customer, such period being referred to herein as the "Transition Period". This Transition Period shall not be a cure period and shall terminate by DMS giving not less than five days' notice of its intention to terminate the Transition Period. Seller shall not have the right to terminate the Transition Period except in the event that DMS fails to pay for conforming Goods, Services, and/or Tech Products timely delivered or effectively provided by Seller during the Transition Period in accordance with the Purchase Order and Releases issued for such Goods, Services, and/or Tech Products and without regard to whether or not such Purchase Order has been terminated in whole or in part. Seller further acknowledges that the Goods, Services, and/or Tech Products provided hereunder are unique and that rights set forth herein are in addition to any rights granted under any applicable law including but not limited to Commercial Code and the Federal Civil Code as adopted by the jurisdiction governing the transactions contemplated hereunder.

The Parties further agree that any breach of these Terms or a Purchase Order that would have the effect of interrupting production at DMS or Customer, would result in irreparable harm to DMS, its customers and the business and reputation of each of them, and that money damages would not be a sufficient remedy for any such breach. The Parties agree that in such event DMS shall be entitled to demand from Seller the corresponding indemnification, requiring further production of Goods or the provision of Services, as a remedy for any such breach or claimed breach. During the term of any Purchase Order, Seller consents to the entry of an order for specific performance for the production of goods in accordance with Commercial Code and the Federal Civil Code. Seller further waives any requirement or finding that a Purchase Order constitutes a requirements contract or the securing or posting of any bond in connection with any such remedy. Seller further acknowledges and consents to the entry of any action permitted by law in order to enforce the obligations of the Parties under these Terms and Conditions and any Purchase Order or other document governing the purchase of goods from Seller by DMS in accordance with Mexican law. The remedies of DMS shall not be deemed to be the exclusive remedies for a breach by Seller but shall be in addition to all other remedies available at law. Seller further agrees that any right of termination of DMS, whether in whole or part, under these Terms may be enforced by DMS without the need for entry of a resolution or order from a court of competent jurisdiction and shall be in the sole and absolute discretion of DMS.

3. Section 32 above is replaced in its entirety with the following:

32. GOVERNING LAW; COMPLIANCE WARRANTY

a. These Terms and any Purchase Order shall be interpreted and enforced in accordance with the applicable Laws of Mexico and the competent Courts of Querétaro City waiving to any jurisdiction which may correspond to them by reason of their domiciles. For greater certainty, the U.N. Convention on Contracts for the International Sale of Goods shall not apply to the Terms of any Purchase Order.

b. Any action or proceedings by DMS against Seller may be brought by DMS in any competent court.

c. Any reference in these terms to “applicable law(s)” shall include but not be limited to all consumer protection Laws existing under the Laws of Mexico.

d. THESE TERMS AND THE DOCUMENTS REFERENCED HEREIN EMBODY THE ENTIRE AGREEMENT BETWEEN DMS AND SELLER, AND NO NEGOTIATIONS, UNDERSTANDINGS OR AGREEMENTS, VERBAL, COLLATERAL OR OTHERWISE IN RELATION HERETO EXIST BETWEEN DMS AND SELLER, EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS OR A PURCHASE ORDER.

e. Seller warrants its compliance with Mexican Labor law, social security legislation with respect to its employees, as well as intellectual property law, copyright law and all related applicable Mexican law.

4. The following provision is added as Section 36 of these Terms:

38. LANGUAGE; The parties have agreed that these Terms along with any documents to be created and/or delivered in conjunction with these Terms, including without limitation, any Purchase Order, may be drafted in either or both, English and Spanish. The official version for these Terms shall be Spanish and in the event of any inconsistency the Spanish version of the Terms shall prevail.

ADDENDUM FOR SELLERS FROM CANADA.

For shipments from Sellers organized and existing under the Laws of Canada the following modified Terms and Conditions shall apply and shall modify or replace as applicable below, the related provisions set forth in the main body text above; provided, however, that these provisions shall not apply to the enforcement of the Terms and Conditions against a Seller's US affiliate, if any:

1. Section 19 above is replaced in its entirety with the following:

19. **RECALL; RECALL LIABILITY:** Upon the occurrence of a Recall, where one of the potential causes for the Recall is determined in DMS' reasonable judgment to be attributable to Seller, Seller will indemnify and hold DMS harmless for the costs of any services or other actions undertaken to correct or to remedy any Recall. DMS' remedies under this Section shall include, but not be limited to, a claim for damages and lost profits, actual, consequential and incidental damages (including, without limitation, legal fees and disbursements and administrative costs and expenses) arising out of, resulting from or related to any such Recall. The term "Recall" shall mean (i) in the absence of an order issued by Transport Canada ("Transport Canada") or any other applicable governmental agency or authority of Canada or any other country, notification by Customer to Transport Canada, governmental authority of such other foreign country and to owners, purchasers, and dealers as required under the Laws of Canada, that any motor vehicle or item of replacement equipment contains a defect related to motor vehicle safety or that such vehicle or item of replacement equipment fails to comply with an applicable federal, state or provincial motor vehicle safety standard, or such other notification as may be required under any other federal, state or provincial applicable law and/or (ii) an order by any competent authority with respect to any motor vehicle or item of replacement equipment which fails to comply with an applicable motor vehicle safety standard or contains a defect which relates to motor vehicle safety, or an order by any other applicable authority requiring notification and remedial action on the part of DMS or Customer with respect to any motor vehicle or item of replacement equipment. Any decision on the part of DMS, which shall be in its sole discretion, to contest in a legal proceeding any determination by Transport Canada, or any other Canadian or foreign governmental agency or authority, with respect to a Recall order shall not waive or diminish in any manner any rights of DMS under the provisions of this Section. DMS' rights under the provisions of this Section shall be cumulative and additional to any other or further remedies provided by law.

2. Section 29 above is amended as follows:

29. **REMEDIES:** The remedies reserved in these Terms and at law are cumulative, and not alternative, and may be exercised separately or together, in any order or combination, and, in the case of DMS only, are in addition to any other rights and remedies provided for or available to DMS at Law, in equity or otherwise. Seller hereby waives any claims that it may have against DMS in tort, under statute or in equity, and confirms that Seller's complete rights and remedies as against DMS, including the right of indemnity and measure of damages in the event of DMS' breach or default, are limited to those expressly conferred by or provided for in these Terms.

In the event that Seller takes action (or fails to act) in a manner that disrupts or threatens to disrupt DMS' ability to produce and deliver to Customer on schedule,

DMS shall have the right to seek specific performance of a Purchase Order in a court of DMS' choosing without application of principles of conflicts of law.

Notwithstanding the termination of a Purchase Order, in whole or part, whether for cause or convenience, and whether such termination is claimed by DMS or Seller, so long as during the Transition Period, as defined hereinafter, and provided that DMS timely pays the pricing set forth on the Purchase Order for such Goods, Services, and/or Tech Products the Seller shall have the absolute obligation to continue to provide the Services or produce and deliver the Goods in accordance with the terms of the Purchase Order for a reasonable period of time so as to permit DMS the opportunity to procure a replacement supplier, so as to permit an orderly transition of the production of the Goods, Services, and/or Tech Products and so as to avoid any interruption of production at DMS' facilities or the facilities of Customer. Such period shall only be of such a length so as to reasonably provide DMS the opportunity to transition, under commercially reasonable terms and conditions, the supply of Goods, Services, and/or Tech Products without an interruption of production at DMS' facility or at the facilities of Customer, such period being referred to herein as the "Transition Period". This Transition Period shall not be a cure period and shall terminate by DMS giving not less than five days' notice of its intention to terminate the Transition Period. Seller shall not have the right to terminate the Transition Period except in the event that DMS fails to pay for conforming Goods, Services, and/or Tech Products timely delivered or provided by Seller during the Transition Period in accordance with the Purchase Order and Releases issued for such Goods, Services, and/or Tech Products and without regard to whether or not such Purchase Order has been terminated in whole or in part. Seller further acknowledges that the Goods, Services, and/or Tech Products provided hereunder are unique and that rights set forth herein are in addition to any rights granted under any applicable law including but not limited to, sales of goods legislation as adopted by the jurisdiction governing the transactions contemplated hereunder.

The Parties further agree that any breach of these Terms or a Purchase Order that would have the effect of interrupting production at DMS or Customer, would result in irreparable harm to DMS, its customers and the business and reputation of each of them, and that money damages would not be a sufficient remedy for any such breach. The Parties agree that in such event DMS shall be entitled to equitable relief, including injunction and specific performance, requiring further production of Goods or the provision of Services, as a remedy for any such breach or claimed breach. In the event of any breach or claimed breach of these Terms or any Purchaser Order, Seller shall not oppose or otherwise challenge or impede DMS' attempts or efforts to obtain specific performance for the production of goods in accordance and, without limitation to the generality of the foregoing, shall consent to the entry of an order for specific performance which may be sought by DMS as aforesaid. The remedies of DMS shall not be deemed to be the exclusive remedies for a breach by Seller but shall be in addition to all other remedies available at law or equity.

Seller shall comply with all applicable Laws with respect to the performance of its obligations under these Terms or a Purchase Order. Without limitation to the foregoing, Seller shall ensure it holds all necessary permits, licenses, consents and authorizations necessary for the performance of its obligations under these Terms or a Purchase Order. Seller shall be solely responsible for the control and

management of its operations, employment practices and labor relations. For greater certainty, Seller shall have the sole and exclusive control over its employees, employee relations policies and policies relating to wages, hours of work and working conditions, and the sole and exclusive right to hire, transfer, suspend, lay-off, recall, promote, assign, discipline and discharge its employees. Seller will be responsible for the payment of all compensation, including wages, salary, benefits and expenses, to all of its employees and other persons rendering services to Seller (including subcontractors retained by Seller). Seller will be responsible for the payment of all employer payroll, employer health, income, withholding and other taxes, including Canada Pension Plan, employment insurance, and workers' compensation or workplace safety & insurance in respect of each of its employees and other persons rendering services to on behalf of Seller in connection with the performance of these Terms or a Purchase Order. Seller covenants and agrees to register itself and all persons engaged for service by it under applicable workers' compensation legislation and to pay all applicable workers' compensation premiums and maintain such workers' compensation coverage throughout the duration of these Terms and any and all Purchase Orders. Seller further agrees to provide DMS with evidence thereof in form satisfactory to DMS upon request by DMS from time to time. Seller covenants and agrees that all persons engaged by it to perform these Terms and Conditions or any Purchase Order in Canada will at all times be legally able to work in Canada in the specific occupation that such person performs. DMS may at any time demand from Seller, and Seller agrees to provide to DMS forthwith, a certification of compliance with applicable immigration Laws in such form as DMS in its sole, absolute, and unfettered discretion may require.

3. Section 32 above is replaced in its entirety with the following:

32. GOVERNING LAW; COMPLIANCE WARRANTY

(a) These Terms and any Purchase Order shall be interpreted and enforced in accordance with the Laws of the Province of Ontario and the Federal Laws of Canada applicable in the Province of Ontario, exclusive of the choice of law rules thereof. For greater certainty, the U.N. Convention on Contracts for the International Sale of Goods shall not apply to the Terms of any Purchase Order.

(b) Any actions or proceedings by Seller against DMS may be brought by Seller only in the City of Toronto, Ontario and each Party hereby waives any claim or defense respecting improper venue or lack of jurisdiction in any case brought in such court(s). Each Party agrees not to oppose the enforcement of any order or judgment obtained in the Province of Ontario with respect to these Terms (including, without limitation, any Purchase Order) in any other jurisdiction.

(c) THESE TERMS AND THE DOCUMENTS REFERENCED HEREIN EMBODY THE ENTIRE AGREEMENT BETWEEN DMS AND SELLER, AND NO NEGOTIATIONS, UNDERSTANDINGS OR AGREEMENTS, VERBAL, COLLATERAL OR OTHERWISE IN RELATION HERETO EXIST BETWEEN DMS AND SELLER, EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS OR A PURCHASE ORDER.

4. The following provision is added as Section 36 of these Terms:

38. LANGUAGE; REFERENCE TO ATTORNEY FEES: The parties have agreed that these Terms along with any documents to be created and/or delivered in conjunction with these Terms, including without limitation, any Purchase Order, be drafted in English only. Les parties aux présentes conviennent que ces dispositions contractuelles ainsi que tout document y afférent, soit rédigé en anglais uniquement. References to “attorneys’ fees” in these Terms and in any Purchase Order shall mean and be read as “legal fees and disbursements.”