

Charting Your Way Through General Motors' New Terms and Conditions

General Motors (GM) issued new general terms and conditions (Terms) for direct material, customer care & aftersales, and tooling purchases effective for requests for quotation issued on or after July 15, 2013. GM's existing contracts with Suppliers will not be amended to include the Terms. The Terms include 40 provisions and reflect significant changes from prior iterations. This is the most extensive revision of GM's purchase Terms.

Identifying the changes and differences from prior versions of these Terms is only the first step. Suppliers to GM need to understand the implications of the various changes to their business. And, even more important, Suppliers need to think strategically about how they will respond to the Terms GM now seeks to impose.

Foley prepared the following chart to assist Suppliers navigate the changes by not only identifying the most significant provisions and changes, but explaining the implications and recommending strategic responses to these changes.

Foley has significant experience representing auto suppliers with myriad issues, such as contract negotiations, supply chain management and pricing issues, and dispute resolution. Foley has extensive

expertise in drafting, negotiating, and enforcing favorable terms on behalf of its Supplier clients.

Foley can review and update Suppliers' own standard terms and conditions of purchase to protect their interests and align their procurement terms as needed to more effectively address the Terms from GM and other OEMs. Additionally, Foley can assist with consultation and preparation of other supply chain documentation to reduce the exposure faced by Suppliers. Sales and procurement training regarding these changes is essential.



Analysis of General Motors' 2013 Terms and Conditions

Provision	Difference	Strategic Implication	Strategic Consideration/ Response
<p>Entire Agreement; Applicability</p> <p>[Click here to view the term]</p>	<p>The new terms expressly reject any contrary or additional terms and conditions proposed by seller, and the terms provide that by shipping, seller accepts GM's terms and conditions.</p> <p>[Click here to view redline]</p>	<p>This provision imposes the terms unless otherwise established.</p>	<p>If an objection is made, it should be clear, consistent and in a written communication with GM and also included in the Response to the RFQ.</p> <p>If Supplier is going to object to or reject certain T&Cs or certain provisions, it should not create acceptance through performance.</p> <p>Supplier should consider supply agreements or other long-term agreements with negotiated terms and conditions.</p> <p>Supplier should take care to establish, when feasible, consistent terms with its suppliers.</p>
<p>Seller's Assurance of Performance</p> <p>[Click here to view the term]</p>	<p>The 2013 Terms add a new provision that:</p> <ul style="list-style-type: none"> » Gives GM the right to seek adequate assurances if it has "reasonable grounds for insecurity" » Puts a time limit on when Suppliers must provide such assurances: within 20 days » Allows GM to determine the adequacy of provided assurances "in its reasonable discretion" 	<p>Under the Uniform Commercial Code (UCC), a party to a contract already has the right to demand adequate assurances of performance when it has reasonable grounds for insecurity.</p> <p>The keys to this provision, however, are that GM has now put a date certain on timing for responding to demands for adequate assurances and that GM reserves to its discretion the right to</p>	<p>Supplier should establish procedures to ensure compliance with the deadline.</p> <p>Supplier must carefully draft a response to any such request with the inclusion of objective and verifiable data.</p>



Provision	Difference	Strategic Implication	Strategic Consideration/ Response
Seller's Assurance of Performance (Cont.)		determine the adequacy of any assurance. Failure to timely respond alone can place the Supplier in breach.	
Changes [Click here to view the term]	<p>The 2013 Terms include:</p> <ul style="list-style-type: none"> » The new requirement that if changes are made to the original scope of work, buyer and seller will promptly discuss, reasonably and in good faith, any pricing adjustments (up or down) to be made. The prior terms and conditions did not contain the requirement that pricing adjustments would be made either up or down or the requirement that the parties would discuss adjustments in good faith. » If parties cannot agree on the adjusted price, GM reserves the right to ultimately set pricing based on a "fair cost assessment." » The new Terms add the language that the seller may not relocate production from the approved facility without obtaining advance written consent. <p>[Click here to view redline]</p>	<p>Absent a right to make changes, a party ordinarily would not be entitled to require a change unless mutually agreed. This provision provides leverage to maintain any price increases to a fair cost assessment. GM could argue that a fair cost assessment should be limited to the actual increase necessitated by the change.</p>	<p>Detailed support for establishing "fair cost," such as the use of industry standards or past practices, should be prepared in such cases.</p>
Quality [Click here to view the term]	<p>This is a new provision under which:</p> <ol style="list-style-type: none"> 1. Seller undertakes to comply, and to "cause" its subcontractors and suppliers to comply, with GM's quality requirements 	<p>This places a substantial burden on Suppliers to be responsible for compliance with quality standards by its suppliers.</p>	<p>Supplier should consider how it will comply with this provision and how it will monitor the suppliers to ensure their compliance with applicable requirements.</p>



Provision	Difference	Strategic Implication	Strategic Consideration/ Response
Quality (Cont.)	2. Seller is obligated to promote continuous improvement in the quality of goods and seller's manufacturing and logistics processes		Supplier should proactively clarify the extent of its product improvement obligations. Directed source situations should be addressed with potential exceptions.
Product Warranty; Warranty of Performance [Click here to view the term]	<p>Compared to previous versions, the 2013 provision contains three significant changes:</p> <ol style="list-style-type: none"> 1. GM added the potential new warranty that the goods "will not, at any time (including after expiration or termination of this Contract), pose an unreasonable risk to consumer or vehicle safety" 2. GM also added a new warranty of compliance with "quality standards," including the seller's own standards, if approved by GM in writing 3. GM also made it clear that the warranty runs to the later of: (a) any period provided by law; (b) the duration of the consumer warranty; or (c) the expiration of any specific warranty period or performance standard provided in any document incorporated by reference into the Contract, including the Buyer's specifications or quality standards <p>[Click here to view redline]</p>	Suppliers should be concerned that this provision expands warranties indefinitely and creates a perpetual "no recall" warranty.	<p>Supplier should take caution with respect to products manufactured to customer specifications in defining the warranty scope, as well as safety testing and compliance, including with respect to later changes in regulations or applicable standards.</p> <p>The precise standards to which the Supplier is warranting should be clear and express.</p> <p>Because "quality standards" are not defined, Supplier should review its existing internal quality standards and consider whether it should revise same.</p> <p>If Supplier is manufacturing to the customer's specifications, it should review for modification the warranty of fitness for a particular purpose.</p>



Provision	Difference	Strategic Implication	Strategic Consideration/ Response
<p>Ingredients Disclosure; Special Warnings And Instructions</p> <p>[Click here to view the term]</p>	<p>The new Terms expand Suppliers' obligations in the following ways:</p> <ol style="list-style-type: none"> 1. Seller is now required to identify not only the <i>ingredients</i> included in the goods, but also <i>materials</i> incorporated in the goods 2. Seller agrees to identify not only materials that are hazardous, but also "dangerous" 3. The provision adds the obligation for seller to assist GM in complying with reporting requirements under applicable law with respect to consumer protection, "conflict minerals" or similar materials or ingredients <p>[Click here to view redline]</p>	<p>Supplier is required to ascertain the origin of materials in component parts. Requiring Suppliers to certify in writing the origin of these materials places additional risks on Supplier.</p> <p>Supplier is required to have a founded basis for any such certification.</p>	<p>Supplier should require its suppliers to represent the origin of their materials, provide certifications of same, and maintain the appropriate records.</p>
<p>Duty to Inform and Notify</p> <p>[Click here to view the term]</p>	<p>This entirely new provision in the T&Cs requires Supplier to self-report the following problems, even if simply reasonably likely to occur:</p> <ol style="list-style-type: none"> (a) any failure by Seller to perform any of its obligations under this Contract (b) any delay in delivery of goods or services under this Contract (c) any defects or quality problems relating to the goods or services covered by this Contract 	<p>This is a new, broad duty to inform, which includes the duty to notify GM of its own defective design or deficiencies in specifications.</p>	<p>Supplier when appropriate should clarify that it has not reviewed/analyzed the specifications or conducted any other component/end use testing for adequacy or fitness. Supplier may also clarify when appropriate that it is without ability to determine its suppliers' compliance with applicable laws.</p> <p>Supplier needs to carefully review the specifications at time of contract and notify GM in writing of any specification that appears to be even potentially problematic.</p>



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<p>Duty to Inform and Notify (Cont.)</p>	<p>(d) any changes in Seller’s corporate structure or organization (including any direct or indirect change in control or ownership of Seller)</p> <p>(e) any deficiency in Buyer specifications, samples, prototypes or test results relating to this Contract</p> <p>(f) any failure by Seller, or its subcontractors or common carriers, to comply with applicable laws and regulations, including with respect to transportation of goods under this Contract; or</p> <p>(g) any change in Seller’s authorized representatives, insurance coverage or professional certifications (e.g., ISO 9001)</p>		
<p>Audit Rights; Inspection of Seller’s Premises</p> <p>[Click here to view the term]</p>	<p>This revised provision substantially expands GM’s right to audit Supplier, including:</p> <ol style="list-style-type: none"> 1. It grants GM access to Supplier’s books and records, including payroll records, “most current income statements, balance sheets, cash-flow statements and supporting data and schedules” 2. It obligates Supplier to produce such records as Buyer may “reasonably request” 3. It creates an obligation on the part of Supplier to preserve “all records pertinent” to the contract for at least “one year after Buyer’s final payment to Seller under this Contract” 	<p>The expanded audit rights raise, among other things, confidentiality and proprietary concerns.</p>	<p>At a minimum, Supplier should request an NDA requiring confidentiality and limiting the scope of such information provided.</p> <p>The NDA should also limit the use of the data, e.g., the information will only be used to confirm the Supplier is not insolvent.</p> <p>The NDA should also limit the review to the inspection, and not retention, of such documentation.</p>



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Audit Rights; Inspection of Seller's Premises (Cont.)	<p>4. It clarifies that audit under this provision does not relieve Suppliers of their liability under the contract</p> <p>[Click here to view redline]</p>		
Transactional Tax [Click here to view the term]	<p>This is an entirely new provision that obligates Suppliers to:</p> <ul style="list-style-type: none"> » Identify in the quote and contract all transactional taxes, including “any sales, use, excise, services, value added tax, goods and services tax, or similar tax,” even if zero » Separately state all transactional taxes on invoices and other such documents » Separately provide GM with pertinent documentation “to enable the Buyer to reclaim the transactional taxes” » Remit transactional tax to applicable taxing authority and use reasonable efforts to apply for exemptions from such tax where applicable » Not charge GM for transactional tax charged by a subcontracting Supplier if such tax is recoverable or would have been recoverable by seller if transaction had been “structured through other entities (either the Seller’s or the Buyer’s affiliated companies)” 	<p>The term now requires treatment of transactional tax as a material cost and requires all prices to include the transactional tax. Under the term, the tax must, among other things, be satisfied and included in the price.</p>	<p>Supplier should evaluate and address whether any tax obligations will be shifted to it under its particular circumstances in light of this new clause.</p>



Provision	Difference	Strategic Implication	Strategic Consideration/ Response
Transactional Tax (Cont.)	» If transactional tax is not recoverable by Supplier, Supplier must document the transactional taxes paid or payable to taxing authority		
Intellectual Property Rights [Click here to view the term]	<p>This is a substantially new provision that governs the parties' IP rights in the absence of a written agreement. Some of the highlights include:</p> <ul style="list-style-type: none"> » The new provision distinguishes between Background Intellectual Property Rights (essentially, rights relating to goods or services that existed prior to the contract or were developed outside of the contract) and Foreground Intellectual Property Rights (rights developed by either or both parties in connection with the contract or relating to goods or services contracted) » Foreground IP rights are owned by developing party or, if co-developed, owned jointly, with each party having the right to sublicense the technology without authorization or consultation or accounting » Each party retains ownership of Background Intellectual Rights. However, Supplier grants GM the Limited License to the Background IP Rights for direct purposes of the Contract 	<p>This is a significant provision to many Suppliers. This provision provides broad licenses to Background IP, which are not necessarily limited to the goods covered by the contract. The provision also fails to provide for confidentiality rights corresponding to the IP access GM is obtaining by its terms. That would require Suppliers to obtain a separate NDA.</p> <p>Each party is also provided a unilateral right to use or license Foreground IP, without exception.</p>	<p>Supplier should require a corresponding nondisclosure or joint development agreement. Supplier should make clear that the IP rights being given are, at most, a license tied only to the specific contract. Background IP and Foreground IP should be carefully defined and limited in scope and use under the particular circumstances. Supplier should also specify that such licenses are non-transferable and are limited in duration to the life of the contract.</p> <p>Supplier could negotiate royalty fees for these rights and negotiate revocation rights (e.g., rights terminate at the termination of the contract/program).</p> <p>Emphasis should be placed on utilizing a Master or Program Based Development and Technology Agreement to particularize use of Background and Foreground IP.</p>



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Intellectual Property Rights (Cont.)	<ul style="list-style-type: none"> » Supplier also grants GM Limited License to its Background IP Rights in the event of termination for cause or force majeure, in which cases the Limited License would be fully-paid for lifetime of the applicable product or program » Supplier also grants GM Limited License to its Background IP Rights if Buyer deems the use of the Limited License reasonably necessary to prevent the interruption or delay of Buyer's production operations, in which case the Limited License will be utilized for as long as reasonably necessary and Buyer pays to Seller reasonable royalty 		
Intellectual Property Indemnification [Click here to view the term]	<p>In addition to the duty to defend and hold harmless against any actual IP rights violations, seller now has the duty to investigate any claims, and is liable to indemnify for merely alleged claims of infringement and other assertions of proprietary rights violations.</p> <p>[Click here to view redline]</p>	<p>This provision expands GM's indemnification rights.</p>	<p>Supplier should take care to ensure that it has comparable indemnification obligations from its own relevant supply chain.</p> <p>Supplier should also review and evaluate liability insurance to ascertain whether it is covered, or should be covered, for this expanded potential liability.</p> <p>This issue should also be addressed in a Development and Technology Agreement detailing the IP use and indemnification.</p>
Specific Performance [Click here to view the term]	<p>Seller acknowledges and agrees that money damages will not be sufficient for any threatened or actual breach of contract, and buyer is entitled to temporary, preliminary and permanent injunctive relief</p>	<p>This is a significant change because the mere threat of a supply disruption may subject the Supplier to liability and damages. This clause also is conceding that injunctive relief is appropriate,</p>	<p>Supplier should consider limiting the application of this language by explicitly excluding situations when GM is able to avoid or mitigate its damages by accepting shipment on modified terms.</p>



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Specific Performance (Cont.)	in connection with any action to enforce the contract without any requirement of a bond by buyer.	when the facts of the dispute otherwise may not bear same.	<p>Even to the extent this provision is enforced, it will not automatically entitle GM to injunctive relief as GM will still have to meet the other necessary requirements including, primarily, likelihood of success on the merits.</p> <p>It is also not clear whether courts will accept the contractual agreement that injunctive relief is appropriate in situations when GM would be adequately compensated through monetary relief.</p> <p>In the event of a dispute concerning performance, care should be given to analyze the equitable bases for injunctive relief and determine the application of such recourse notwithstanding the term.</p>
Insurance [Click here to view the term]	Supplier is now required to name GM as an additional insured or beneficiary on all liability policies. [Click here to view redline]	This change adds costs and administrative burdens on Suppliers.	Supplier should review applicable insurance policies and compliance procedures.
Termination for Cause [Click here to view the term]	Buyer has added a trigger for termination if seller states its intention not to perform or otherwise rejects its obligations under the Contract. [Click here to view redline]	Under the UCC, a party may generally treat an opposing party's statement that it will not perform as an anticipatory repudiation. When a party makes an anticipatory repudiation, the UCC allows the first party to treat such repudiation as a breach.	Issues involving disputes concerning performance should be carefully analyzed and addressed in light of relevant law governing anticipatory repudiation and like scenarios.



Select Provisions in General Motors' 2013 Terms and Conditions

2. Entire Agreement; Applicability

This Contract sets forth the exclusive terms and conditions under which Seller will sell and Buyer will purchase the goods or services described herein for the period(s) specified in this Contract. Terms and conditions proposed by Seller that are different from or in addition to the provisions of this Contract are expressly rejected by Buyer and are not a part of this Contract, and Seller's acceptance is expressly limited to the terms of this Contract. This Contract constitutes the entire agreement between Seller and Buyer with respect to the matters contained herein and supersedes all prior or contemporaneous oral or written agreements, representations and/or communications. This Contract may be modified only by an amendment issued by Buyer.

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9. Seller's Assurance of Performance

In the event that Buyer has reasonable grounds for insecurity with respect to Seller's continued performance under this Contract, Buyer may, in writing, demand adequate assurance of such performance from Seller. After receipt of such demand, Seller's failure, within a reasonable period of time under the circumstances (not to exceed 20 days), to provide assurances adequate under the circumstances (as determined by Buyer in its reasonable discretion) will be deemed a breach of this Contract by Seller.

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10. Changes

By written notice to Seller, Buyer may, from time to time, direct changes, or direct Seller to make changes, to drawings and specifications of the goods or to otherwise change the scope of the work covered by this Contract, including, without limitation, work with respect to such matters as inspection, testing or quality control, and Buyer and Seller will promptly discuss, reasonably and in good faith, any pricing adjustments (up or down) to be made in connection with such changes. Notwithstanding any such discussions, Seller will promptly implement such changes as directed by Buyer without delay. In the event that Buyer and Seller are unable to reach agreement on any pricing adjustments to be made in connection with such changes, any difference in price or time for performance resulting from such changes will be equitably adjusted by Buyer based on a fair cost assessment after receipt of documentation in such form and detail as Buyer may direct. Seller will accept any amendments issued by Buyer implementing such changes. Seller may, from time to time, propose changes to drawings and specifications of the goods or to the scope of the work covered by this Contract. If Buyer agrees, in its discretion, to implement such changes, the agreement between the parties with respect to such changes will be made in accordance with Section 2 (Entire Agreement, Applicability) above.



Seller will not relocate the production, manufacture or assembly of the goods from the facilities approved by Buyer, or change the location from which the goods are shipped, without first following Buyer's relocation requirements and obtaining Buyer's advanced written consent.

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12. Quality

Seller will comply, in all respects, and will cause its subcontractors and suppliers to comply, in all respects, with Buyer's quality requirements and procedures as amended or updated from time to time and as incorporated by reference in this Contract. Seller will promote continuous improvement in the quality of the goods and Seller's manufacturing and logistics processes.

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13. Product Warranty; Warranty of Performance

Seller warrants and guarantees that the goods covered by this Contract will conform to all specifications, drawings, samples, descriptions and quality standards (i) furnished by Buyer, or (ii) furnished by Seller and approved by Buyer in writing, and will be merchantable, of good material and workmanship and free from defect. In addition, Seller acknowledges that Seller knows of Buyer's intended use of the goods covered by this Contract and warrants and guarantees that such goods have been selected, designed, manufactured or assembled by Seller based upon Buyer's stated use and will be fit and sufficient for the particular purposes intended by Buyer. Unless otherwise set forth in this Contract, the duration of the warranty provided by Seller to Buyer for the goods will begin on the date of receipt of the goods by Buyer and end on the later of (a) the date of expiration of any warranty period provided under applicable law for the goods, (b) expiration of any warranty applicable to the goods provided by Buyer to Buyer's end customer for the vehicle into which the goods are incorporated, or (c) the expiration of any specific warranty period or performance standard provided in any document incorporated by reference into the Contract, including in Buyer's specifications or quality standards. Notwithstanding the foregoing, Seller warrants and guarantees that the goods covered by this Contract will not, at any time (including after expiration or termination of this Contract), pose an unreasonable risk to consumer or vehicle safety.

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14. Ingredients Disclosure; Special Warnings And Instructions

Seller will promptly furnish to Buyer in such form and detail as Buyer may direct: (a) a list of all ingredients and materials incorporated in the goods; (b) the amount of such ingredients and materials; and (c) information concerning any changes in or additions to such ingredients and materials. Prior to and with the shipment of the goods, Seller agrees to furnish to Buyer sufficient advance warning and notice, in writing (including, without limitation, appropriate labels on the goods, containers and packing), of any dangerous goods or hazardous material that is an ingredient or a part of any shipment of goods, together with such special handling instructions as may be necessary to advise carriers, Buyer and their respective employees of how to exercise that measure of care and precaution that will comply with any applicable laws or regulations and best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the goods, containers and packing shipped to Buyer. Upon Buyer's request, Seller will certify to Buyer in writing the origin of any ingredients or materials in the goods. Seller will promptly provide, in writing, any information regarding the goods requested by Buyer so that Buyer may comply in a timely manner with reporting



requirements under applicable law with respect to consumer protection, “conflict minerals” or similar materials or ingredients, if any.

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15. Duty to Inform and Notify

Seller will promptly notify Buyer in writing of any of the following events or occurrences, or any facts or circumstances reasonably likely to give rise to any of the following events or occurrences: (a) any failure by Seller to perform any of its obligations under this Contract; (b) any delay in delivery of goods or services under this Contract; (c) any defects or quality problems relating to the goods or services covered by this Contract; (d) any changes in Seller’s corporate structure or organization (including any direct or indirect change in control or ownership of Seller); (e) any deficiency in Buyer specifications, samples, prototypes or test results relating to this Contract; (f) any failure by Seller, or its subcontractors or common carriers, to comply with applicable laws and regulations, including, without limitation, with respect to transportation of goods under this Contract; or (g) any change in Seller’s authorized representatives, insurance coverage or professional certifications (e.g., ISO 9001).

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16. Audit Rights; Inspection of Seller’s Premises

Seller grants Buyer access to Seller’s premises and all pertinent information (including, without limitation, books, records, payroll and other data, receipts, correspondence and other documents) for the purpose of auditing Seller’s compliance with the terms of this Contract (including, without limitation, charges under this Contract) or inspecting or conducting an inventory of finished goods, work-in-process, raw materials, any of Buyer’s Property and all work or other items to be provided pursuant to this Contract located at Seller’s premises. Seller will cooperate with Buyer so as to facilitate Buyer’s audit, including, without limitation, by segregating and promptly producing such records as Buyer may reasonably request, and otherwise making records and other materials accessible to Buyer. If requested by Buyer, Seller will promptly provide to Buyer its most current income statements, balance sheets, cash-flow statements and supporting data and schedules. Seller will preserve all records pertinent to this Contract, and Seller’s performance under this Contract, for a period of not less than one year after Buyer’s final payment to Seller under this Contract. Any such audit or inspection conducted by Buyer or its representatives will not constitute acceptance of any goods (whether in progress or finished), relieve Seller of any liability under this Contract or prejudice any rights or remedies available to Buyer.

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20. Transactional Tax

Unless otherwise provided in this Contract, the prices set forth in this Contract will be exclusive of all transactional taxes, including any sales, use, excise, services, value added tax, goods and services tax, or similar tax, and these taxes should be separately identified by Seller in both Seller’s quote and in this Contract even if the tax rate is zero. Buyer will not be responsible for any transactional taxes charged by the Seller that are not identified in this manner. Seller shall separately state all charges for transactional taxes on its invoices (or other such documents). Additionally, Seller shall provide Buyer with invoices in line with the applicable tax laws in its country to enable the Buyer to reclaim the



transactional taxes and Seller will provide such documentation no later than when the payment to which the invoice relates is due from Buyer. Seller will be responsible for remitting the transactional tax to the applicable taxing authority except for those states or jurisdictions where Buyer has provided Seller with an appropriate exemption certificate. Seller will use reasonable efforts to apply for such exemptions where applicable. Seller will not charge Buyer for any transactional taxes charged by a subcontracting supplier if such tax is recoverable by Seller, or if not recoverable, it would have been, had the transaction been structured through other entities (either the Seller's or the Buyer's affiliated companies). If transactional taxes are not recoverable by Seller, Seller agrees to provide detailed billing, customs or other documents as requested, which set out the transactional taxes paid or payable to any of the Buyer's subcontracting supplier or to a taxing authority.

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24. Intellectual Property Rights

(A) APPLICABILITY

This Section will apply where the Parties have not entered into a separate written agreement signed by their respective authorized representatives prior to or contemporaneous with the effective date of this Contract with respect to the Parties' Intellectual Property Rights (defined below) that expressly prevails over this Contract.

(B) DEFINITIONS

"Intellectual Property Rights" means any patent, patented articles, patent applications, designs, industrial designs, copyrights, software, source code, database rights, moral rights, inventions whether or not capable of protection by patent or registration, techniques, technical data, trade secrets, know-how, and any other proprietary right, whether registered or unregistered, including applications and registrations thereof, all related and continuing rights, and all similar or equivalent forms of protection anywhere in the world. Intellectual Property Rights excludes all brands, trademarks, trade names, slogans and logos of Seller and Buyer unless specifically identified as a deliverable or work product of Seller pursuant to this Contract.

"Background Intellectual Property Rights" means any Intellectual Property Rights of either Buyer or Seller relating to the goods or services contracted (i) existing prior to the effective date of this Contract or prior to the date Buyer and Seller began any technical cooperation relating to the goods or services contracted, whichever is earlier, or (ii) that each party acquires or develops after these dates but in a strictly independent manner and entirely outside of any work conducted under this Contract.

"Foreground Intellectual Property Rights" means any Intellectual Property Rights, except Background Intellectual Property Rights, (i) that are developed in whole or in part by Buyer alone, by Buyer and Seller jointly or by Seller alone, in connection with this Contract or (ii) relating to the goods or services contracted.

(C) FOREGROUND INTELLECTUAL PROPERTY RIGHTS

Buyer and Seller will each retain ownership of any Foreground Intellectual Property Rights that are solely created or made by their respective employees, agents or subcontractors (Personnel). Buyer and Seller will jointly own any Foreground Intellectual Property Rights that are jointly created or made by Personnel of both Buyer and Seller with the ability to grant licenses without consultation and no duty of accounting to each other for any use or purpose. For clarity, unless an express written period of exclusivity has been promised to Buyer, Foreground Intellectual Property Rights owned or controlled by Seller may be immediately exploited by Seller in connection with its business with its other



customers and will not be exclusive to Seller's performance of this Contract. Seller hereby grants to Buyer and causes its affiliates and Personnel to grant to Buyer, an irrevocable, worldwide, nonexclusive, perpetual to the maximum extent permitted by law, royalty free, fully paid-up license, with right to sublicense, to all Foreground Intellectual Property Rights to make, have made, use, reproduce, modify, improve, prepare derivative works of, distribute, display, perform, offer to sell, sell and import, without limitation.

(D) BACKGROUND INTELLECTUAL PROPERTY RIGHTS

Buyer and Seller will each retain ownership of their respective Background Intellectual Property Rights.

Seller hereby grants to Buyer and causes its affiliates and Personnel to grant to Buyer, an irrevocable, worldwide, nonexclusive license, with right to sublicense to Buyer's affiliates, to all Background Intellectual Property Rights to make, have made, use, reproduce, modify, improve, prepare derivative works of, distribute, display, perform, offer to sell, sell and import (Limited License), provided that Buyer or its affiliates will only use this Limited License in the following circumstances: (i) to the extent deemed reasonably necessary for the direct purposes of this Contract, without any additional cost to Buyer, (ii) termination of this Contract by Buyer under Section 34 (Termination for Cause), or in case of a force majeure event alleged by Seller under Section 28 (Force majeure), in which cases the Limited License granted hereunder is fully-paid for the lifetime of the applicable product or program, or (iii) if after good-faith consultation with Seller, Buyer deems the use of the Limited License reasonably necessary to prevent the interruption or delay of Buyer's production operations, in which case the Limited License will only be utilized for period(s) deemed reasonably necessary by Buyer for such purpose provided that Buyer pays to Seller a reasonable royalty to be negotiated by Seller and Buyer in good faith.

(E) COPYRIGHTS

To the extent that this Contract is issued for the creation of copyrightable works, the works will be considered "works made for hire" for Buyer except to the extent that the works do not qualify as "works made for hire" for Buyer in which case Seller hereby assigns to Buyer all right, title and interest in all copyrights and if lawfully permitted waives all moral rights therein.

(F) RIGHT TO REPAIR

For the avoidance of doubt, Buyer Group, its dealers, its customers, and its subcontractors have the right to repair, reconstruct, remanufacture, reflash, or rebuild the specific goods delivered under this Contract without payment of any royalty to Seller.

(G) MISCELLANEOUS

Goods manufactured based on Buyer's drawings, designs, and/or specifications as well as any software code or models provided by Buyer may not be used for Seller's own use or sold to third parties without Buyer's express written authorization.

Nothing in this Contract is an admission by Buyer of the validity of any Intellectual Property Rights claimed by Seller, including an admission that any license is required by Buyer to manufacture the goods or continue the services contracted. Seller will claim and acquire all rights and waivers of Seller's personnel required to enable Seller to grant Buyer the rights and licenses in this Contract. Seller assumes full and sole responsibility for compensating Seller's personnel for such rights and waivers, including the remuneration of employees.



Seller, on behalf of itself and Buyer Group and its dealers and customers will comply with all obligations with respect to software that forms any part of the goods or services contracted, including obligations under any licenses.

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25. Intellectual Property Indemnification

Seller will investigate, defend, hold harmless and indemnify Buyer, its successors, its affiliates (collectively, Buyer Group) and its dealers and customers against any actual or alleged claims of infringement or other assertions of proprietary rights violations (including patent, trademark, copyright, industrial design right, or other proprietary right, misuse, or misappropriation of trade secret) and resulting damages and expenses (including attorney's and other professional fees) arising in any way in relation to the goods or services contracted, including such claims where Seller has provided only part of the goods or services (collectively, IP claims). Seller expressly waives any claim against Buyer Group that any such IP Claims arose out of compliance with Buyer Group's or its dealers' or customers' specification or direction.

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27. Specific Performance

Seller acknowledges and agrees that money damages will not be a sufficient remedy for any actual or threatened breach of this Contract by Seller and that, in addition to all other rights and remedies that Buyer may have, Buyer will be entitled to specific performance and temporary, preliminary and permanent injunctive relief in connection with any action to enforce this Contract, without any requirement of a bond or other security to be provided by Buyer.

[\[Click here to return to chart\]](#)

29. Insurance

Seller will maintain insurance coverage with insurance carriers acceptable to Buyer and in the amounts set forth elsewhere in this Contract. Seller will name Buyer as an additional insured or a beneficiary on all liability policies. Seller will furnish to Buyer either a certificate showing compliance with these insurance requirements or certified copies of all insurance policies within 10 days of Buyer's written request. The certificate will provide that Buyer will receive 30 days' prior written notice of any termination or reduction in the amount or scope of coverage. Seller's furnishing of certificates of insurance or purchase of insurance will not release Seller of any of its obligations or liabilities under this Contract.

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34. Termination for Cause

Buyer may terminate all or any part of this Contract, without liability to Seller, if Seller (a) breaches any term of this Contract (including, without limitation, Seller's warranties); (b) states its intention not to perform or otherwise rejects its obligations under this Contract; or (c) fails to make progress in performance so as to endanger timely and proper completion of services or delivery of goods under this Contract; provided, however, that if any failure or breach under the foregoing (a) through (c) is curable, Buyer will provide Seller an opportunity to cure within a commercially reasonable period of time under the circumstances, in no case exceeding 10 days after Buyer provides notice of the failure or breach to Seller. In addition, Buyer may terminate this Contract upon giving at least 60 days' notice to Seller,





without liability to Seller, if a direct or indirect change in control or ownership of Seller occurs without Buyer's prior written consent.

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Redline of Selected Sections

~~31. ENTIRE AGREEMENT:~~

2. Entire Agreement; Applicability

This Contract, ~~together with the attachments, exhibits, supplements or other terms of Buyer specifically referenced in this Contract,~~ sets forth the exclusive terms and conditions under which Seller will sell and Buyer will purchase the goods or services described herein for the period(s) specified in this Contract. Terms and conditions proposed by Seller that are different from or in addition to the provisions of this Contract are expressly rejected by Buyer and are not a part of this Contract, and Seller's acceptance is expressly limited to the terms of this Contract. This Contract constitutes the entire agreement between Seller and Buyer with respect to the matters contained ~~in this Contract herein~~ and supersedes all prior ~~or contemporaneous~~ oral or written agreements, representations and ~~agreements/or communications.~~ This Contract may ~~only~~ be modified only by ~~a contract an~~ amendment issued by Buyer.

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~~5. CHANGES:~~

10. Changes

~~Buyer reserves the right at any~~ By written notice to Seller, Buyer may, from time to time, direct changes, or ~~cause~~ direct Seller to make changes, to drawings and specifications of the goods or to otherwise change the scope of the work covered by this Contract, including, without limitation, work with respect to such matters as inspection, testing or quality control, and ~~Seller agrees to (a) promptly make such changes, and (b) accept any subsequently issued contracts implementing such changes. Any~~ Buyer and Seller will promptly discuss, reasonably and in good faith, any pricing adjustments (up or down) to be made in connection with such changes. Notwithstanding any such discussions, Seller will promptly implement such changes as directed by Buyer without delay. In the event that Buyer and Seller are unable to reach agreement on any pricing adjustments to be made in connection with such changes, any difference in price or time for performance resulting from such changes ~~shall~~ will be equitably adjusted by Buyer based on a fair cost assessment after receipt of documentation in such form and detail as Buyer may direct. ~~Any changes to this Contract shall~~ Seller will accept any amendments issued by Buyer implementing such changes. Seller may, from time to time, propose changes to drawings and specifications of the goods or to the scope of the work covered by this Contract. If Buyer agrees, in its discretion, to implement such changes, the agreement between the parties with respect to such changes will be made in accordance with ~~Paragraph 31, Section 2 (Entire Agreement, Applicability) above.~~ Seller will not relocate the production, manufacture or assembly of the goods from the facilities approved by Buyer, or change the location from which the goods are shipped, without first following Buyer's relocation requirements and obtaining Buyer's advanced written consent.

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9. WARRANTY:

13. Product Warranty; Warranty of Performance

Seller warrants ~~and~~ guarantees that the goods covered by this Contract will conform to ~~the~~all specifications, drawings, samples, ~~or~~ descriptions and quality standards (i) furnished to or by Buyer, or (ii) furnished by Seller and approved by Buyer in writing, and will be merchantable, of good material and workmanship and free from defect. In addition, Seller acknowledges that Seller knows of Buyer's intended use ~~and warrants/guarantees that all of the~~ goods covered by this Contract ~~that~~and warrants and guarantees that such goods have been selected, designed, manufactured or assembled by Seller based upon Buyer's stated use and will be fit and sufficient for the particular purposes intended by Buyer. ~~The~~Unless otherwise set forth in this Contract, the duration of the warranty ~~period shall be that provided by applicable law, except that if Buyer offers a longer warranty to its customers for goods installed on vehicles, such longer period shall apply~~provided by Seller to Buyer for the goods will begin on the date of receipt of the goods by Buyer and end on the later of (a) the date of expiration of any warranty period provided under applicable law for the goods, (b) expiration of any warranty applicable to the goods provided by Buyer to Buyer's end customer for the vehicle into which the goods are incorporated, or (c) the expiration of any specific warranty period or performance standard provided in any document incorporated by reference into the Contract, including in Buyer's specifications or quality standards. Notwithstanding the foregoing, Seller warrants and guarantees that the goods covered by this Contract will not, at any time (including after expiration or termination of this Contract), pose an unreasonable risk to consumer or vehicle safety.

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10. INGREDIENTS DISCLOSURE; SPECIAL WARNINGS AND INSTRUCTIONS:

14. Ingredients Disclosure; Special Warnings and Instructions

~~If requested by Buyer,~~ Seller ~~shall~~will promptly furnish to Buyer in such form and detail as Buyer may direct: (a) a list of all ingredients and materials incorporated in the goods; (b) the amount of ~~all~~such ingredients and materials; and (c) information concerning any changes in or additions to such ingredients and materials. Prior to and with the shipment of the goods, Seller agrees to furnish to Buyer sufficient advance warning and notice, in writing (including, without limitation, appropriate labels on the goods, containers and packing), of any dangerous goods or hazardous material that is an ingredient or a part of any shipment of ~~the~~ goods, together with such special handling instructions as may be necessary to advise carriers, Buyer, and their respective employees of how to exercise that measure of care and precaution that will comply with any applicable laws or regulations and best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the goods, containers and packing shipped to Buyer. Upon Buyer's request, Seller will certify to Buyer in writing the origin of any ingredients or materials in the goods. Seller will promptly provide, in writing, any information regarding the goods requested by Buyer so that Buyer may comply in a timely manner with reporting requirements under applicable law with respect to consumer protection, "conflict minerals" or similar materials or ingredients, if any.

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6. SUPPLIER QUALITY AND DEVELOPMENT; INSPECTION:

~~Seiler agrees to participate in Buyer's supplier quality and development program(s) and to comply with all quality requirements and procedures specified by Buyer, as revised from time to time. In addition, Buyer shall have the right to enter Seller's facility at reasonable times to inspect the facility, goods, materials and any property of Buyer covered by this Contract. Buyer'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.~~

16. Audit Rights; Inspection of Seller's Premises

Seller grants Buyer access to Seller's premises and all pertinent information (including, without limitation, books, records, payroll and other data, receipts, correspondence and other documents) for the purpose of auditing Seller's compliance with the terms of this Contract (including, without limitation, charges under this Contract) or inspecting or conducting an inventory of finished goods, work-in-process, raw materials, any of Buyer's Property and all work or other items to be provided pursuant to this Contract located at Seller's premises. Seller will cooperate with Buyer so as to facilitate Buyer's audit, including, without limitation, by segregating and promptly producing such records as Buyer may reasonably request, and otherwise making records and other materials accessible to Buyer. If requested by Buyer, Seller will promptly provide to Buyer its most current income statements, balance sheets, cash-flow statements and supporting data and schedules. Seller will preserve all records pertinent to this Contract, and Seller's performance under this Contract, for a period of not less than one year after Buyer's final payment to Seller under this Contract. Any such audit or inspection conducted by Buyer or its representatives will not constitute acceptance of any goods (whether in progress or finished), relieve Seller of any liability under this Contract or prejudice any rights or remedies available to Buyer.

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14. INTELLECTUAL PROPERTY:

25. Intellectual Property Indemnification

~~Seller agrees: (a) to will investigate, defend, hold harmless and indemnify Buyer, its successors, its affiliates (collectively "Buyer Group") and its dealers and customers against any actual or alleged claims of infringement or other assertions of proprietary rights violations (including patent, trademark, copyright, industrial design right, or other proprietary right, or misuse, or misappropriation of trade secret) and resulting damages and expenses (including attorney's and other professional fees) arising in any way in relation to the goods or services contracted, including such claims where Seller has provided only part of the goods or services; (collectively "IP claims"). Seller expressly waives any claim against Buyer Group that any such infringement IP Claims arose out of compliance with Buyer's specification; (b) that Buyer or Buyer's subcontractor has the right to repair, reconstruct, or rebuild the specific goods delivered under this Contract without payment of any royalty to Seller; (c) that parts manufactured based on Buyer's drawings and/or specifications may not be used for its own use or sold to third parties without Buyer's express written authorization; and (d) to the extent that this Contract is issued for the creation of copyrightable works, the works shall be considered "works made for hire;" to the extent that the works do not qualify as "works made for hire," Seller hereby assigns to Buyer all right, title and interest in all copyrights and moral rights therein Group's or its dealers' or customers' specification or direction.~~

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~~17. INSURANCE:~~

29. Insurance

Seller ~~shall~~will maintain insurance coverage with insurance carriers acceptable to Buyer and in the amounts set forth ~~in the Special Terms. Seller shall~~elsewhere in this Contract. Seller will name Buyer as an additional insured or a beneficiary on all liability policies. Seller will furnish to Buyer either a certificate showing compliance with these insurance requirements or certified copies of all insurance policies within 10 days of Buyer's written request. The certificate will provide that Buyer will receive 30 days' prior written notice ~~from the insurer~~ of any termination or reduction in the amount or scope of coverage. Seller's furnishing of certificates of insurance or purchase of insurance ~~shall~~will not release Seller of any of its obligations or liabilities under this Contract.

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~~12. TERMINATION FOR BREACH OR NONPERFORMANCE; SALE OF ASSETS OR CHANGE IN CONTROL:~~

34. Termination for Cause

Buyer ~~reserves the right to~~may terminate all or any part of this Contract, without liability to Seller, if Seller: (a) ~~repudiates or~~ breaches any of the term~~term~~ of this Contract, (including, without limitation, Seller's warranties); (b) ~~fails~~states its intention not to perform ~~services or deliver goods as specified by Buyer; or otherwise rejects its obligations under this Contract; or~~ (c) fails to make progress in performance so as to endanger timely and proper completion of services or delivery of goods; ~~and does not correct such failure or breach within 10 days (or such shorter period of time if under this Contract; provided, however, that if any failure or breach under the foregoing (a) through (c) is curable. Buyer will provide Seller an opportunity to cure within a~~ commercially reasonable period of time under the circumstances); in no case exceeding 10 days after ~~receipt of written~~Buyer provides notice ~~from Buyer specifying such of the~~ failure or breach to Seller. In addition, Buyer may terminate this Contract upon giving at least 60 days' notice to Seller, without liability to Seller, if ~~Seller (i) sells, or offers to sell, a material portion of its assets, or (ii) sells or exchanges, or offers to sell or exchange, or causes to be sold or exchanged, a sufficient amount of its stock that effects a change in the~~a direct or indirect change in control or ownership of Seller occurs without Buyer's prior written consent.

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