

**LEAR DO BRASIL INDÚSTRIA E COMÉRCIO DE INTERIORES AUTOMOTIVOS  
LTDA. PURCHASE ORDER TERMS AND CONDITIONS**

**January 1, 2007 Version**

**1. Formation; Offer; Acceptance; Exclusive Terms.**

A. Each purchase order, together with these Terms and Conditions (“Order”) is an offer by Lear do Brasil Indústria e Comércio de Interiores Automotivos Ltda., or any company controlled, controlling or under common control with it (“Purchaser”) to the party to whom such Order is addressed and such party’s applicable affiliates and subsidiaries (“Seller”) to enter into the agreement it describes and it shall be the complete and exclusive statement of such offer and agreement. An Order does not constitute an acceptance by Purchaser of any offer or proposal by Seller, whether in Seller’s quotation, acknowledgement, invoice or otherwise. In the event that any Seller quotation or proposal is held to be an offer, that offer is expressly rejected and is replaced in its entirety by the offer made up of the Order.

B. A contract is formed when Seller accepts the offer of Purchaser. Each Order shall be deemed accepted upon the terms and conditions of such Order by Seller by shipment of goods, performance of services, commencement of work on goods, written acknowledgement, or any other conduct of Seller that recognizes the existence of a contract pertaining to the subject matter hereof.

C. Acceptance is expressly limited to these Terms and Conditions and such terms and conditions as are otherwise expressly referenced on the face of the Order. No purported acceptance of any Order on terms and conditions which modify, supersede, supplement or otherwise alter these Terms and Conditions shall be binding upon Purchaser and such terms and conditions shall be deemed rejected and replaced by these Terms and Conditions unless Seller’s proffered terms or conditions are accepted in a physically signed writing (a “Signed Writing”) by Purchaser’s Officer – Purchasing, notwithstanding Purchaser’s acceptance of or payment for any shipment of goods or similar act of Purchaser.

D. In the event of a conflict between the Order and any prior or contemporaneous agreement or document exchanged between Purchaser and Seller, the Order governs.

E. Lear Corporation may from time to time administer purchasing for its affiliates and subsidiaries and issue Orders containing the Lear Corporation logo, but identifying a different Purchaser. Seller acknowledges and agrees that no such Order shall constitute or be interpreted to represent an Order of Lear Corporation or a guaranty by Lear Corporation of any obligations or liabilities of the Purchaser identified on the Order.

**2. Applicability of Terms and Conditions.**

A. These terms and conditions, as may be amended from time to time (the “Terms and Conditions”) apply to the purchase by Purchaser of all goods and/or services, as applicable, from Seller as described on the face of each Order (collectively, “Goods”) or on any document expressly referenced on the face of such Order describing such Goods. The term “Goods” throughout these Terms and Conditions includes, without limitation, raw materials, components, intermediate assemblies, tooling, molds, equipment and end products and all services, whether or not performed in connection with any of the foregoing items. Certain of the Terms and Conditions apply only to particular types of Goods, but only where expressly limited to those types of Goods.

B. These Terms and Conditions apply to all Sellers under an Order, including, without limitation, any Seller that is a Directed Supplier. A "Directed Supplier" is any Seller from which Purchaser has been requested or recommended to procure Goods at the direction or suggestion of Purchaser's customer and/or the ultimate Original Equipment Manufacturer ("OEM") customer, if different (collectively, the "Customer") (including through co-sourcing arrangements), or when, due to a Customer's product description, specification or other limitation, Purchaser is limited to such Seller for the Goods required. Each Seller that is a Directed Supplier acknowledges the applicability of these Terms and Conditions and agrees to be bound by these Terms and Conditions, including, without limitation, the World Class Supplier requirements under Section 6 and the payment terms under Section 33.

C. Each Order and Order amendment issued by Purchaser to Seller after January 1, 2007 incorporates these Terms and Conditions which shall apply to each such Order, as amended, in its entirety.

D. The Terms and Conditions that are applicable to each Order are the Terms and Conditions that are in effect on the Issue Date shown on the later of the Order or any Order amendment applicable to such Order.

E. No exception to, deviation from, or waiver of these Terms and Conditions shall be valid or binding on Purchaser unless specified on the face of an Order or Order amendment or made in a Signed Writing by Purchaser's Officer – Purchasing.

**3. Documents used in Purchasing.** The following documents may be used by Purchaser as a part of Purchaser's sourcing and purchasing process.

A. Long Term Agreement ("LTA"). This is an agreement relating to price reductions that also is used, in some cases, as an indicator for eligibility to quote on certain business. LTAs effective prior to January 1, 2007 signed by other authorized Purchasing personnel shall continue in effect notwithstanding Section 3(i) above.

B. Lear Supply Agreement ("LSA"). This is an agreement that provides relationship terms between Seller and Purchaser including agreed upon price changes and that also is used, in some cases, as an indicator for eligibility to quote on certain business. LSAs effective prior to January 1, 2007 signed by other authorized Purchasing personnel shall continue in effect notwithstanding Section 3(i) above.

C. Joint Development Agreement ("JDA"). This is an agreement between Purchaser and another party to develop jointly a specific product or technology. JDAs effective prior to January 1, 2007 signed by other authorized Purchasing personnel shall continue in effect notwithstanding Section 3(i) above.

D. Letter of Intent ("LOI"). This is an agreement by which Purchaser agrees to be liable for certain expenses associated with the acquisition by a third party of long lead time items, normally tooling or equipment. Such an agreement is binding on Purchaser only if it (i) expressly states that it is binding and (ii) contains a stated maximum liability and a limited duration.

E. Early Sourcing and Target Agreement ("ESTA"). This is an agreement that, without commitment by Purchaser to source Seller, provides a prospective supplier with the opportunity to develop required technology and processes that may be necessary for the

production of Goods for Purchaser. Purchaser owns any related developments under an ESTA or has the right to acquire such developments at audited incremental costs.

F. Supplier Engineering Target Agreement ("SETA"). This is an agreement between Purchaser and Seller relating to engineering owned by Seller that is used, in certain cases, to supplement the relevant terms of the Order.

G. Supplier Owned Tooling Agreement ("SOTA"). This is an agreement between Purchaser and Seller relating to tooling owned by Seller that is used, in certain cases, to supplement the relevant terms of the Order.

H. Request for Quotation ("RFQ"). This is an introductory step in potentially generating an offer from Purchaser to Seller contained in an Order. It may include Volume and Duration Projections (See Section 5) and specifications for the Goods being quoted.

I. Engineering Change Notice ("ECN") This is an alternative introductory step in potentially generating an offer from Purchaser to Seller contained in an Order. It may include Volume and Duration Projections (See Section 5) and specifications for the Goods being quoted.

J. Quotation. Following the RFQ or ECN, this is generally the next step in generating the offer from Purchaser to Seller contained in the Order. It also may include Volume and Duration Projections (See Section 5) and may reference projected prices.

K. Order. The Order describes the Goods being purchased, specifies the name and address of the Purchaser and Seller and incorporates these Terms and Conditions. In accordance with Section 1, each Order constitutes Purchaser's offer to Seller to enter into the agreement it describes and is the complete and exclusive statement of such offer and agreement. Each Order is either a Spot-buy Order or a Blanket Order. A Spot-buy Order is a one-time Order for a specific quantity of Goods. A Blanket Order is an Order for Goods in accordance with the firm quantities and delivery schedules specified in Releases issued by Purchaser pursuant to the Order.

L. Release. This is a schedule by which Purchaser (i) specifies the firm quantity of Goods that Seller is to deliver to Purchaser, (ii) authorizes material fabrication, and/or (iii) authorizes the purchase of raw materials/components, each for the period specified therein. The Release indicates the quantity of Goods and/or the quantity of raw materials/components, as applicable, for which Purchaser is liable to Seller and that Seller is obligated to provide to Purchaser for the period specified therein. The Release may also provide a forecast of the quantity of Goods that will be ordered beyond the firm quantity amount. The forecast is not binding on Purchaser or Seller.

M. Order amendment. This is an amendment to the Order issued by Purchaser on Purchaser's purchase order form to reflect an amendment or modification to the Order.

#### **4. Quantity and Duration.**

A. The quantity applicable to each Order and its duration are specified on the face of the Order. For all Blanket Orders, Purchaser shall issue a Release (see Section 3.L) to specify the quantities needed, delivery locations, and dates. Seller acknowledges and agrees that, notwithstanding anything in any Order to the contrary, Seller is obligated to provide Goods to Purchaser in at least the quantity and for at least the period specified in any Release. A Release will specify a firm quantity of Goods and/or a firm quantity of raw materials/components that

Purchaser will be responsible for in the event of termination (see Section 17.B). Releases may include Volume and Duration Projections (see Section 5), but Releases are only binding upon Purchaser for, and Purchaser will have no obligation or liability beyond, the quantity specified as firm in the Release. Seller acknowledges and agrees to accept the risk associated with the lead times of the various components if they are beyond the firm Release amounts provided by Purchaser.

B. Unless the Order specifically provides that Seller shall produce one hundred percent (100%) of Purchaser's requirements for the Goods, Purchaser shall have the right to obtain a portion of such Goods from another third party source or from Purchaser's internal sources.

**5. Volume and Duration Projections.** From time to time and in connection with quotations, requisitions and Orders, Purchaser may provide Seller with estimates, forecasts or projections of its future volume or quantity requirements for the Goods and/or the term of a program ("Volume and Duration Projections"). Volume and Duration Projections, unlike a Release for a firm quantity, are not binding on Purchaser. They also are not evidence of an Order. Seller acknowledges that the Volume and Duration Projections, like any other forward looking projections, are based on a number of economic and business factors, variables and assumptions, some or all of which may change over time, and may or may not be accurate at the time they were made or later. Purchaser makes no representation, warranty, guaranty or commitment of any kind or nature, express or implied, regarding any Volume and Duration Projections or other estimate, forecast or projection provided to Seller, including as to its accuracy or completeness. Seller accepts that Volume and Duration Projections may not be accurate and that actual volume or duration could be less than or greater than the projections. Seller acknowledges that this risk, and possible reward, is an aspect of the automotive industry.

**6. World Class Supplier Requirements.** Seller must provide world-class competitive Goods in terms of *cost* (see Section 7), *quality* (see Section 8), *delivery* (see Section 9), *technology* (see Section 10) and *customer support* (see Section 11). Each reference to World Class Supplier in these Terms and Conditions and in any other document or agreement between Purchaser and Seller incorporates by reference each of the foregoing elements (cost, quality, delivery, technology and customer support) and all of the conditions, provisions and requirements pertaining to such elements in these Terms and Conditions. Seller's failure to meet the requirements of a World Class Supplier is a basis for Purchaser's immediate termination of the Order under Section 17.A.

**7. Cost.**

A. Prices charged for Goods listed on the Order are not subject to increase, including specifically any increase based upon changes in raw material or component pricing, labor or overhead, unless specifically agreed to by Purchaser on the face of an Order amendment or in a Signed Writing by Purchaser's Officer – Purchasing.

B. Seller represents that the price charged to Purchaser for Goods is at least as low as the price charged by Seller to buyers of a class similar to Purchaser under conditions similar to those specified in the Order and that all prices comply with all applicable governmental laws and regulations in effect at the time of quotation, sale and delivery. Seller agrees that any price reduction implemented by Seller for any Goods or related charges will apply to all shipments of such Goods under the Order or any Order amendment from and after Seller's implementation of the price reduction.

C. Seller shall ensure that the price charged to Purchaser for Goods remains competitive with the price for similar goods available to Purchaser from other sellers.

D. Seller agrees to participate in Purchaser's cost savings and productivity programs and initiatives and to implement Seller's own cost savings and productivity programs and initiatives to reduce Seller's costs.

## **8. Quality.**

A. Seller shall meet all quality requirements of Purchaser and all quality requirements of Purchaser's Customer, including, but not limited to, the applicable plans relating to TS 16949, ISO 14001.

B. Seller agrees to participate in Purchaser's quality and development program(s) and to comply with all quality requirements and procedures specified by Purchaser, as revised from time to time. Based on Purchaser's assessment of responsibility, Seller may be held responsible for any and all costs associated with quality issue investigation, containment and Remedial Actions on account of Goods provided by Seller to Purchaser (including third party activities identified and initiated by Purchaser). Seller is obligated to provide any and all reasonable support requested by Purchaser to address immediately and correct concerns regarding the quality of Goods provided. Seller shall provide additional resources, as necessary and as identified by Purchaser, to support product development, process development, validation, production launch, or any issue that may jeopardize the success of the manufacture or assembly of any Goods or of the program.

C. Seller must assure overall equipment (shared and specific) and plant capacity are adequate to meet Purchaser's needs. Ongoing capacity analysis must account for at least: scrap variation, downtime, maintenance, and other Customer requirements. Each production process must successfully complete a Run-at-Rate. The Run-at-Rate must demonstrate that Seller's production process can produce in less than 24 hours at least one day's quantity of acceptable quality Goods to satisfy Seller's Capacity Planning Volume ("CPV"). Purchaser is not obligated to pay Seller any incremental costs as long as the Release quantities do not exceed Seller's CPV. The requirement for capacity and the CPV is not a volume, program or other commitment by Purchaser.

D. Seller is responsible for all sub-tier providers of goods or services. Seller must maintain adequate development, validation, launch, and ongoing supervision to assure all Goods provided to Purchaser conform to all specifications, standards, drawings, samples and descriptions, including, without limitation, as to quality, performance, fit, form, function and appearance, under the Order.

E. For all Goods, in addition to any other applicable warranties, Seller shall provide the warranties specified in Section 12.

## **9. Delivery.**

A. Deliveries shall be made both in quantities and at times specified on the Order or on Releases furnished by Purchaser. Time and quantity of delivery are of the essence of each Order. Seller shall adhere to shipping directions specified on the Order or Releases. Purchaser shall not be required to make payment for Goods delivered to Purchaser that are in excess of firm

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quantities and delivery schedules specified in Purchaser's Releases. Purchaser may, upon notification to Seller, change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which shall entitle Seller to a modification of the price of Goods covered by any Order. With each delivery, Seller shall be deemed to have made the representations, warranties and covenants with respect to its financial and operating condition provided in Section 14.

B. Premium shipping expenses and/or other related expenses necessary to meet delivery schedules set forth in Releases shall be Seller's sole responsibility, unless the delay or expense was solely the result of Purchaser's negligence and Seller provides Purchaser with notice of any claim against Purchaser within ten (10) days after the occurrence of the alleged negligent action of Purchaser giving rise to such claim.

C. Notwithstanding any agreement concerning payment of freight expenses, delivery shall not have occurred and the risk of loss shall not have shifted to Purchaser until the Goods have been delivered to Purchaser's applicable facility and have been accepted at that facility.

## **10. Technology**

A. If Purchaser furnished or supplied Seller with any designs, drawings, specifications, blueprints or other materials that contain proprietary information, Seller shall not disclose or use for the benefit of Seller or others such designs, drawings, specifications, blueprints or other material including any copies thereof, except as approved by Purchaser on the face of an Order or Order amendment or in a Signed Writing by Purchaser's Officer - Purchasing.

B. Seller expressly warrants that all Goods covered by each Order will not and do not infringe on any patent, trademark, copyright or other intellectual property of any third party. Seller (i) agrees to defend, hold harmless and indemnify Purchaser and its Customers against all claims, demands, losses, suits, damages, liability and expenses (including actual fees for attorneys, experts and consultants, settlement costs and judgments) arising out of any suit, claim or action for actual or alleged direct or contributory infringement of, or inducement to infringe, any Brazilian or foreign patent, trademark, copyright or other proprietary right by reason of the manufacture, use or sale of the Goods ordered, including infringement arising out of compliance with specifications furnished by Purchaser or for actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from Seller's actions; and (ii) waives any claim against Purchaser and its Customers, including any hold-harmless or similar claim, whether known or unknown, contingent or latent, in any way related to a claim asserted against Seller or Purchaser for infringement of any patent, trademark, copyright or other proprietary right, including claims arising out of compliance with specifications furnished by Purchaser. Seller hereby assigns to Purchaser all right, title and interest in and to all inventions, trademarks, copyrights and other proprietary rights in any material created for and paid for by Purchaser under each Order. Technical information and data furnished to Purchaser in connection with each Order are disclosed on a non-confidential basis.

C. Seller expressly warrants that all copyrightable works of original authorship (including but not limited to computer programs, technical specifications, documentation and manuals), ideas, inventions (whether patentable, patented or not), know-how, processes, compilations of information, trademarks and other intellectual property (collectively, "Deliverables") shall be original to Seller and shall not incorporate any intellectual property (including copyright, patent, trade secret, mask work, or trademark rights) of any third party.

D. All Deliverables that are created in the course of performing any Order (separately or as part of any Goods), and all intellectual property rights in Deliverables, are owned by Purchaser and not by Seller. Seller agrees that all works of original authorship created by Seller in connection with each Order are "works made for hire". To the extent that, by operation of law, Seller owns any intellectual property rights in the Deliverables, Seller hereby assigns to Purchaser all rights, title and interest, including copyrights and patent rights, in such Deliverables.

E. Seller grants to Purchaser an irrevocable, non-exclusive, worldwide license with the right to grant sublicenses to affiliates to use any technical information, know how, copyrights and patents owned or controlled by Seller or its affiliates to make, have made, use and sell any Goods provided by Seller under each Order. The license shall be effective from the first delivery of Goods under the Order. For a period of two (2) years from Seller's first delivery of Goods under the Order, Purchaser shall pay to Seller a "reasonable royalty" for such license, which is acknowledged by Seller to be included in the price paid by Purchaser to Seller for the Goods. In the event Purchaser sources the Goods from a party other than Seller, Purchaser shall pay Seller a "reasonable royalty" for a period of two (2) years from the date of Seller's first delivery of Goods and thereafter, Purchaser's license shall be royalty free, fully paid-up, permanent and irrevocable.

F. Seller shall ensure that any subcontractors to Seller shall have contracts with Seller in writing consistent with the terms of this Section 10 to ensure that the protections required by Purchaser from Seller are also received from subcontractors for the benefit of Purchaser and Seller.

## **11. Customer Support.**

A. Seller shall support all supplier initiatives of Purchaser and support Purchaser in meeting the initiatives of its Customers. Upon Seller's written request, Purchaser shall cooperate with Seller to explain to Seller the terms, conditions and requirements of Purchaser's Customers.

B. As all elements of the automotive tiered supply network must work together to ensure that Purchaser's Customer's terms, conditions and requirements are met, it is the intent of both Seller and Purchaser that the applicable terms, conditions and requirements of Purchaser's Customer shall flow through Purchaser to Seller to the extent that they do not conflict with the terms of the Order. To the extent that Seller does not meet the applicable terms, conditions or requirements of Purchaser's Customer or to the extent that the terms of Purchaser's Customer do conflict with the terms of the Order, Seller agrees, notwithstanding any such conflict, to indemnify and hold harmless Purchaser from any and all claims and demands from Purchaser's Customer relating to any actual or alleged problem or issue with the Goods sold by Seller under any Order or the manner in which Seller has supplied such Goods under the Order.

C. The automotive industry is customer focused and Seller agrees to work with Purchaser to meet the requirements of Purchaser's Customers. Therefore, in the event that any requirement imposed by any Order on Seller is found to be unenforceable or a gap is otherwise created in the terms applicable to any Order through operation of law, conflict in terms or otherwise, the parties agree that the corresponding requirement of Purchaser's Customer shall be applicable to and binding on Seller for the benefit of Purchaser. Seller acknowledges that it is familiar with the automotive industry and the applicable terms of Purchaser's Customer that would apply in such an event.

## 12. Warranty.

A. Seller expressly warrants that all Goods covered by each Order will conform to all specifications, standards, drawings, samples or descriptions furnished to or by Purchaser, and all industry standards, laws and regulations in force in countries where Goods or vehicles equipped with such Goods are to be sold and that all Goods will be merchantable, of good material and workmanship and free from defects. In addition, Seller acknowledges that Seller knows of Purchaser's intended use and expressly warrants that all Goods covered by each Order will be fit and sufficient for the particular purpose intended by Purchaser.

B. Seller expressly warrants that, for all Goods under the Order, Seller shall convey good title to Purchaser, free and clear of all liens, claims or other encumbrances.

C. All warranties will be effective for the longer of (i) the period provided by applicable law, or (ii) the warranty period provided by Purchaser to its Customer; provided, however, in the event that Purchaser or its Customer voluntarily or pursuant to a government mandate, makes an offer to owners of vehicles (or other finished products) on which the Goods, or any parts, components or systems incorporating the Goods, are installed to provide remedial action to address a defect or condition that relates to motor vehicle safety or the failure of the vehicle to comply with any applicable law, safety standard or guideline, whether in connection with a recall campaign or other customer satisfaction or corrective service action (a "Remedial Action"), the warranty shall continue for such time period as may be dictated by Purchaser's Customer or the federal, state, local or foreign government where the Goods are used or provided and Seller shall fully comply with the requirements under Section 12.I.

D. The warranty period for non-production materials shall be the longer of one (1) year after final acceptance by Purchaser or the period stated in Seller's sales materials.

E. All warranties are intended to provide Purchaser with protection from any and all warranty claims brought against Purchaser by its Customer. This includes, but is not limited to, meeting any Customer-required warranties relating to the Goods in question or products into which the Goods are incorporated. All such Customer-required warranties are incorporated by reference.

F. The following communications shall each constitute notice of breach of warranty under the Order: (i) any communication specifying a defect, default, claim of defect or other problem or quality issue with Goods sold under the Order; (ii) any communication to Seller claiming that Seller's Goods are in breach of any warranty or that Seller is in default under the Order; and (iii) a termination notice from Purchaser under Section 17.A. Any such claim of breach by Purchaser may only be rescinded in writing by an authorized member of Purchaser's Legal Department.

G. To mitigate its damages, Purchaser may fully defend any claim from any Customer that any Goods supplied by Seller are defective, in breach of warranty, or otherwise did not meet applicable legal or contractual requirements because such Customer may attempt to hold Purchaser responsible for problems caused in whole or in part by Seller. Seller and Purchaser agree that this defense is in the interest of both Seller and Purchaser. Seller hereby waives the right to argue that the fact that Purchaser took any such position in any way limits Purchaser's right to assert a claim against Seller by Purchaser for breach of warranty, contribution,



indemnification or other claim that may arise from or be related to the subject matter of any of the foregoing.

H. In the event that Seller wishes to participate in any of the negotiations with Purchaser's Customer regarding any of the foregoing or any related litigation or defense of any such claim, then in each case that Seller receives notice of default or claim of breach, Seller shall give Purchaser prompt notice of its request to participate in accordance with Section 42, which notice shall describe with particularity the details of the alleged default or breach.

I. Notwithstanding the expiration of the warranty period set forth in Section 12.C, Seller shall nonetheless be liable for costs and damages associated with the conduct of any Remedial Action to the extent that such Remedial Action is based upon a reasonable determination (including by use of statistical analysis or other sampling methodology) that the Goods fail to conform to the warranties set forth in the Order. Where applicable, Seller shall pay all reasonable expenses associated with determining whether a Remedial Action is necessary. Purchaser and Seller agree that any Remedial Action involving Goods for Purchaser shall be treated separately and distinctly from similar Remedial Actions of other goods of Seller; provided that such separate and distinct treatment is lawful and Seller shall in no event fail to provide at least the same protection to Purchaser on such Goods as Seller provides to its other customers in connection with such similar Remedial Actions.

### **13. Changes.**

A. Purchaser reserves the right at any time to direct changes, or cause Seller to make changes, to the Goods under any Order or Order amendment, including, but not limited to, changes in the design (including drawings and specifications), processing, methods of packing and shipping and the date or place of delivery of the Goods covered by the Order or to otherwise change the scope of the work covered by the Order including work with respect to such matters as inspection, testing or quality control, and Seller agrees to promptly make such changes. Any such changes shall be deemed not to affect the time for performance or cost under the Order unless (i) Seller provides Purchaser with written notice in accordance with Section 44 of a claim for adjustment to time for performance or cost within ten (10) days after Purchaser's notice to Seller of the change and (ii) after auditing such claim, Purchaser determines that an adjustment (up or down) is appropriate. Any such claim by Seller for adjustment to time for performance or cost under an Order must be solely and directly the result of the change directed by Purchaser and any notice of such claim shall be effective only if accompanied by all relevant information sufficient for Purchaser to verify such claim. In addition, Purchaser shall have the right to audit all relevant records, facilities, work or materials of Seller to verify any claim. Seller shall consider and advise Purchaser of the impact of a design change on the system in which the Goods covered by the Order are used. Nothing in this Section 13 shall excuse Seller from proceeding with the Order as changed.

B. Without the prior approval of Purchaser on the face of an Order amendment or in a Signed Writing by Purchaser's Vice President – Purchasing, Seller shall not make any changes to any Order or the Goods covered by the Order, including, without limitation, changing (i) any third party supplier to Seller of services, raw materials or goods used by Seller in connection with its performance under the Order, (ii) the facility from which Seller or such supplier operates, (iii) the price of any of the Goods covered by the Order, (iv) the nature, type or quality of any services, raw materials or goods used by Seller or its suppliers in connection with the Order; (v) the fit, form, function, appearance, performance of any Goods covered by the Order; or (vi) the production method, or any process or software used in the production or provision of any Goods

under the Order. Any changes by Seller to any Order or the Goods covered by the Order without the prior approval by Purchaser on the face of an Order amendment or in a Signed Writing by Purchaser's Officer – Purchasing shall constitute a breach of the Order.

#### **14. Financial and Operational Condition of Seller.**

A. Seller represents and warrants to Purchaser as of the date of each Order (which representations and warranties shall be deemed repeated as of the date of Seller's acceptance of each Release under the Order and at the time of each delivery under the Order) that it is not insolvent and is paying all debts as they become due; that it is in compliance with all loan covenants and other obligations; that all financial information provided by Seller to Purchaser concerning Seller is true and accurate; that such financial information fairly represents Seller's financial condition; and that all financial statements of Seller have been prepared in accordance with generally accepted accounting principles, uniformly and consistently applied.

B. Seller shall permit Purchaser and its representatives to review Seller's books and records concerning compliance with each Order and Seller's overall financial condition and agrees to provide Purchaser with full and complete access to all such books and records for such purpose upon Purchaser's request. Seller agrees that, if Seller experiences any delivery or operational problems, Purchaser may, but is not required to, designate a representative to be present in Seller's applicable facility to observe Seller's operations. Seller agrees that, if Purchaser provides to Seller any accommodations (financial or other) that are necessary for Seller to fulfill its obligations under any Order, Seller shall reimburse Purchaser for all costs, including attorneys' and other professionals' fees, incurred by Purchaser in connection with such accommodation and shall grant a right of access to Purchaser to use Seller's premises, machinery, equipment and other property necessary for the production of Goods covered by such Order (and a lien to secure the access right) under an access and security agreement.

**15. Seller Insolvency.** Purchaser may immediately terminate each Order without any liability of Purchaser to Seller upon the occurrence of any of the following or any other similar or comparable event (each, a "Seller Insolvency"): (i) insolvency of Seller; (ii) Seller's inability to promptly provide Purchaser with adequate and reasonable assurance of Seller's financial capability to perform timely any of Seller's obligations under any Order; (iii) filing of a voluntary petition in bankruptcy by Seller; (iv) filing of an involuntary petition in bankruptcy against Seller; (v) appointment of a receiver or trustee for Seller; or (vi) execution of an assignment for the benefit of creditors of Seller.

#### **16. Remedies for Breach by Seller.**

A. The rights and remedies reserved to Purchaser in each Order, including, without limitation, the rights of entry, reclamation and inspection under Section 22, shall be cumulative with, and additional to, all other or further remedies provided in law. Without limiting the generality of the foregoing, should any Goods fail to conform to the warranties set forth herein or should Seller or any Goods provided by Seller fail to meet any of the conditions of a World Class Supplier under Section 6, Purchaser shall notify Seller and Seller shall, if requested by Purchaser, reimburse Purchaser for any damages, direct or indirect, including loss of profits caused by nonconforming Goods, including, but not limited to, costs, expenses and losses incurred by Purchaser (a) in inspecting, sorting, testing, repairing or replacing such nonconforming Goods; (b) resulting from production interruptions, (c) in conducting Remedial Actions, and (d) in connection with claims for personal injury (including death) or property damage caused by such nonconforming Goods. If requested by Purchaser, Seller shall, without charge to Purchaser,

administer and process warranty charge-backs for nonconforming Goods in accordance with Purchaser's directions. Seller acknowledges and agrees that money damages would not be a sufficient remedy for any actual or threatened breach of any Order by Seller with respect to its delivery of Goods to Purchaser and that, in addition to all other rights and remedies which Purchaser may have, Purchaser shall be entitled to specific performance and temporary, preliminary and permanent injunctive as a remedy for any such breach, without proof of actual damages and without bond or other security being required.

B. In addition, notwithstanding the foregoing, Seller acknowledges that shutting down Customer's plant creates issues for which money damages are not a sufficient remedy. While the cost of a plant shutdown may easily generate substantial costs, the damages to Purchaser's relationship with Purchaser's Customer through potential loss of business, and other damages which are equally difficult to calculate, are far worse. Because of these risks, in the event of a breach or threatened breach by Seller of any of the representations, warranties or covenants of Seller (including without limitation, any commitment related to being a World Class Supplier), Purchaser may, with a prior notice to Seller, resource the production of Goods from Seller to another supplier or dual source any of the Goods covered hereby (i.e., have another supplier produce or be prepared to produce Goods being produced by Seller), to protect Purchaser and its Customers. This process of moving business may take a considerable amount of time and Seller understands that, given the risks posed by the possible shutdown of Purchaser's Customer, Purchaser is justified in initiating and transferring business immediately after prior notice is sent to Seller.

C. Seller understands that the resourcing of business during a program, while not desirable, is a part of the automotive business and is an acknowledged risk to Seller in the industry. Even the risk of Seller's financial or operational uncertainty, in light of the huge risks to Purchaser and Purchaser's Customer, is an example of a justified reason to move production, without notice, and that any incidental or related activity by Purchaser is understandable and reasonable.

D. Notwithstanding anything to the contrary contained in any Order, Purchaser does not release any claim against Seller that is based in whole or in part on any fraud or duress in connection with the Order or any breach or anticipatory breach of the Order or any other Order between Purchaser and Seller (even if that Order relates to other products).

## **17. Termination.**

A. Purchaser's Right to Terminate for Breach. Purchaser reserves the right to terminate immediately all or any part of each Order, without any liability of Purchaser to Seller if Seller: (i) repudiates, breaches or threatens to breach any of the terms of the Order including, without limitation, Seller's warranties and World Class Supplier provisions; (ii) fails to perform or deliver Goods as specified by Purchaser; or (iii) fails to provide Purchaser with adequate and reasonable assurance of Seller's ability to perform timely any of Seller's obligations under any Order, including, without limitation, delivery of Goods; or if Purchaser terminates for breach any other Order issued by Purchaser to Seller in accordance with the terms of such other Order (whether or not such other Order is related to the Order).

B. Purchaser's Right to Terminate for Convenience.

(1) In addition to any other rights of Purchaser to terminate each Order, Purchaser may at its option, immediately terminate all or any part of the Order at any time and for any reason by giving written notice to Seller.

(2) Upon receipt of notice of termination pursuant to this Section 17.B, Seller, unless otherwise directed in writing by Purchaser, shall (i) terminate immediately all work under the Order; (ii) transfer title and deliver to Purchaser the usable and merchantable finished Goods, work in process, and raw materials/components that Seller produced or acquired in accordance with firm Release amounts under the Order and which Seller cannot use in producing goods for itself or for others; (iii) settle all claims by subcontractors approved by Purchaser on the face of an Order or Order amendment or in a Signed Writing by Purchaser's Vice President – Purchasing, if any, for reasonable actual costs that are rendered unrecoverable by such termination; (iv) take actions reasonably necessary to protect property in Seller's possession in which Purchaser has an interest and (v) upon Purchaser's request, cooperate with Purchaser in effecting the resourcing of the Goods covered by the Order to an alternative supplier designated by Purchaser.

(3) Upon termination of any Order by Purchaser under this Section 17.B, Purchaser shall pay to Seller the following amounts without duplication: (i) the Order price for all finished and completed Goods that conform to the requirements of the Order and not previously paid for; (ii) Seller's reasonable actual cost of the usable and merchantable work in process and raw materials/components transferred to Purchaser in accordance with subsection B(2)(ii) hereof; (iii) Seller's reasonable actual cost of settling claims for the obligations Seller would have had to the subcontractors approved by Purchaser on the face of an Order or Order amendment or in a Signed Writing by Purchaser's Officer – Purchasing in the absence of termination, and (iv) Seller's reasonable actual cost of carrying out its obligations under subsections B(2)(iv) and (2)(v). Purchaser shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for any other alleged losses or costs, whether denominated as loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, general and administrative burden charges resulting from termination of the Order or otherwise. Notwithstanding anything to the contrary, Purchaser's obligation to Seller upon termination under this Section 17.B shall not exceed the obligation Purchaser would have had to Seller in the absence of termination.

(4) Within twenty (20) days after the effective date of termination under this Section 17.B, Seller shall furnish to Purchaser its termination claim, together with all supporting data which shall consist exclusively of the items of Purchaser's obligation to Seller that are listed in subsection B(3). Purchaser may audit Seller's records before or after payment to verify amounts requested in Seller's termination claim.

C. No Termination Right by Seller. Because Purchaser's commitments to its Customers are made in reliance on Seller's commitments under each Order, Seller has no right to terminate any Order.

D. Transition of Supply. Upon the expiration or earlier termination of any Order for whatever reason, Seller agrees to take such action as may be reasonably required by Purchaser to accomplish the transition from Seller to an alternative seller, including, without limitation the actions set forth below. The term "alternative seller" expressly includes, but is not limited to, a Purchaser-owned facility.

(1) Seller shall provide all notices necessary or desirable for Purchaser to resource the Order to an alternative seller.

(2) Seller shall provide a sufficient bank of Goods covered by the Order to ensure that the transition to any alternative seller chosen by Purchaser will proceed smoothly.

(3) Seller shall return to Purchaser all Bailed Property and any other property furnished by or belonging to Purchaser or any of Purchaser's Customers in as good as condition as when received by Seller, reasonable wear and tear excepted.

(4) Seller shall, at Purchaser's option, (i) assign to Purchaser any or all supply contracts or orders for raw material or components relating to the Order, (ii) sell to Purchaser, at Seller's cost, any or all inventory and work in process relating to the Order and (iii) sell to Purchaser, at the unamortized portion of the cost of such items, less any amounts Purchaser previously has paid to Seller for the cost of such items, any or all Seller's Property relating to the Order (see Section 21).

**18. Limitation of Damages.** In no event shall Purchaser be liable to Seller for anticipated profits or for indirect damages. This limitation of liability provision applies notwithstanding the type of the Order (including, without limitation, Spot-buy Orders and Blanket Orders). Purchaser's liability for a claim of any kind or for any loss or damage arising out of or in connection with or resulting from each Order, the Goods or any other agreement between Purchaser and Seller is the Reasonable Obsolescence, if any, created by the event giving rise to the claim. Purchaser and Seller agree that "Reasonable Obsolescence" means the following amounts without duplication: (i) the Order price for all finished and completed Goods that conform to the requirements of the Order and not previously paid for; (ii) Seller's reasonable actual cost of the usable and merchantable work in process and raw materials/components transferred to Purchaser in accordance with the termination and that are covered by outstanding firm Releases from Purchaser; and (iii) Seller's reasonable actual cost of settling claims for the obligations Seller would have had to the subcontractors approved in a Signed Writing by Purchaser's Vice President – Purchasing in the absence of termination limited to the amount of the firm quantities of Goods and raw materials/components specified in Releases issued by Purchaser that are currently outstanding. Purchaser shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for any other alleged losses or costs, whether denominated as loss of anticipated profit, recoupment of investment, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, general and administrative burden charges resulting from termination of the Order or otherwise. Notwithstanding anything to the contrary, Purchaser's obligation to Seller upon termination of any Order shall not exceed the obligation Purchaser would have had to Seller in the absence of termination of such Order.

**19. Assignment.** Seller shall not assign or delegate any of its duties or obligations under any Order without the prior consent of Purchaser on the face of an Order or Order amendment or in a Signed Writing by Purchaser's Officer – Purchasing, which consent may be withheld in Purchaser's sole discretion. Any sale or other transfer of stock or other securities of Seller that would result in a change in control of Seller shall be deemed an assignment under the Order. Seller may assign its claims for money under any Order as collateral security for indebtedness of Seller, but Purchaser shall not be required to pay the assignee until Purchaser receives written notice of the assignment, a true copy of the assignment and a release from Seller reasonably acceptable to Purchaser. Any such assignment shall not prohibit Purchaser from enforcing its

rights against Seller or the assignee, including, without limitation, Purchaser's rights to setoff and recoupment under Section 34, all of which rights of Purchaser against Seller or assignee are senior to any rights of such assignee. Purchaser may freely assign to any third party its rights and obligations under any Order without the consent of Seller.

## **20. Bailed Property.**

A. All supplies, materials, molds, machinery, equipment, patterns, tools, dies, jigs, fixtures, blueprints, designs, specifications, drawings, photographic negatives and positives, art work, copy layout, consigned material for production or repair and other items furnished by Purchaser, either directly or indirectly, to Seller or to any sub-supplier of Seller in connection with or related to any Order, or for which Seller has been reimbursed by Purchaser (collectively, "Bailed Property"), shall be and remain the property of Purchaser and be held by Seller on a bailment at-will basis. Seller shall bear the risk of loss of and damage to the Bailed Property and Seller, at its own expense, shall keep such Bailed Property insured for the benefit of Purchaser, naming Purchaser as the loss payee and additional insured. The Bailed Property shall at all times be properly housed and maintained by Seller; shall not be used by Seller for any purpose other than the performance of the Order; shall be deemed to be personal property; shall be conspicuously marked by Seller to identify it as the property of Purchaser and indicate Purchaser's name and address; shall not be commingled with the property of Seller or with that of a third person and shall not be moved from Seller's premises without the prior approval by Purchaser on the face of an Order or Order amendment or in a Signed Writing of Purchaser's Officer – Purchasing. Seller, at its expense, shall maintain, repair and refurbish Bailed Property in first class condition. All replacement parts, additions, improvements and accessories for such Bailed Property shall automatically become Purchaser's property upon their incorporation into or attachment to the Bailed Property.

B. Seller agrees that Purchaser has the right, at any time, with or without reason and without payment of any kind to retake possession of or request return of any or all Bailed Property, without the necessity of obtaining a court order. Upon the request of Purchaser, the Bailed Property shall be immediately released to Purchaser or delivered to Purchaser by Seller, either (i) F.O.B. transport equipment at Seller's plant, properly packaged and marked in accordance with the requirements of the carrier selected by Purchaser to transport such property, or (ii) to any location designated by Purchaser, in which event Purchaser shall pay to Seller the reasonable cost of delivering such Bailed Property to such location. Purchaser shall have the right to enter onto Seller's premises at all reasonable times to inspect the Bailed Property and Seller's records with respect thereto. When permitted by law, Seller waives any lien or other rights that Seller might otherwise have on any of the Bailed Property for work performed on such property, for the purchase price of any Goods or otherwise. Seller agrees that any missing components of or inserts to any Bailed Property shall be replaced by Seller at current costs.

C. Seller acknowledges and agrees that (i) Purchaser is not the manufacturer of the Bailed Property nor the manufacturer's agent nor a dealer therein; (ii) Purchaser is bailing the Bailed Property to Seller for Seller's benefit; and (iii) Seller has inspected the Bailed Property and is satisfied that the Bailed Property is suitable and fit for its purposes, and (ii) PURCHASER HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF THE BAILED PROPERTY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. Purchaser will not be liable to Seller for any loss, damage, injury or expense of any kind or nature caused, directly or indirectly, by the Bailed Property, including, without limitation, its use or maintenance, or its repair, service or adjustment,

or by any interruption of service or for any loss of business whatsoever or howsoever caused, including, without limitation any loss of profits or any other indirect damages.

D. Seller authorizes Purchaser to file financing statement or similar document with the appropriate filing authority to give notice of Purchaser's ownership interest in the Bailed Property. Failure to file a financing statement will not alter or amend Purchaser's ownership rights to the Bailed Property. Seller shall provide Purchaser, upon Purchaser's request, with a written inventory of all Bailed Property.

**21. Seller's Property.** Unless otherwise agreed to by Purchaser and Seller in a written agreement signed by both Seller and Purchaser's Officer – Purchasing, Seller, at its expense: shall (i) furnish, (ii) keep in good condition, and (iii) replace when necessary all Seller's Property (hereinafter defined). Seller hereby grants Purchaser an irrevocable option to purchase, free and clear of all liens, claims and other encumbrances, any or all of Seller's supplies, materials, molds, machinery, equipment, patterns, tools, dies, jigs, fixtures, blueprints, designs, specifications, drawings, photographic negatives and positives, art work, copy layout and other items necessary for the production of the Goods under any Order (collectively, "Seller's Property") that are specially designed or configured for manufacture or assembly of Goods under the Order upon Purchaser's payment of the unamortized portion of the cost of such items of Seller's Property, less any amounts Purchaser previously has paid to Seller for the cost of such Seller's Property. Seller shall permit Purchaser to audit Seller's records to verify the amount due for any of Seller's Property. This option will not apply to any of Seller's Property that is used by Seller to produce a substantial quantity of like products for other customers of Seller which cannot readily be obtained by Seller's customer(s) from third parties unless, at Purchaser's election upon exercise of the option, Seller assigns to Purchaser and Purchaser or its designee assumes Seller's obligation to produce such products for Seller's other customers using those items of Seller's Property during the period subsequent to the sale of Seller's Property to Purchaser. Seller shall cooperate with Purchaser's reasonable requests for information regarding any such obligation to Seller's other customer(s) and to effect such assignment and assumption. Purchaser's right to exercise the option under this Section 21 is not conditioned on a breach by Seller or Purchaser's termination of the Order.

**22. Rights of Entry, Reclamation and Inspection.** Purchaser shall have the right to enter Seller's facility during normal business hours or, in the event of a Seller shutdown, at reasonable times, to inspect the facility, Goods, materials and any property of Purchaser covered by each Order and, without the necessity of a court order, may enter upon Seller's property and remove property belonging to Purchaser or any Customer of Purchaser, including, without limitation, Bailed Property and other Goods, inventory or Seller's Property that has been or is agreed to be sold to Purchaser under the Order. Purchaser's inspection of the Goods, whether during manufacture, prior to delivery or within a reasonable time after delivery, shall not constitute acceptance of any work in process or finished Goods.

### **23. Subcontracting.**

A. Seller shall not subcontract any of its duties or obligations under any Order without prior approval by Purchaser on the face of an Order or Order amendment or in a Signed Writing by Purchaser's Officer – Purchasing. Seller shall ensure that any subcontractor so approved complies with all production part approval process requirements of Purchaser's Customer and any other requirements of Purchaser. Purchaser or Purchaser's representative shall be afforded the right to verify at any subcontractor's premises and Seller's premises that subcontracted Goods conform to specified requirements. Verification by Purchaser or Purchaser's representative shall

not (i) shift responsibility for quality by the subcontractor from Seller to Purchaser, (ii) absolve Seller of the responsibility to provide acceptable Goods nor (iii) preclude subsequent rejection of Goods by Purchaser. Notwithstanding any verification by Purchaser or Purchaser's representative, Seller remains fully liable for any work subcontracted.

B. In the event Seller's subcontracting of any of the work under any Order is approved by Purchaser on the face of an Order or Order amendment or in a Signed Writing by Purchaser's Vice President – Purchasing, and as a condition to such approval, Seller shall provide Purchaser with written evidence that the subcontractor agrees to be bound by these Terms and Conditions and the Order.

C. In the event Seller cannot fulfill any of its obligations under any Order, Seller shall, at Purchaser's option and in addition to any other rights or remedies available to Purchaser under the Order or otherwise, assign to Purchaser all of Seller's rights with respect to any subcontractors under such Order.

**24. Nonconforming Goods.** Purchaser, at its option, may reject and return at Seller's risk and expense, or retain and correct, Goods received pursuant to any Order that fail to conform to the requirements of the Order even if the nonconformity does not become apparent to Purchaser until the manufacturing, processing or assembly stage or later. To the extent Purchaser rejects Goods as nonconforming, the quantities under the Order will not be reduced by the quantity of nonconforming Goods unless Purchaser otherwise notifies Seller in writing. Seller shall replace nonconforming Goods with conforming Goods unless otherwise notified in writing by Purchaser, including, without limitation by way of a termination notice from Purchaser under Section 17.A. Nonconforming Goods will be held by Purchaser for disposition in accordance with Seller's written instructions at Seller's risk. Seller's failure to provide written instructions within ten (10) days (or such shorter period as may be commercially reasonable under the circumstances) after notice of nonconformity shall entitle Purchaser, at Purchaser's option, to charge Seller for storage and handling, or to dispose of the Goods without any liability of Purchaser to Seller. Seller shall reimburse Purchaser for (a) any amounts paid by Purchaser on account of the purchase price of any rejected nonconforming Goods, and (b) any costs incurred by Purchaser in connection with the nonconforming Goods, including, but not limited to inspection, sorting, testing, evaluations, storage or rework, within ten (10) days after a debit memo for the costs has been issued by Purchaser. Payment by Purchaser for nonconforming Goods shall not constitute an acceptance, limit or impair Purchaser's right to assert any legal remedy, or relieve Seller's responsibility for latent defects.

#### **25. Indemnification.**

A. Seller hereby covenants and agrees to indemnify and hold harmless Purchaser, its affiliates and subsidiaries, and their respective directors, officers, employees and agents from any claims, liabilities, damages (including direct and indirect damages), costs and expenses (including actual fees for attorneys, experts and consultants, settlement costs and judgments) incurred in connection with any claims (including lawsuits, administrative claims, regulatory actions and other proceedings to recover for personal injury or death, property damage or economic losses) that are related in any way to or arise in any way from the Goods, Seller's representations, Seller's performance of or failure to perform obligations under any Order, including claims based on Seller's breach or alleged breach of warranty (whether or not the Goods have been incorporated into Purchaser's products and/or resold by Purchaser), and claims for any violation of any applicable law, ordinance or regulation or government authorization or order. Seller's obligation to indemnify will apply regardless of whether the claim arises in tort, negligence, contract,



warranty, strict liability or otherwise, except to the extent of any such liability arising solely out of the gross negligence of Purchaser. Seller's indemnification obligations will apply even if Purchaser furnishes all or a portion of the design and specifies all or a portion of the processing used by Seller unless a separate written agreement signed by Seller and Purchaser's Officer – Purchasing provides otherwise.

B. If Seller performs any work on Purchaser's premises or utilizes the property of Purchaser, whether on or off Purchaser's premises, Seller shall indemnify and hold harmless Purchaser, its affiliates and subsidiaries, and their respective directors, officers, employees and agents from and against any liabilities, claims, demands or expenses (including actual fees for attorneys, experts and consultants, settlement costs and judgments) for damages to the property of or injuries (including death) to Purchaser, its employees or any other person arising from or in connection with Seller's performance of work or use of Purchaser's property except to the extent of any such liability, claim or demand arising solely out of the gross negligence of Purchaser.

**26. Insurance.** Seller shall obtain and maintain insurance coverage customary in the industry and as otherwise required by law or reasonably requested by Purchaser with such insurance carriers and in such amounts as are reasonably acceptable to Purchaser. This includes, without limitation, providing full fire and extended coverage insurance for the replacement value of (i) all Seller's Property and (ii) any Bailed Property, both for their full replacement value. All such insurance coverage shall name Purchaser as loss payee and additional insured. Seller shall furnish to Purchaser certificates of insurance setting forth the amount of coverage, policy number and date(s) of expiration for insurance maintained by Seller and such certificates must provide that Purchaser shall receive thirty (30) days prior written notification from the insurer of any termination or reduction in the amount or scope of coverages. Seller's furnishing of certificates of insurance or purchase of insurance shall not release Seller of its obligations or liabilities under any Order. If Seller shall fail to maintain any insurance under any Order, Purchaser shall have the right to procure such insurance and Seller shall reimburse Purchaser on demand, for all actual costs and expenses of procuring such insurance.

**27. Compliance.**

A. Seller agrees to comply with all federal, state, local and foreign laws, Executive Orders, rules, regulations and ordinances that may be applicable to Seller's performance of its obligations under each Order, and each Order shall be deemed to incorporate by reference all the clauses required by the provisions of said laws, orders, rules, regulations and ordinances. All purchased materials used in manufacture of the Goods shall satisfy current governmental and safety constraints on restricted, toxic and hazardous materials as well as environmental, electrical and electromagnetic considerations applicable to the country of manufacture and sale. All suppliers must be in compliance with ISO14001, TS16949 and ELV or their successors, as amended from time to time.

B. Seller shall not (i) utilize forced or involuntary labor, regardless of its form, (ii) employ any child, except as part of a government approved job training, apprenticeship or similar program, or (iii) engage in abusive employment or corrupt business practices, in the supply or provision of Goods under any Order.

C. Seller shall adopt and enforce a code of conduct for business practices with principles, policies and procedures consistent with the principles, policies and procedures set forth in Purchaser's Code of Business Conduct and Ethics available through links provided on the

Lear Corporation web site at [www.lear.com](http://www.lear.com). Seller shall promptly report all violations of Seller's code of conduct to Purchaser's Officer – Purchasing.

D. Seller shall provide Purchaser written notice immediately upon becoming aware that any director, officer or employee of Seller, or any of its subsidiaries or affiliates, is also a director, officer or immediate family member of any director or officer of Purchaser, or any of its subsidiaries or affiliates. As to employees of Seller only, Seller only needs to report this information to Purchaser if the employee (excluding an officer or director of Seller) is substantively involved in Seller's business relationship with Purchaser or receives any direct or indirect compensation or benefit based on Seller's business relationship with Purchaser.

E. In the event Seller subcontracts any of its duties or obligations under any Order in accordance with Section 23, Seller shall ensure that all subcontractors comply with the requirements under this Section 27. At Purchaser's request, Seller shall certify in writing Seller's and its subcontractor's compliance with all such requirements. Purchaser shall have the right to audit and monitor Seller's and its subcontractor's compliance with Seller's and its subcontractor's obligations under any Order. Seller shall indemnify and hold harmless Purchaser, its affiliates and subsidiaries, and their respective directors, officers, employees and agents from and against any liability claims, demands or expenses (including actual fees for attorneys, experts and consultants, settlement costs and judgments) arising from or relating to Seller's or its subcontractor's noncompliance.

**28. Production Part Approval Requirements.** With respect to Orders for production parts, Seller agrees to meet the full requirements identified in the industry production part approval process manual and agrees to present this information and data relating thereto to Purchaser upon request, regardless of the authorized submission level, at Level No. 3 or its current equivalent unless otherwise authorized by Purchaser on the face of an Order or Order amendment or in a Signed Writing by Purchaser's Officer – Purchasing.

**29. Identification of Goods.** All Goods supplied pursuant to each Order that are construed as a completed part shall permanently bear Purchaser's part number and name or code name, Seller's name or code name, and date of manufacture by Seller.

**30. Shipping.**

A. Seller agrees (i) to properly pack, mark and ship Goods in accordance with the requirements of Purchaser and the involved carrier in a manner to secure the lowest transportation cost; (ii) to route shipment in accordance with Purchaser's instructions; (iii) to make no charge for handling, packaging, storage, transportation (including duties, taxes, fees, etc.), cost of vehicle or other transport expenses or drayage of Goods unless otherwise approved by Purchaser on the face of an Order or Order amendment or in a Signed Writing by Purchaser's Officer – Purchasing; (iv) to provide with each shipment papers showing the Order number, Order amendment or Release number, Purchaser's part number, Seller's part number where applicable, quantity of pieces in shipment, number of cartons or containers in shipment, Seller's name and vendor number, the bill of lading number and the country of origin; and (v) to promptly forward the original bill of lading or other shipment receipt for each shipment in accordance with Purchaser's instructions and carrier requirements. The marks on each package and identification of the Goods on packing slips, bills of lading and invoices shall be sufficient to enable Purchaser to easily identify the Goods purchased.

B. For Goods that may contain potentially hazardous and/or restricted materials, if requested by Purchaser, Seller shall promptly furnish to Purchaser in whatever form and detail Purchaser requests (i) a list of all potentially hazardous ingredients in the Goods, (ii) the quantity of one or more such ingredients, and (iii) information concerning any changes in or additions to such ingredients. Before shipping the Goods, Seller agrees to furnish to Purchaser sufficient warning and notice in writing (including appropriate labels on the Goods, containers and packing) of any hazardous material that is an ingredient or a part of any of the Goods, together with such special handling instructions necessary to advise the involved carriers, Purchaser, and their respective employees how to exercise that measure of care and precaution that will best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the Goods, containers and packing shipped to Purchaser. Seller shall comply with all applicable federal, state, local and foreign laws and regulations pertaining to product and warning labels. If Goods are shipped by Seller to European destinations, before shipments are made, Seller shall notify Purchaser of the "Classification of Dangerous Goods" as required by the European Agreement concerning the "International Carriage of Dangerous Goods".

C. Any packaging made of wood (including pallets) must conform to the international softwood standards, including USDA Regulations on Wood Packaging Material Imports. In the event Seller fails to comply with such standards, Seller shall be liable for all related replacement and transportation costs.

**31. Customs Drawback Documents, Other Government Requirements, and Export Controls.**

A. Upon Purchaser's request, Seller shall furnish promptly all documents required for customs drawback purposes, properly completed in accordance with government regulations applicable thereto. Seller shall furthermore, at its expense, provide all information necessary (including written documentation and electronic transaction records relating to the Goods, tooling and equipment necessary for Purchaser to fulfill any customs-related or other Governmental agency-related obligations, origin marking or labeling requirements and certification or local content reporting requirements, to enable Purchaser to claim preferential duty treatment at the time of entry for Goods, tooling and equipment eligible under applicable trade preference regimes, and to make all arrangements that are necessary for the Goods to be covered by any applicable duty deferral or free trade zone program(s) of the country of import. Seller shall, at its expense, provide Purchaser or Purchaser's nominated service provider with all documentation to enable the Goods to be exported, and obtain all export licenses or authorizations necessary for the export of the Goods, tooling and equipment unless otherwise indicated in the Order, in which event Seller shall provide all information as may be necessary to enable Purchaser to obtain such licenses or authorization(s). Credits or benefits resulting or arising from any Order, including trade credits, export credits or the refund of duties, taxes or fees, shall belong to Purchaser.

B. Seller is responsible for any incorrect information provided by Seller or any noncompliance with the Brazilian Customs Regulations by Seller that results in penalties and/or additional duties for Purchaser.

**32. Invoices.** All invoices and/or advanced shipping notices ("ASN") for Goods shipped pursuant to each Order must reference the Order number, Order amendment or Release number, Purchaser's part number, Seller's part number where applicable, quantity of pieces in shipment, number of cartons or containers, Seller's name and number, and bill of lading number, before any payment will be made for Goods by Purchaser. In addition, no invoice may reference any term separate from or different than these Terms and Conditions or the terms that appear on the face of

the Order. Purchaser reserves the right to return all invoices or related documents submitted incorrectly. Payment terms will begin to run once the latest correct invoice or ASN is received and input into Purchaser's system by the applicable Purchaser facility. Any payment by Purchaser of a nonconforming invoice is not an acceptance of any nonconforming element or terms on such invoice.

**33. Payment Terms.**

A. Payment terms will be set for Seller on Purchaser's central payables system.

B. If a payment date falls on a non-business day, payment will occur on the following business day.

C. Notwithstanding the particular payment terms applicable to an Order, (i) in no event will Seller have a right to payment for Tooling before Purchaser is paid by its Customer for such Tooling, (ii) in no event will a Seller who is a Directed Supplier have a right to receive payment from Purchaser until Purchaser is fully paid by Purchaser's Customer for the related Goods or, as applicable, the goods into which such Goods are incorporated, and (iii) Purchaser may, at its option, upon notice to Seller, revise its payment terms for production Goods to take into account any change in the payment terms of Purchaser's Customer applicable to the Goods under any Order.

**34. Setoff and Contractual Recoupment.**

A. In addition to any right of setoff or recoupment provided or allowed by law, all amounts due Seller, or any of its subsidiaries or affiliates shall be considered net of indebtedness or obligations of Seller, or any of its subsidiaries or affiliates to Purchaser or any of its subsidiaries or affiliates, and Purchaser or any of its subsidiaries or affiliates may setoff against or recoup from any amounts due or to become due from Seller, or any of its subsidiaries or affiliates to Purchaser or any of its subsidiaries or affiliates however and whenever arising. In the event that Purchaser or any of its subsidiaries or affiliates reasonably feels itself at risk, Purchaser or any of its subsidiaries or affiliates may withhold and recoup a corresponding amount due Seller or any of its subsidiaries or affiliates to protect against such risk.

B. An "affiliate" of a party means any other company that controls, is controlled by, or is under common control with such party. For purposes of this definition, the term "control" means the ownership, directly or indirectly, of twenty percent (20%) or more of the capital or equity of a company or the ability, by voting securities, contract or otherwise, to elect a majority of the board of directors or other governing body of such company.

C. If an obligation of Seller or any of its subsidiaries or affiliates to Purchaser or any of its subsidiaries or affiliates is disputed, contingent or unliquidated, Purchaser or any of its subsidiaries or affiliates may defer payment of all or any portion of the amount due until such obligation is resolved. Without limiting the generality of the foregoing and by way of example only, in the event of a bankruptcy of Seller, if all of the Orders between Purchaser and Seller have not been assumed, then Purchaser may defer payment to Seller for Goods against potential rejection and other damages.

**35. Advertising.** Seller shall not refer to Purchaser in advertising or public releases without the prior approval in a Signed Writing of Purchaser's Officer – Purchasing and shall not use Purchaser's trademarks or trade names in advertising or promotional materials.

**36. Force Majeure.** Any delay or failure of Purchaser or Seller to perform its obligations under the Order will be excused if, and to the extent that, the party is unable to perform specifically due to an event or occurrence beyond its reasonable control and without its fault or negligence, such as: acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority; embargoes; fires; explosions; natural disasters; riots; wars; sabotage; or inability to obtain power. As soon as possible (but no more than one full business day) after the occurrence, Seller shall provide written notice describing such delay and assuring Purchaser of the anticipated duration of the delay and the time that the delay will be cured. During the delay or failure to perform by Seller, Purchaser may at its option: (a) purchase Goods from other sources and reduce its Releases to Seller by such quantities, without liability of Purchaser to Seller and require Seller to reimburse Purchaser for any additional costs to Purchaser of obtaining the substitute Goods compared to the prices set forth in the Order; (b) require Seller to deliver to Purchaser at Purchaser's expense all finished Goods, work in process and parts and materials produced or acquired for work under the Order; or (c) require Seller to provide Goods from other sources in quantities and at a time requested by Purchaser and at the price set forth in the Order. In addition, Seller at its expense shall take all actions deemed reasonably necessary by Seller to ensure that in the event of any anticipated labor disruption, strike or worker slowdown or resulting from the expiration of Seller's labor contracts, an uninterrupted supply of Goods will be available to Purchaser in an area that will not be affected by any such disruption for a period of at least thirty (30) days. If upon request of Purchaser, Seller fails to provide within ten (10) days (or such shorter period as Purchaser requires) adequate assurances that any delay will not exceed thirty (30) days or if any delay lasts longer than thirty (30) days, Purchaser may terminate the Order without liability and Seller shall reimburse Purchaser for costs associated with the cancellation. Seller acknowledges and agrees that the change in cost or availability of materials, components or services based on market conditions, supplier actions or contract disputes will not excuse performance by Seller under theories of force majeure, commercial impracticability or otherwise and Seller expressly assumes these risks.

**37. Service and Replacement Parts.**

A. Upon receipt of a Release, Seller shall sell to Purchaser all Goods necessary for Purchaser to fulfill Purchaser's and its Customer's service and replacement parts requirements for its current model year at the then current production prices plus any actual net cost differential for required unique packaging. If the Goods are systems, modules or assemblies, Seller shall sell the components or parts of such systems, modules or assemblies at prices that will not in the aggregate exceed the then current production price of the system, module or assembly less the costs of labor involved in connection with the system, module or assembly plus any actual net cost differential for required unique packaging.

B. After termination of the current model production of the vehicle involved, Seller shall sell to Purchaser Goods necessary for Purchaser to fulfill Purchaser's and its Customers' service and replacement parts requirements for past model years at the prices then specified in the last Order for current model production plus any actual net cost differential for required unique packaging for the first five (5) years of past model service. For the following ten (10) years of past model service or such longer period as Purchaser's Customer requires service parts, the prices shall be as specified in the last Order for current model production plus any actual net cost

differential for required unique packaging, plus any actual net cost differential for manufacturing costs as mutually agreed between Purchaser and Seller.

**38. Packaging.** All packaging must conform to Purchaser's standard packaging requirements.

**39. Claims from Seller.** Any action by Seller under any Order must be commenced within one (1) year after the breach or other event giving rise to Seller's claim occurs, regardless of Seller's lack of knowledge of the breach or other event giving rise to such claim.

**40. Severability.** If any term(s) of the Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term(s) shall be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of the Order shall remain in full force and effect.

**41. Electronic Communications and Electronic Signatures.** Seller shall comply with any method of electronic communication specified by Purchaser, purchase order transmission, production Releases, electronic signature, and communication. E-mails, even those containing a signature block of one of Purchaser's representatives shall not constitute a Signed Writing.

**42. Notices.** All notices, claims and other communications to Purchaser required or permitted under the Order shall be made in writing and sent by certified or registered mail, return receipt requested and proper postage prepaid to the following address and shall be effective only upon receipt by Purchaser:

Lear do Brasil Indústria e Comércio de Produtos Automotivos Ltda.  
Rua Professor Manoelito de Ornelas, 303 1º andar – Chácara Santo Antônio – CEP-04719-040  
SP. Brasil Attn: Officer – Purchasing

Seller's failure to provide any notice, claim or other communication to Purchaser in the manner and within the time periods specified in the Order shall constitute a waiver by Seller of any and all rights and remedies that otherwise would have been available to Seller upon making such notice, claim or other communication.

**43. Confidentiality.**

A. Seller shall (i) keep all Purchaser's information confidential and disclose it only to its employees who need to know such Purchaser's information in order for Seller to supply Goods, tooling, and equipment to Purchaser under the Order and (ii) use Purchaser's Information solely for the purpose of supplying Goods to Purchaser. "Purchaser's information" means all information provided to Seller by Purchaser or its representatives or subcontractors in connection with the business, programs, and Goods covered by the Order, including without limitation, pricing and other terms of the Order, specifications, data, formulas, compositions, designs, sketches, photographs, samples, prototypes, test vehicles, manufacturing, packaging or shipping methods and processes and computer software and programs (including object code and source code). Purchaser's information also includes any materials or information that contain, or are based on, any Purchaser's Information, whether prepared by Purchaser, Seller or any other person.

B. Seller shall promptly notify Purchaser if it has provided information to a Government regarding the Goods, tooling or equipment provided.

**44. Tooling & Equipment - Supplemental Terms.** In addition to the Orders, these Terms and Conditions shall also apply to Free Lease Agreements used in the purchase of tooling and equipment, provided however that, in the event of an inconsistency between these Terms and Conditions, the Orders and the Free Lease Agreements, the Free Lease Agreements shall prevail.

**45. Service Terms - Supplemental Terms.** In addition to being governed by these Terms and Conditions, each Order for the purchase of services unrelated to production Goods shall be governed by the Rendering of Services Agreements (Specific and Basic Conditions); provided that, in the event of an inconsistency between these Terms and Conditions and the Rendering of Services Agreements, the Rendering of Services Agreements shall control as to all such services unrelated to production Goods.

**46. Construction.** When used in the Order, "including" means "including, without limitation," and terms defined in the singular include the plural and vice versa. The headers, titles and numbering are for convenience of reference only and shall not affect the construction or interpretation of the Order.

**47. Entire Agreement; Modification.** The Order, together with the attachments, exhibits or supplements specifically referenced in the Order, constitutes the entire agreement between Seller and Purchaser with respect to the matters contained in the Order and supersedes all prior oral or written representations and agreements. Purchaser may modify the Terms and Conditions, at any time, by posting notice of such modified Terms and Conditions through links provided on the Lear Corporation web site at [www.lear.com](http://www.lear.com) under Supplier Information at least ten (10) days prior to any modified Terms and Conditions becoming effective. Seller shall review the Lear Corporation website and the Terms and Conditions periodically. Seller's continued performance under the Order without providing written notice to Purchaser in accordance with Section 44 detailing Seller's objection to any modified Terms and Conditions prior to the effective date of such modified Terms and Conditions will be subject to and will constitute Seller's acceptance of such modified Terms and Conditions. Except as provided in the preceding sentences or as otherwise provided in these Terms and Conditions, the Order may only be modified by an Order amendment or a Signed Writing by Purchaser's Officer – Purchasing.

**48. Governing Law; Jurisdiction; Venue.** Each Order shall be governed by the laws of Brazil. Any dispute relating to these Terms and Conditions or to an Order shall be submitted to the Courts of São Paulo, State of São Paulo, with the express waiver of any other, no matter how privileged.