

**METALDYNE**

**GENERAL TERMS AND CONDITIONS**

**INTRODUCTORY STATEMENT AND DEFINITIONS:**

Seller acknowledges and agrees that these General Terms and Conditions and Buyer's Supplier Development and Quality Requirements Manual (which includes Buyer's quality and environmental compliance requirements as modified from time to time and may be found at <https://portal.covisint.com/metaldyne/>) are incorporated in, and made a part of, each Order (such documents shall be collectively referred to as "the Contract" and/or "this Contract"). The Contract may be transmitted to Seller in hard copy, via facsimile, or via any other mode of transmission.

As used in these General Terms and Conditions:

**"Buyer"** means the subsidiary or affiliate of Metaldyne Corporation identified on the face of the purchase order issued to Seller.

**"Seller"** means the supplier shown on the face of Buyer's validly issued purchase order that is responsible for providing the goods or services under this Contract.

**"Order"** means Buyer's purchase orders, releases, requisitions, work orders, shipping instructions, specifications, drawings, and other associated purchasing documents, whether expressed in written form, by electronic data interchange or other tangible format, relating to the goods and/or services to be provided by Seller to Buyer.

**1. ACCEPTANCE; TERM**

1.1 Acceptance. If Seller accepts this Contract in writing or commences any of the work or services which are the subject of this Contract, Seller will be deemed to have accepted this Contract, including these General Terms and Conditions, in their entirety without modification. Any additions to, changes in, modifications of, or revisions of this Contract (including these General Terms and Conditions) which Seller proposes will be deemed to be rejected by Buyer except to the extent that an authorized employee of Buyer expressly agrees to accept any such proposals in writing.

1.2 Term. Unless the production purchase order specifies otherwise, the initial term of the Contract begins on the effective date shown on the production purchase order (the "Effective Date") and continues for twelve (12) months after the Effective Date (the "Initial Term"). Thereafter, the production purchase order will automatically be renewed for successive renewal terms of twelve (12) months each (the "Renewal Term") unless Buyer has provided Seller with a notice of non-renewal at least sixty (60) days prior to the end of the Initial Term or each Renewal Term. Notwithstanding any termination under this Contract, Buyer, at its option, may extend the term of the production purchase order for up to six (6) additional months beyond the originally scheduled expiration of the Initial Term or the Extended Term (as applicable).

## **2. SHIPPING AND PAYMENT TERMS**

2.1 Shipping. Seller will (a) properly pack, mark and ship goods as instructed by Buyer or any carriers and in accordance with any applicable laws or regulations, (b) route shipments as Buyer instructs, (c) not, unless otherwise expressly agreed to between the parties, charge for costs relating to handling, packaging, dryage, storage or returnable containers, or transportation (including duties, taxes, fees, etc.), (d) provide packing slips with each shipment that identify Buyer's contract and release number and the date of the shipment, and (e) promptly forward the original bill of lading or other shipping receipt with respect to each shipment as Buyer instructs. Seller will include on bills of lading or other shipping receipts the correct classification identification of the goods shipped as Buyer or the carrier requires. The marks on each package and identification of the goods on packing slips, bills of lading and invoices must enable Buyer to easily identify the goods.

2.2 Payment Terms. Payment terms will be set forth on the applicable purchase order. Buyer may withhold payment for any goods or services until Buyer receives evidence, in such form and detail as Buyer requires, of the absence of any liens, encumbrances and claims on such goods or services. Supplier represents and warrants that it will timely invoice Buyer for its purchase of goods or services and that Buyer is not obligated to pay for any goods or services identified in invoices that Buyer receives more than one-hundred eighty (180) days after receiving the goods or services, regardless of whether Buyer actually accepted such goods or services.

2.3 Taxes. Unless otherwise stated in this Contract, the price includes all applicable federal, state, provincial, and local taxes other than sales, value added, or similar turnover taxes or charges. Seller will separately invoice Buyer for any sales, value added, or similar turnover taxes or charges that Seller is required by law to collect from Buyer. Seller will provide Buyer with whatever information and documentation that is required under local law in order to enable Buyer to recover any sales, value added, or similar turnover taxes or charges. Invoices shall also be in the appropriate form as required by local law to permit deduction of payments for income tax purposes by the Buyer.

2.4 Withholding of Taxes by Buyer. If Buyer is required by law to make any deduction or withholding from any sum otherwise payable to Seller under this Contract, Buyer shall be entitled to deduct or withhold such amount and effect payment thereof to the applicable tax authority. Buyer will, upon request from Seller, provide Seller official tax receipts or other evidence issued by the applicable tax authorities sufficient to establish that any taxes which are withheld have been paid.

2.5 Buyer's Requirements. Unless a purchase order validly issued by Buyer (or a separate written agreement executed by an authorized representative of Buyer) requires Seller to manufacture, ship and/or provide a specified quantity of goods or services, this Contract is a requirements contract under which Seller is required to supply all of Buyer's requirements. Buyer's requirements shall be defined as those quantities ordered by Buyer from time to time, as evidenced by written releases issued by Buyer from time to time. Buyer's requirements are determined by the needs of Buyer's customers and such needs may change from time-to-time. If the requirements of Buyer's customers or market, economic or other conditions require changes in delivery

schedules, Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments without entitling Seller to a price adjustment or other compensation.

2.6 Delivery Schedules. Buyer will issue releases to specify the quantities needed, delivery locations, times and dates. Deliveries will be made to the locations, in the quantities, on the dates, and at the times specified by Buyer in this Contract, including any subsequent releases or instructions Buyer issues under this Contract. Time is of the essence with respect to all delivery schedules Buyer establishes. Buyer will not be required to pay for or accept goods, nor will it be responsible for Seller's commitments or production arrangements relating to goods: (i) that are in excess of the quantities specified in Buyer's delivery schedules or releases, or (ii) that are delivered in advance of the delivery date specified in Buyer's delivery schedules. Where deliveries are specified to be in accordance with Buyer's releases, Seller will neither procure any goods, nor procure raw materials, nor ship any goods, except to the extent authorized by Buyer's written releases. Seller bears the risk of loss of all goods delivered in advance of the delivery date specified in Buyer's releases or delivery schedules.

2.7 Premium Shipments. If Seller fails to have goods ready for shipment in time to meet Buyer's delivery schedules using the method of transportation originally specified by Buyer and, as a result, Buyer requires Seller to ship the goods using a premium (more expeditious) method of transportation, Seller will ship the goods as expeditiously as possible. Seller will pay, and be responsible for, the entire cost of such premium shipment, except to the extent Buyer's actions caused Seller to fail to meet Buyer's delivery schedules, in which case Buyer will pay the costs incurred for premium shipment resulting from Buyer's actions.

2.8 Volume Forecasts. Buyer may provide Seller with estimates, forecasts or projections of its future anticipated volume or quantity requirements for goods. Seller acknowledges that any such forecasts are provided for informational purposes only and, 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. Buyer makes no representation, warranty, guaranty or commitment of any kind or nature, express or implied, regarding any such forecasts provided to Seller, including with respect to the accuracy or completeness of such forecasts.

2.9 Protection of Supply. Seller shall immediately notify Buyer, in writing, of any condition that may impair its ability, for any reason, to timely deliver any goods or services to Buyer (an "Impending Supply Disruption"). Additionally, Seller shall give Buyer annual written notice of Seller's labor union contract expiration dates and union affiliations. Upon Buyer's request, Seller will provide Buyer with its plan to avoid adversely affecting Buyer's operations as a result of an Impending Supply Disruption, and shall develop and implement (with or without Buyer's request) contingency supply plans within one hundred twenty (120) days of expiration of each labor contract. Seller shall also ensure that Buyer's requirements for goods will be met without disruption for at least a ninety (90) day period after (a) the expiration of a labor contract or (b) any other Impending Supply Disruption commences. At a minimum, Seller will produce (and locate in an area that will not be affected by any such Impending Supply Disruption) a finished inventory of goods in quantities sufficient to ensure the supply of goods to Buyer.

### **3. SPECIFICATION, DESIGN AND SCOPE CHANGES**

Buyer may at any time require Seller to implement changes to the specifications or design of the goods or to the scope of any services or work covered by this Contract, including work related to inspection, testing or quality control. While Buyer will endeavor to discuss any such changes with Seller as early as practical, Seller will promptly implement such changes. Buyer will equitably determine any adjustment in price or delivery schedules resulting from such changes, including Buyer's payment of reasonable costs of modifications to Seller's Equipment (as defined in Section 16 herein) necessary to implement such changes. In order to assist in the determination of any equitable adjustment in price or delivery schedules, Seller will, as requested, provide information to Buyer, including documentation of changes in Seller's cost of production and the time to implement such changes. In the event of any disagreement arising out of such changes, Buyer and Seller will work to resolve the disagreement in good faith; provided, however, that Seller will continue performing under this Contract, including the manufacture and delivery of goods and prompt implementation of changes required by Buyer, while Buyer and Seller resolve any disagreement arising out of such changes. Seller may not make any change to the specifications or the design of a good without first notifying Buyer and obtaining Buyer's written consent to such change.

### **4. QUALITY AND INSPECTION**

Seller will participate in Buyer's supplier quality and development program(s) and comply with all engineering release and validation requirements and procedures, including Buyer's production part approval processes, which Buyer specifies from time to time. Seller will permit Buyer and its representatives and consultants to enter Seller's facilities at reasonable times to inspect such facilities and any goods, inventories, work-in-process, materials, machinery, equipment, tooling, fixtures, gauges and other items and processes related to Seller's performance of this Contract. No such inspection by Buyer will constitute acceptance by Buyer of any work-in-process or finished goods, nor will it impair any other rights Buyer has under this Contract or in law or equity.

### **5. NON-CONFORMING GOODS**

Seller will deliver only goods that conform in all respects to Buyer's requirements as specified in the Contract. Buyer is not required to perform incoming inspections of any goods, and Seller waives any right to require Buyer to conduct any such inspections. Seller will not substitute any goods for the goods covered by this Contract unless Buyer consents in writing. If Buyer rejects any good as non-conforming, Buyer may, at its option, (a) reduce the quantities of goods ordered under this Contract by the quantity of non-conforming goods, (b) require Seller to replace the non-conforming goods with conforming goods without any additional charges, (c) purchase substitute, conforming goods from other available sources, in which case, the quantities under this Contract will be reduced by the quantities of the substitute goods, and Seller will reimburse Buyer for any additional costs to Buyer of obtaining the substitute goods, including any transaction and other costs incurred by Buyer in connection with locating and executing an agreement with the alternate source, and/or (d) exercise any other applicable rights or remedies available at law or in equity. If Seller fails to inform Buyer in writing of the manner in which Seller desires that Buyer dispose of non-conforming goods within forty-eight (48) hours of notice of Buyer's rejection of non-conforming goods (or such shorter period as is reasonable under the circumstances), Buyer will be entitled to dispose of the

non-conforming goods without liability to Seller, provided; however, that in any event Buyer may elect to arrange for the shipment of any non-conforming goods back to Seller at Seller's expense. Seller will bear all risk of loss with respect to all non-conforming goods and will promptly pay or reimburse all costs incurred by Buyer to return, store or dispose of any non-conforming goods. Buyer's payment for any non-conforming goods will not constitute acceptance by Buyer, limit or impair Buyer's right to exercise any rights or remedies, or relieve Seller of responsibility for the non-conforming goods.

## **6. RISK OF LOSS; INSURANCE**

Seller shall bear the risk of loss for the goods covered by this Contract and any Buyer Property (as defined in Section 17.2 below) until it is delivered and unloaded at Buyer's designated facility. Seller will obtain and maintain, at its own expense, insurance coverage as required by applicable law or as reasonably requested by Buyer with carriers reasonably acceptable to Buyer. With respect to any such insurance coverage, Seller will furnish to Buyer either a certificate evidencing satisfaction of the above-mentioned insurance requirements under this Contract or certified copies of all insurance policies within ten (10) days of Buyer's request. The certificate must provide that Buyer will receive thirty (30) days prior written notice from the insurer of any termination or reduction in the amount or scope of coverage. The furnishing of certificates of insurance and purchase of insurance will not limit or release Seller from Seller's obligations or liabilities under this Contract.

## **7. FORCE MAJEURE**

If Seller is unable to produce, sell or deliver any goods or services covered by this Contract, or Buyer is unable to accept delivery, buy or use any goods or services covered by this Contract, as a result of an event or occurrence beyond the reasonable control of the affected party and without such party's fault or negligence, then any delay or failure to perform under this Contract that results from such event or occurrence will be excused for only so long as such event or occurrence continues, provided; however, that (i) such occurrence shall not relieve the affected party of its performance obligations to the extent its ability to perform is unaffected by such occurrence and (ii) the affected party gives written notice of each such delay (including the anticipated duration of the delay) to the other party as soon as possible after the event or occurrence (but in no event more than three (3) days thereafter). Such force majeure events and occurrences must be truly extraordinary and not the type of occurrence that typically impacts companies in the industry, such as labor strikes, equipment failures, and commodity pricing fluctuations, which are specifically excluded from the terms of this Section 7. Instead, the force majeure events or conditions may include, by way of example and not limitation, natural disasters, fires, floods, explosions, riots, wars, and sabotage. During any delay or failure to perform by Seller, Buyer may (i) purchase substitute goods from other available sources, in which case, the quantities under this Contract will be reduced by the quantities of such substitute goods and Seller will reimburse Buyer for any additional costs to Buyer of obtaining the substitute goods and/or (ii) have Seller provide substitute goods from other available sources in quantities and at times Buyer requests and at the prices set forth in this Contract. If Seller fails to provide adequate assurances that any delay will not exceed thirty (30) days or if any delay lasts more than thirty (30) days, Buyer may terminate this Contract (or any portion thereof) without any liability to Seller or obligation to purchase raw materials, work-in-process or finished goods

## 8. WARRANTY

8.1 General. Seller warrants and guarantees to Buyer, its successors, assigns and customers that the goods and services covered by this Contract will (a) conform to the Contract requirements and the then current release/revision level (based on the date Buyer's release is issued to Seller) of Buyer's applicable specifications and drawings, (b) conform to all samples, descriptions, brochures and manuals furnished by Seller or Buyer, (c) comply with all applicable industry standards and all Government, laws, regulations and requirements of the countries from which the goods are manufactured or shipped, and where the goods are to be ultimately used or sold, including, but not limited to, the standards issued under the National Traffic and Motor Vehicle Safety Act, as amended, (d) be merchantable, (e) be free from all defects in design, materials and workmanship, (f) be fit and sufficient for the particular purposes intended; Seller acknowledging that it knows of Buyer's intended use and the intended use of Buyer's customers, and waives any claims or defenses that it was unaware of such intended uses, and (g) comply with all other implied warranties provided to Buyer under law or in equity. If requested by Buyer, Seller will enter into a separate agreement for the administration or processing of warranty charge backs for nonconforming goods. All warranties of Seller, express or implied, and all remedies of Buyer, in this Section and elsewhere, shall survive any delivery, inspection, tests, acceptance, payment, processing and/or expiration or termination of this Contract.

8.2 Warranty Period. In the case of goods supplied for use as, or incorporation into, parts, components or systems for automotive vehicles or other finished products, the period for each of the Section 8.1 warranties will commence upon delivery of the goods to Buyer and, except as provided in Section 8.4 or as otherwise expressly agreed in writing by an authorized employee of Buyer, end forty-eight (48) months following the date the vehicle or other finished product on which such parts, components or systems are installed is first sold and delivered or otherwise utilized for consumer or commercial purposes; provided, however, that if Buyer offers and provides a longer warranty to its customers with respect to any such parts, components or systems, then such longer warranty period will apply to the goods. In the case of goods supplied for other uses, the period for each of the foregoing warranties will be that provided by applicable law unless otherwise expressly agreed in writing by an authorized employee of Buyer.

8.3 Remedies and Damages. If any goods fail to conform to the warranties set forth in this Contract, Seller shall reimburse Buyer for all Losses (as defined in Section 14 - "Indemnification" below) caused by such nonconforming goods. Such Losses may include, without limitation, costs, expenses and losses of Buyer and/or its customers arising from (i) inspection, sorting, repair or replacement of any nonconforming goods or any system or component that incorporates such nonconforming goods, (ii) production interruptions or slowdowns, (iii) offlining of vehicles or component systems, and (iv) field service campaigns and other corrective service actions, including, without limitation, the amounts paid to distributors and/or dealers for materials and replacement parts (including reasonable markup to recover administrative costs or other capital expenses) and the labor costs to perform such work.

8.4 Recalls. Notwithstanding the expiration of the warranty period set forth in Section 8.2, if Buyer and/or the manufacturer of the vehicles (or other finished product) on which the goods, or any parts, components or systems incorporating the goods, are installed makes an offer to owners of such vehicles to provide remedial action to address a defect

that relates to motor vehicle safety or the failure of the vehicle to comply with any applicable law, safety standard or guideline (a "Recall"), Seller will nonetheless be liable for all Losses (as defined in Section 14) associated with the conduct of such Recall to the extent that such Losses result from, or relate to, goods that fail to conform to the warranties and other requirements set forth in this Contract.

8.5 Price warranty. Seller represents and warrants that the prices for the goods and services covered by this Contract are no less favorable than Seller currently extends to any other customer for the same or similar goods or services in similar quantities. If Seller reduces its prices to others for the same or similar goods or services during the term of this contract, Seller will reduce the prices to Buyer for such goods and services correspondingly. Seller warrants that the prices on this contract are complete and that no additional charges of any type will be added without Buyer's express written consent.

## **9. COMPOSITION OF GOODS; HAZARDOUS MATERIALS**

If Buyer requests, Seller will promptly furnish (and provide access) to Buyer, in such form and detail as Buyer directs (a) any formula or analysis that relates to the goods (or component part thereof) covered by this Contract, including without limitation the goods' composition and ingredients, and any materials or substances used in the production of the goods, (b) the amount of all components and ingredients, (c) information concerning any changes in or additions to the components and ingredients, (d) assistance to Buyer in order to comply with any requirement of a Government (either mandated or voluntarily agreed upon by Buyer) relating to hazardous, toxic or other content in the goods, and (e) copies of any data, materials or other information relating to the foregoing. Prior to, and together with, the shipment of the goods, Seller will furnish to Buyer and all carriers sufficient written warning and notice (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 all special handling instructions, safety measures and precautions as may be necessary to comply with applicable laws, to inform Buyer and all carriers of any applicable legal requirements and to best allow Buyer and all carriers to prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the goods, containers and packing. Seller will comply with Buyer's requirements relating to the use (or prohibition on use) of certain materials and substances in the goods and utilize and comply with Buyer's reporting processes and requirements relating to any data, materials or other information (such as the International Material Data System (IMDS)).

## **10. INSOLVENCY OF SELLER**

In any of the following or any similar events, Buyer may immediately terminate this Contract without any liability to Seller or obligation to purchase raw materials, work-in-process or finished goods: (a) Seller's insolvency, (b) filing of a voluntary petition in bankruptcy by Seller, (c) filing of any involuntary petition in bankruptcy against Seller, (d) appointment of a receiver or trustee for Seller, (e) execution of an assignment for the benefit of creditors by Seller, (f) any accommodation by Buyer, financial or otherwise, not contemplated by this Contract, that is necessary for Seller to meet its obligations under this Contract, or (g) or financial difficulties of Seller that Buyer believes, in good faith, will impair Seller's ability to timely deliver goods or services, or otherwise perform its obligations under this Contract. Seller will reimburse Buyer for all costs Buyer incurs in

connection with any of the foregoing, whether or not this Contract is terminated, including, but not limited to, all attorney or other professional fees.

## **11. TERMINATION AND EXPIRATION**

11.1 Buyer's Termination for Cause. Buyer may terminate all or any part of this Contract without any liability to Seller or obligation to purchase raw materials, work-in-process or finished goods if: (a) Seller repudiates, breaches, or threatens to breach any of the terms of this Contract, including Seller's warranties, (b) Seller fails to perform or threatens not to perform services or deliver goods in accordance with this Contract, (c) Seller fails to make progress so as to endanger timely and proper completion of the goods or services, and does not correct such failure or breach within ten (10) days after Buyer notifies Seller, in writing, of such breach or failure, or within such shorter period of time as is commercially reasonable under the circumstances; or (d) Buyer's customer terminates the program relating to the Contract or otherwise requires Buyer to remove Seller as its supplier on such program.

11.2 Buyer's Termination for Convenience. In addition to any other rights of Buyer to terminate this Contract, Buyer may immediately terminate all or any part of this Contract, at any time and for any reason, by giving ninety (90) days prior notice to Seller. For the avoidance of doubt, Seller may not terminate this Contract for convenience.

11.3 Seller's Expiration and Termination Obligations. Upon expiration or receipt of a termination notice from Buyer, Seller, unless, otherwise directed by Buyer, shall (a) promptly cease all work under this Contract as of the effective date of any expiration or termination, (b) take all actions necessary to protect property in Seller's (or its suppliers and subcontractors) possession in which Buyer has an interest; (c) cooperate with Buyer to help avoid production disruptions while the production of the goods is being resourced to another supplier; and (d) transfer title and possession of the goods, work-in-process, raw materials, Tooling and Materials (as defined in Section 17.1), and Seller's Equipment (as defined in Section 16) that Buyer has agreed to acquire from Seller in accordance with Sections 11.4, 16 and 17.1, and return Buyer's Property (in accordance with Section 17.4) and any other property of Buyer.

11.4 Seller's Remedies Upon Buyer's Termination for Convenience. Seller's sole and exclusive remedy for Buyer's termination for convenience under Section 11.2 shall be as follows:

- (a) Subject to the terms and conditions of this Section 11.4, Buyer will pay Seller the contract price for all goods and services that have been completed in accordance with this Contract as of the termination date and which were delivered, accepted and not previously paid for by Buyer.
- (b) Buyer may, at its option, purchase from Seller any or all raw materials or work-in-process inventory related to the goods covered by this Contract which are useable and in a merchantable condition.
- (c) The purchase price for such finished goods, raw materials and work-in-process described in Sections 11.4(a) and 11.4(b) above that Buyer elects, or is required, to purchase will be (a) the contract price

for all goods that have been completed in accordance with this Contract as of the termination date, plus (b) the actual costs of work-in-process and raw materials incurred by Seller in furnishing the goods or services under this Contract to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting principles to the terminated portion of this Contract, less (c) the reasonable value or cost (whichever is higher) of any goods or materials used or sold by Seller with Buyer's written consent.

- (d) Notwithstanding anything to the contrary contained in this Section 11.4, in no event will Buyer be required to pay for (i) any finished goods (delivered or undelivered), work-in-process or raw materials which Seller fabricates or procures without properly issued delivery releases from Buyer, or in amounts that exceed those Buyer authorizes in delivery releases, or (ii) any finished goods, work-in-process, or materials that are in Seller's standard stock or that are readily marketable.
- (e) Payments made under this Section 11.4 will not exceed the aggregate price for finished goods that would be produced by Seller under delivery or release schedules outstanding at the date of termination, and Buyer's obligation upon termination under this Section 11.4 shall not exceed the obligation Buyer would have had in the absence of termination. Buyer's payment to Seller under this Section 11.4 is subject to Buyer's Recovery Right under Section 21 and this Section 11.4 constitutes Seller's sole and exclusive recovery from Buyer (without regard to the legal theory which is the basis for any claim by Seller) on account of Buyer's termination for convenience under Section 11.2

11.5 Buyer's Option Right Upon Expiration. Upon expiration or termination of this Contract for any reason other than "for convenience" under Section 11.2, Buyer may purchase, at its option (but has no obligation or commitment to do so, nor will it have any liability for choosing not to purchase), any part, or all, raw materials, work-in-process and finished goods inventory related to the goods under this Contract which are useable and in a merchantable condition in accordance with the purchase price provisions contained in Section 11.4.

## **12. CLAIMS**

12.1 Seller Claims. Any claim by Seller seeking a payment under Section 11.4(a) as a result of Buyer's termination of the Contract for convenience under Section 11.2 (a "Seller Claim") must be submitted within 60 days after the effective date of the termination of this Contract. Seller's Claim must be comprehensive and include sufficient supporting data and detail to permit Buyer or its auditors to verify and substantiate Seller's Claim. Thereafter, Seller shall promptly furnish any supplemental and supporting information Buyer requests. Buyer and its designated agents have the right to examine and audit all pertinent items related to Seller's Claim, including books, records, facilities, work-in-process, raw materials and inventory. Seller's failure to submit a Seller Claim during the 60 day period described above results in a waiver of

Seller's right to seek or collect any payment from Buyer as a result of Buyer's termination.

12.2 Payment not a waiver. Any amount paid by Buyer for the goods or services covered by this Contract will not be deemed to be a waiver of any breach of this Contract by Seller or any amount otherwise due to Buyer under the Contract. Waiver by Buyer of any breach by Seller on one occasion will not preclude Buyer from seeking any recovery or Losses (as defined in Section 14) from Seller, nor will it preclude Buyer from terminating the Contract for, or constitute a waiver of, any similar breach at another time.

12.3 Liability. Buyer has no liability to Seller for lost profits, consequential, exemplary, special, or punitive damages, unabsorbed overhead, capital investment, interest expense, indirect costs, product development and engineering costs, facilities and equipment rental or purchase or rearrangement costs, unamortized depreciation costs, penalties, or general or administrative charges, whether incurred directly or indirectly by Seller or their suppliers.

### **13. TECHNICAL INFORMATION**

13.1 Information Disclosed by Seller. Seller will create, maintain, update, and provide to Buyer, in compliance with Buyer's standards, all technical information about the goods covered by this Contract and their manufacture which is reasonably needed, or is requested, by Buyer in connection with its use of the goods, including, without limitation, the engineering validation and qualification of the goods for production and other applications and compliance with any legal or regulatory requirements. Such technical information will not be subject to any use or disclosure restrictions, except as provided in Section 13.2 below.

13.2 Waiver of Claims. Seller agrees not to assert any claim (other than a claim for patent infringement), including, without limitation, breach of confidentiality or misappropriation of trade secrets, against Buyer, Buyer's customers or each of their respective suppliers with respect to any technical information that Seller shall have disclosed, or may hereafter disclose, in connection with the goods or services covered by this Contract.

13.3 Software and Written Works. Seller grants to Buyer and its subsidiaries and affiliates, a permanent, perpetual, fully paid-up, royalty-free license to copy, distribute, use, sublicense, display, incorporate into goods, repair, modify, create derivative works, and sell any software incorporated in the goods covered by this Contract. In addition, all works of authorship (and copyrights therein), including without limitation, designs, software, computer programs and databases (including object code, micro code, source code and data structures), and all enhancements, derivative works, modifications and updates thereof and all other written work products or materials, which are created in the course of performing this Contract, separately or as part of any goods and components, are "works made for hire" and are the sole property of Buyer. To the extent that such works of authorship do not qualify under applicable law as works made for hire, Seller hereby assigns to Buyer all right, title and interest in any intellectual property rights in such works of authorship. If such assignment is not possible under any applicable law, Seller hereby grants to Buyer a permanent, perpetual, fully paid-up, royalty-free license to copy, distribute, sublicense, display, incorporate into goods, repair, modify, and create derivative works of such works of authorship.

13.4 Development, Engineering And Consulting Services. Engineering (whether design, manufacturing, process or otherwise), consulting or development services (“Development Services”) funded by Buyer under this Contract that result in any idea, invention, concept, discovery, work of authorship, patent, copyright, trademark, trade secret, know-how or other intellectual property (“IP”) and/or any IP developed by Buyer shall be the sole property of Buyer. Seller assigns and agrees to assign to Buyer all right, title and interest in and to IP resulting from Development Services (“Developed IP”). Seller shall notify Buyer of the existence of Developed IP and assist Buyer in every reasonable way to perfect its right, title and interest in Developed IP, such as by executing and delivering all additional documents reasonably requested by Buyer in order to perfect, register, and/or enforce the same, and Buyer shall reimburse Seller for reasonable costs incurred by Seller in providing such assistance.

13.5 License to Buyer-Specific IP. If Buyer does not fund the Development Services as contemplated in Section 13.4, but as a result of Seller’s (or its subcontractors) Development Services not funded by Buyer, Seller creates or develops a design of a unique part or modification of an off-the-shelf part, Seller hereby grants to Buyer a permanent, fully paid up, royalty-free license with a right to sub-license to others, to make, have made, use and have used, sell and have sold, import and have imported, manufactures, compositions, machines and processes covered by the IP rights of Seller for any and all inventions or other results of Seller’s Development Services which Seller conceives, develops or acquires in the course of performing work under the Contract or other written agreement with Buyer. Seller also grants a background license under any IP rights that are owned or controlled by Seller (now or acquired in the future) that cover any invention embodied in the goods delivered under this Contract.

13.6 License to Repair and Rebuild. Seller grants to Buyer, its affiliates, subsidiaries, agents and subcontractors, and Buyer’s customers a permanent, fully paid-up, royalty-free, worldwide license under any IP that is owned or controlled by Seller or its affiliates (now or in the future) necessary for Buyer (or a third-party on Buyer’s behalf) to repair, reconstruct or rebuild, but not to have newly manufactured by another, the goods and Tooling and Materials.

13.7 Subcontractor Licenses. In each subcontract of Seller’s work performed pursuant to this Contract, Seller will use its best efforts to obtain for Buyer all of the rights and licenses granted to Buyer under this Section 13.

## **14. INDEMNIFICATION**

Seller will defend, indemnify, and hold harmless Buyer, its affiliates, subsidiaries, customers, and each other third party to which goods or services are provided, and each of their respective shareholders, members, directors, officers, attorneys, employees, agents, successors and assigns, from and against any and all claims, demands, actions, causes of actions, suits, judgments, settlements, costs, expenses (including, without limitation, attorney and other professional fees and disbursements), penalties, damages and all other liabilities and obligations whatsoever (“Losses”) arising out of, or relating to: (a) any third party claims or demands to recover for personal injury, illness or death, property damage or economic loss caused by any of the goods or services covered by this Contract (regardless of whether such claim or demand arises under tort, product liability, negligence, contract, warranty, strict liability or any other legal theories); (b) the

performance by Seller or any of Seller's employees, agents, representatives or subcontractors of any services or work, whether on the property of Buyer, Seller or any third party; (c) any breach of this Contract by Seller, including without limitation any breach of warranty (express or implied) of Seller; (d) any recall campaign or warranty sharing program in which Buyer, any customer of Buyer or any third party participates in connection with any of the goods covered by this Contract; and (e) any infringement claims (including patent, trademark, copyright, moral, industrial design, intellectual property or other proprietary rights, or misuse or misappropriation of trade secret) against Buyer involving the goods or services covered by this Contract, including any claims in circumstances where Seller has provided only part of the goods, and Seller waives any claim against Buyer that any such infringement arose out of compliance with Buyer's specifications or Buyer's exercise of control over the design process. The indemnification obligations contained herein shall continue notwithstanding any delivery, inspection, tests, acceptance, payment, processing and/or expiration or termination of this Contract.

## **15. COMPLIANCE WITH LAWS**

Seller, and any goods or services supplied by Seller, will comply with all applicable international, federal (including executive orders), state, local and other laws, rules, regulations, orders, conventions, and ordinances and standards of the country(ies) of origin and destination, including, but not limited to, those relating to the manufacture, labeling, transportation, licensing, approval, performance and/or certification of the goods or services, environmental matters, wages, hours and conditions of employment, subcontractor selection, discrimination, import and export control, occupational health/safety and motor vehicle safety. Neither Seller nor any of its subcontractors will utilize slave, prisoner or any other form of forced or involuntary labor in the supply of goods or services under this Contract. Upon Buyer's request, Seller will certify in writing its compliance with the foregoing. Seller will promptly notify Buyer if it has provided information to any governmental entity regarding the goods covered by this Contract.

## **16. SELLER'S EQUIPMENT**

Seller, at its expense, will furnish, keep in good condition, and replace when necessary all of its machinery and equipment, including related tooling, jigs, dies, gauges, fixtures, molds, patterns, fixtures and other accessories, required for the production of goods covered by this Contract (collectively, "Seller's Equipment"). Seller will insure Seller's Equipment with fire and extended coverage insurance for its full replacement value. Seller grants Buyer an irrevocable option to take possession of, and title to, all or part of Seller's Equipment that is specially designed or outfitted for the production of the goods covered by this Contract, in which event Buyer will, within 45 days following delivery of such Seller's Equipment to Buyer, pay to Seller the lower of: (i) the net book value of such Seller's Equipment (i.e., actual cost less amortization) or (ii) the then current fair market value of such Seller's Equipment, in each case less any amounts that Buyer has previously paid to Seller on account of such Seller's Equipment. The foregoing option will not apply to the extent that Seller's Equipment is used to produce goods that are the standard stock of Seller and are then being sold by Seller to other customers. Buyer's right to exercise the foregoing option is not conditioned on Seller's breach or Buyer's termination of this Contract or upon payment of any other amounts due under this Contract.

## **17. BUYER'S PROPERTY AND INFORMATION**

17.1 Acquisition of Tooling and Materials. To the extent that this Contract covers Buyer's purchase of, or reimbursement to Seller for, any tooling, jigs, dies, gauges, fixtures, molds, patterns, equipment, supplies, materials and other items (collectively, "Tooling and Materials") to be used in connection with Seller's actual or anticipated supply of goods to Buyer, Seller will acquire such Tooling and Materials as agent of Buyer and Buyer shall pay to or reimburse Seller the lower of (i) the amount specified in this Contract for such Tooling and Materials or (ii) Seller's actual out-of-pocket cost to acquire the Tooling and Materials from an unrelated third party or, if the Tooling and Materials are constructed or fabricated by Seller or any affiliate of Seller, the actual direct costs for materials, labor and overhead associated with such construction and fabrication. Seller shall assign to Buyer any contract rights or claims in which Seller has an interest with respect to such Tooling and Materials. Seller shall establish a reasonable accounting system that readily enables the identification of Seller's costs as described above. Buyer or its agents shall have the right to audit and examine all books, records, facilities, work, material, inventories and other items relating to any such Tooling and Materials. Upon Seller's acquisition of such Tooling and Materials, title thereto shall vest immediately in Buyer and such Tooling and Materials shall be held as "Buyer's Property" by Seller in accordance with this Section 17. If all or part of the fabrication, modification, repair or refurbishment of the Tooling and Materials will be subcontracted to a third party toolmaker, Seller will inform Buyer in advance in a written notice of the identity of the toolmaker and the location of the Tooling and Materials and inform the toolmaker in writing that it is a bailee-at-will of Tooling and Materials owned by the Buyer and shall be solely responsible for payments to the toolmaker.

17.2 Bailment of Buyer's Property. All Tooling and Materials, and Buyer's returnable containers which Buyer furnishes, either directly or indirectly, to Seller or which Buyer buys from, or gives reimbursement to, Seller in whole or in part (collectively, "Buyer's Property") will be and remain the property of Buyer and be held by Seller on a bailment basis. Title to all replacement parts, additions, improvements and accessories purchased by Seller will vest in Buyer immediately upon attachment to or incorporation into Buyer's Property. When permitted by law, Seller waives any lien or other rights that Seller might otherwise have on or in any of Buyer's Property for work performed on, or utilizing, such property or otherwise.

17.3 Seller's Duties with Respect to Buyer's Property. For purposes of this Section 17, all obligations relating to "Buyer's Property" shall also apply, to the extent applicable, to property owned by Buyer's customer that Seller may possess in connection with this Contract. While Buyer's Property is in Seller's possession and until Seller delivers Buyer's Property back to Buyer, Seller bears the risk of loss, theft and damage to Buyer's Property. Seller will be responsible for the cost of repairing or replacing Buyer's Property if it is stolen, damaged or destroyed regardless of cause or fault. Seller will at all times (a) regularly inspect, maintain in good condition, and repair Buyer's Property at Seller's own expense, (b) use Buyer's Property only for the performance of this Contract, (c) deem Buyer's Property to be personal property, (d) unless otherwise directed by Buyer, conspicuously mark Buyer's Property as the property of Buyer and maintain such markings, (e) not commingle Buyer's Property with the property of Seller or with that of a third person, (f) not move Buyer's Property from Seller's applicable shipping location (as shown by the shipping address of Seller) without prior written approval from an authorized employee of Buyer, and (g) use Buyer's Property in compliance with Buyer's

or the manufacturer's instructions and in compliance with all federal, state and local laws, ordinances and regulations. Buyer will have the right to enter Seller's premises at all reasonable times to inspect Buyer's Property and Seller's records with respect thereto. Seller will not sell, lend, rent, encumber, pledge, lease, transfer or otherwise dispose of Buyer's Property. Furthermore, Seller will not assert, or permit any person claiming an interest through Seller to assert any claims of ownership to or any other interest in Buyer's Property.

17.4 Return of Buyer's Property. Seller agrees that Buyer has the right, at any time and from time to time, with or without reason and without payment of any kind, to retake possession of or request the return of Buyer's Property. Without further notice or court hearings, which rights, if any, are hereby waived, Buyer or its designee(s) will have the right to enter Seller's premises and take possession of any and all of Buyer's Property. Upon Buyer's request and in accordance with Buyer's instructions, Buyer's Property will be immediately released to Buyer or delivered to Buyer by Seller, either: (i) Ex Works (IncoTerms 2000) at Seller's plant properly packed and marked in accordance with the requirements of the carrier selected by Buyer to transport such Buyer's Property or (ii) to any location Buyer designates, in which event Buyer will pay Seller the reasonable costs of delivering Buyer's Property to the location Buyer designates. If Seller does not release and deliver any Buyer's Property in accordance with this Section, Buyer may obtain an immediate writ of possession without notice and without the posting of any bond and/or enter Seller's premises, with or without legal process, and take immediate possession of Buyer's Property.

17.5 Disclaimer of Warranties. Seller acknowledges and agrees that: (i) Buyer is not the manufacturer of Buyer's Property nor the manufacturer's agent nor a dealer therein, (ii) Buyer is bailing Buyer's Property to Seller for Seller's benefit, (iii) Seller is satisfied that Buyer's Property is suitable and fit for its purposes, and (iv) BUYER 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 BUYER'S PROPERTY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. Buyer will not be liable to Seller for any Loss, damage, injury or expense of any kind or nature caused, directly or indirectly, by Buyer's Property, including, without limitation, the use or maintenance thereof, or the repair, service or adjustment thereof, or by any interruption of service or for any loss of business whatsoever or howsoever caused, including, without limitation, any loss of anticipatory damages, profits or any other indirect, special or consequential damages and/or personal injury or death.

17.6 Use of Buyer's Information. Seller will (i) keep all Buyer's Information (as defined below) confidential and disclose it only to its employees (whom shall be bound by the confidentiality restrictions contained in this Contract) who need to know such Buyer's Information in order for Seller to supply goods and services to Buyer under this Contract and (ii) use the Buyer's Information solely for the purpose of supplying goods and services to Buyer. Goods manufactured based on, or incorporating, Buyer's Information may not be disclosed, used for Seller's own use, or sold by Seller to third parties without prior express written consent from an authorized employee of Buyer. Seller shall protect Buyer's Information using the same degree of care with which it protects its own confidential information, but in no event shall Seller exercise less than reasonable care to maintain confidentiality. "Buyer's Information" means all information provided to Seller by Buyer or its representatives or subcontractors in connection with the business,

programs, goods and services covered by this Contract, including, without limitation, pricing and other terms of this Contract, 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). Buyer's Information also includes any materials or information that contain, or are based on, any Buyer's Information, whether prepared by Buyer, Seller or any other person. Buyer retains ownership of all rights, proprietary or otherwise, in the Buyer Information disclosed to Seller. Seller's obligations under this Section shall survive expiration or termination of this Contract.

## **18. SERVICE AND REPLACEMENT PARTS**

During the term of this Contract, Seller will sell to Buyer goods necessary to fulfill Buyer's service and replacement parts requirements to Buyer's customers at the then current production price(s) under this Contract. If the goods are systems or modules, Seller will sell the components or parts that comprise the system or module at price(s) that will not, in the aggregate, exceed the price of the system or module less assembly costs. If this Contract is in effect at the end of the vehicle production program into which the goods covered by the Contract are incorporated, Seller will also sell goods to Buyer to fulfill Buyer's and its customers' service and replacement parts requirements during the fifteen (15) year period following the end of such vehicle production program (the "Post-Production Period"), and this Contract will automatically remain in effect for such purpose during the entire Post-Production Period. During the initial five (5) years of the Post-Production Period, the price(s) for such goods will be the production price(s) which were in effect at the commencement of the Post-Production Period. For the remainder of the Post-Production Period, the price(s) for such service goods will be as reasonably agreed to by the parties. If requested by Buyer, Seller will also make service literature and other materials available at no additional charge to support Buyer's service activities.

## **19. REMEDIES AND INJUNCTIVE RELIEF**

The rights and remedies reserved and/or granted to Buyer in this Contract are cumulative with, and in addition to, all other or further remedies provided in law or equity. Seller agrees that the terms and conditions of this Contract are fully applicable and binding upon itself and its affiliates, parents, subsidiaries, agents, attorneys, representatives, employees, associates, assignees, trustees or heirs, or successors in interest and Buyer may recover damages from Seller and each such entity for breaches of this Contract or any other damage caused by Seller and each such entity in performing its obligations under this Contract. Without limiting the foregoing, Seller is liable for all direct, indirect, special, exemplary, incidental and consequential damages, losses, costs and expenses incurred by Buyer resulting from Seller's failure to comply with the terms of this Contract. Seller will be responsible for all costs associated with interruptions or delays in production, reduced line speeds, and/or plant shut downs, both at Buyer's manufacturing locations and Buyer's customer manufacturing locations. To the extent that this Contract is for the supply of goods for use as, or fabrication into, parts, components or systems, Seller acknowledges and agrees that money damages alone would not be a sufficient remedy for any actual, anticipatory or threatened breach of this Contract by Seller with respect to its delivery of goods to Buyer and that, in addition to all other rights and remedies which Buyer may have, Buyer shall be entitled

to specific performance and injunctive or other equitable relief as a remedy for any such breach.

## **20. CUSTOMS AND EXPORT CONTROLS**

Transferable credits or benefits associated with or arising from goods purchased under this Contract, including trade credits, export credits or rights to the refund of duties, taxes or fees, belong to Buyer. Seller will, at its expense, provide all information necessary (including written documentation and electronic transaction records in Buyer-approved formats) to permit Buyer to receive these benefits, credits, or rights. Seller will furthermore, at its expense, provide Buyer with all information, documentation, and electronic transaction records relating to the goods necessary for Buyer to fulfill any customs-related obligations, origin marking or labeling requirements and certification or local content reporting requirements, to enable Buyer to claim preferential duty treatment for goods eligible under applicable trade preference regimes, and to make all arrangements that are necessary for the goods to be covered by any duty deferral or free trade zone program(s) of the country of import. Seller will, at its expense, provide Buyer or Buyer's nominated service provider with export documentation to enable the goods to be exported, and obtain all export licenses or authorizations necessary for the export of the goods unless otherwise indicated in this Contract, in which event Seller will provide all information as may be necessary to enable Buyer to obtain such licenses or authorization(s).

## **21. BUYER'S RECOVERY RIGHT**

With respect to any monetary obligations of Seller or Seller's affiliates to Buyer or Buyer's affiliates, including, without limitation, direct and indirect Losses, costs and damages resulting from Seller's failure to timely delivery goods or services, the failure of any goods or service to conform to applicable warranties or any other breach by Seller of this Contract, Buyer may at any time, as applicable, recover, recoup or setoff such amounts by deducting such amounts from any sums that are, or will become, owing, due or payable to Seller or Seller's affiliates by Buyer or Buyer's affiliates. Buyer and its affiliates may do so without notice to Seller or its affiliates. Buyer's rights under this Section are in addition to any right of setoff or recoupment provided by law or equity.

## **22. NO ADVERTISING**

Seller will not, in any manner, advertise or publish that Seller has contracted to furnish Buyer the goods or services covered by this Contract or use any trademarks or trade names of Buyer in, or on, Seller's goods, advertising or promotional materials unless an authorized representative of Buyer consents in writing.

## **23. NO IMPLIED WAIVER**

The failure of either party at any time to require performance by the other party of any provision of this Contract will not affect the right to require such performance at any later time, nor will the waiver by either party of a breach of any provision of this Contract constitute a waiver of any succeeding breach of the same or any other provision. No failure or delay in exercising any right or remedy will operate as a waiver thereof, nor will any single or partial exercise thereof preclude other or further exercise thereof. No

course of dealing or course of performance may be used to evidence a waiver or limitation of Seller's obligations under this Contract.

## **24. ASSIGNMENT AND CHANGE IN CONTROL; SUBCONTRACTORS**

Buyer may assign its rights and obligations under this Contract without Seller's prior consent. Seller may not assign or delegate its rights or obligations under this Contract without prior written consent from an authorized representative of Buyer. In addition, Buyer may terminate this Contract upon giving at least 60 days notice to Seller, without any liability to Seller or obligation to purchase raw materials, work-in-process or finished goods, 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 or other equity interests that effects a change in the control of Seller, or (iii) executes, or otherwise becomes subject to, a voting or other agreement or trust that effects a change in the control of Seller. Seller may not subcontract any part of this Contract without Buyer's prior written approval.

## **25. RELATIONSHIP OF PARTIES**

Seller and Buyer are independent contracting parties. Except as provided in Section 17 where Seller is specifically authorized to act as Buyer's agent when acquiring Tooling and Materials on Buyer's behalf and where Seller is specifically designated a bailee of Buyer's Property, nothing in this Contract makes either party the agent or legal representative of the other for any purpose whatsoever, nor grants either party any authority to assume or create any obligation on behalf of or in the name of the other party.

## **26. GOVERNING LAW AND JURISDICTION**

**26.1 U.S. Contracts.** If either (i) this Contract is issued by Buyer from a location within the United States of America or its territories, (ii) this Contract is issued, in whole or part, for goods to be shipped to a Buyer location within the United States of America or its territories (as shown by the ship to or receiving address of Buyer), or (iii) Seller's applicable shipping location is within the United States of America or its territories (as shown by the shipping address of Seller), then: (a) this Contract is to be construed according to the laws of the United States of America and the State of Michigan, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any choice of law provisions that require application of any other law, and (b) each party hereby agrees that the forum and venue for any legal or equitable action or proceeding arising out of, or in connection with, this Contract will lie in the appropriate federal or state courts in the State of Michigan, and the parties specifically waive any and all objections to such jurisdiction and venue.

**26.2 Non-U.S. Contracts.** In all cases not covered by Section 26.1 above (a) this Contract is to be construed according to the laws of the country (and state or province, if applicable) where Buyer's receiving location is located (as shown by the ship to or receiving address of Buyer), excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any choice of law provisions that require application of any other law; (b) any legal or equitable action or proceedings by Buyer against Seller arising out of, or in connection with, this Contract may be brought by Buyer in any court(s) having jurisdiction over Seller or, at Buyer's option, in any

court(s) having jurisdiction over Buyer's receiving location, in which event Seller consents to such jurisdiction and venue, including service of process in accordance with applicable procedures; and (c) any legal or equitable actions or proceedings by Seller against Buyer arising out of, or in connection with, this Contract may be brought by Seller only in the court(s) having jurisdiction over the Buyer's receiving location.

## **27. SEVERABILITY**

If any provision of this Contract is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such provision will 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 this Contract will remain in full force and effect.

## **28. RIGHT TO AUDIT AND INSPECT**

Buyer has the right, at Seller's expense, to audit and review all relevant documents, data, books, records, income statements, balance sheets, cash flow statements, payroll data, receipts and other related supporting data, including Seller's administrative and accounting policies, guidelines, practices and procedures, in order to (i) substantiate any charges and other matters under this Contract and (ii) assess Seller's ongoing ability to perform its obligations under this Contract. Seller will maintain and preserve all such documents for a period of four (4) years following final payment under this Contract. Seller will provide Buyer with reasonable access to its facilities and otherwise cooperate and facilitate any such audits by Buyer.

## **29. ENTIRE AGREEMENT**

This Contract, together with the attachments, exhibits, supplements, or other terms of Buyer specifically referenced in this Contract, constitutes the entire agreement between Seller and Buyer with respect to the matters contained in this Contract and supersedes all prior oral or written representations and agreements.