

GEORGETOWN METAL PROCESSING, LLC

GENERAL TERMS AND CONDITIONS FOR PURCHASE

THIS REVISION IS EFFECTIVE AS OF 11/1/2023 AND UNTIL UPDATED.

Unless otherwise agreed to in writing, the following terms and conditions shall apply to all purchases of Production Goods (as defined below) including but not limited to, steel and aluminum coils, and related services by Georgetown Metal Processing, LLC.

1. DEFINITIONS.

- a. "Applicable Laws" shall have the meaning set forth in Section 21.
 - b. "Approved Specifications" shall mean drawings, specifications, models and standards or any revision thereof (including information stored in electronic or digital format) that are developed or designed by Seller at Buyer's request and approved in writing by Buyer.
 - c. "Buyer" means GEORGETOWN METAL PROCESSING, LLC
 - d. "Buyer's Plant" means the plant or facility of Buyer specified in the Purchase Order.
 - e. "Buyer's Website" shall mean <https://www.TBD/> or any subsequent Buyer website notified to Seller in writing.
 - f. "Contract" means the contract for the purchase of the Goods or Services between Buyer and Seller, incorporating the Contract Documents.
 - g. "Contract Documents" means the documents comprising the Contract, and includes the Buyer's Purchase Order, any document which is incorporated into it by reference, these Terms, Buyer Releases, applicable Quality Manuals, and any other document(s) specifically made a part of the Contract by Buyer.
 - h. "Customers" means the Buyer's direct Customer, as well as indirect customers for the Products, including higher tier buyers and OEMs.
 - i. "End User" means the actual end user of the Products.
 - j. "Forecast," as Buyer may issue under a Purchase Order, shall mean Buyer's written non-binding estimate of its future needs for Products addressing a delivery period more than thirty (30) days from the date transmitted to Seller, and provided to Seller at Buyer's discretion to assist Seller in estimating its future delivery requirements.
 - k. "Goods" shall have the meaning set forth in U.C.C. §2-105.
 - l. "Intellectual Property" shall mean 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.
 - m. "Intellectual Property Rights" shall mean the rights to own, use, sell or license Intellectual Property.
 - n. "OEM" shall mean an Original Equipment Manufacturer, an organization that makes devices from components bought from other manufacturers.
 - o. "Production Goods" means Products used by Buyer in the manufacture of the Goods it sells to its customers.
 - p. "Products" means the Goods or services covered by the Purchase Order.
 - q. "Purchase Order" refers to and includes the Buyer's Purchase Order form and any releases.
 - r. "Release" shall mean binding written orders, when issued by Buyer to Seller under a Purchase Order, for specified quantities of Products to be delivered to Buyer by the specified date or within the specified timeframe, whichever applies.
 - s. "Requirements" means any specific requirements set forth in the Contract Documents and any requirements under Applicable Laws.
 - t. "Seller" means the party with whom Buyer places the Purchase Order.
 - u. "Specifications" shall mean drawings, specifications, models and standards or any revision thereof (including information stored in electronic or digital format) approved by Buyer and furnished by Buyer to Seller.
 - v. "Subcontractor" means any sub-supplier or other vendor providing goods and/or services used by Seller in its design, manufacture, delivery, or sale of the Products to the Buyer.
 - w. "Sustainable Development" means an operational model for meeting human development goals while also sustaining the ability of natural systems to provide the natural resources and ecosystem services on which the economy and society depend.
 - x. "Terms" shall mean the terms and conditions set forth in this document, entitled Georgetown Metal Processing, LLC General Terms and Conditions for Purchase.
 - y. Third-Party Quality Standard shall mean: (1) any quality standard generally applicable to the automotive industry such as IATF-16949, TS-16949, QS-9000, ISO 14001, and VDA quality assurance procedures propounded by the German Association of Automotive Manufacturers; or (2) any standard promulgated by an OEM such as the FCA US Quality Management System, the Ford Q1 program, the Hyundai New Part Quality Assurance Procedure, Volkswagen Formula Q, or similar programs.
 - z. "Vehicles" shall mean the vehicles into which the Products are or will be incorporated.
2. NO MODIFICATIONS/BATTLE OF THE FORMS. These Terms supersede any conflicting terms or conditions received from Seller. Any Seller generated document which contains terms additional to or inconsistent with the terms of the Purchase Order, or a rejection of any term of the Purchase Order, shall be deemed to be a counteroffer to Buyer and shall not be binding upon Buyer unless specifically accepted in writing by an authorized representative of Buyer, notwithstanding any course of performance or contrary provision of the Uniform Commercial Code. Acceptance of the Purchase Order is expressly limited to its terms and this clause shall constitute a specific objection to any term not specifically accepted by Buyer. Seller's commencement of performance

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of its obligation under the Purchase Order shall constitute an acceptance of these Terms, notwithstanding any contrary language in its order acknowledgment or sales confirmation, and whether or not this document is acknowledged by Seller. Buyer may change these Terms by providing Seller with thirty (30) days' prior notice of the changes, which notice may be given and shall then become effective upon the posting of the changes to Buyer's Website. Seller agrees that it will monitor Buyer's Website for such changes. Changes will become effective and binding as to all existing Purchase Orders on the date identified in Buyer's posting or, if applicable, other form of notice, unless the Buyer representative responsible for the Seller relationship and Buyer's Legal Department each receive, at least ten (10) business days prior to the effective date of the changes, Seller's written objection, which shall specify in detail the reasons for Seller's objection to the changes. Buyer will consider Seller's timely objection in good faith; however, although Buyer may, at its discretion, agree to modify or limit the application of such changes to existing Purchase Orders, Seller acknowledges and agrees that such changes, without modification or limitation, shall be effective and shall apply, as of their effective date, to all future Purchase Orders, notwithstanding Seller's objection.

3. **MODE.** Mode of Shipment will be as designated by Buyer on the Buyer's Purchase Order. If no mode of shipment is designated Seller shall select a reliable, cost sensitive carrier to fulfill its obligations and notify Buyer of its selection. Unless otherwise specified, if an Incoterm is used in Buyer's Purchase Order, Incoterms 2020 shall apply.
4. **PRICING.** Pricing is based on the original quotation by Seller to Buyer. Pricing includes all government tariffs, duties, assessments, surcharges, and other levies now existing and applicable, and any increase that may hereafter be imposed on the Products. Transferable credits or benefits associated with Products purchased, including trade credits, export credits, or rights to the refund of duties, taxes, or fees, belong to Buyer unless otherwise prohibited by applicable law. Seller will provide Buyer with all information and records relating to the Products necessary for Buyer to: (1) receive these benefits, credits, and rights; (2) fulfill any customs obligations, origin marking or labeling requirements; and certification or local content reporting requirements; (3) claim preferential duty treatment under applicable trade preference regimes; and (4) participate in any duty deferral or free trade zone programs of the country of import. Seller will obtain all export licenses and authorizations and pay all export taxes, duties, and fees unless otherwise stated in the Contract, in which case Seller will provide all information and records necessary to enable Buyer to obtain those export licenses or authorizations.
5. **PACKAGING.** Seller will: (a) properly pack, mark, label, and ship Products in strict conformity with the Requirements, and any applicable carrier's requirements, and legal requirements; (b) route deliveries of Products in strict conformity with the routing requirements of Buyer; (c) deliver Products in quantities and at the time and the place specified in delivery schedules provided by Buyer; (d) not charge Buyer for handling, packaging, storage, or transportation of Products unless otherwise stated in the applicable Purchase Order or Release; and (e) provide with each shipment of Products such packing slips, bills of lading, or other shipping receipts or identifying documentation that, taken together, allow Buyer to identify the Products shipped and determine that such Products have been delivered in strict conformity with the Requirements. Seller will not initiate any change in Product packaging specifications without the applicable Buyer's consent. For international shipments, Seller will use Standard Export Packaging unless otherwise specified in a writing executed by Buyer. Seaworthy packing is required for Products undergoing maritime shipping. All packaging, crating and/or other shipping materials, including dunnage, blocking, and bracing, and/or shipping pallets shall comply with ISPM 15 Solid Wood Packaging Requirements and any region-specific requirements at the point of delivery, for all modes of transport. Buyer's Purchase Order number must appear on the packaging and packing slip. All Hazardous Materials shall be transported in accordance with applicable laws and regulations including, but not limited to: 1) regulations promulgated by the Pipeline and Hazardous Materials Safety Administration; 2) the International Maritime Dangerous Goods Code; and 3) regulations of the International Air Transport Association.
6. **INSPECTION.** Subject to the Requirements and the applicable Purchase Order, Seller is responsible for the quality control of the Products, including adequate inspection of Products prior to delivery to the Buyer. All Products are received subject to the applicable Buyer's (or its designee's) acceptance or rejection. Neither (a) payment by a Buyer for Products under these Terms; nor (b) operation or use of the Product by a Buyer, whether for business, testing, profit, revenue, or for any other purpose, in each case, prior to or after the end of Buyer's period of inspection, constitutes acceptance of a Product by the Buyer, nor does such payment or operation diminish Seller's responsibility for any nonconforming Products. Neither inspection, nor failure to inspect, by a Buyer relieves Seller of any obligations, representations, or Seller's Warranties as set forth in Section 14. Final inspection may be performed by the End User of the Products. Buyer may present all claims against the Products on behalf of the End User to the Seller.
7. **QUANTITY.**
 - a. **Contract Quantities.** Buyer shall have no liability for payment for Products delivered to the applicable destination location designated by or on behalf of Buyer that exceed the quantities specified in the applicable Contract Document. At the sole option of Buyer, Buyer may do any one of the following: (i) keep any overshipments of Products and elect to have the quantities of Products under the applicable Contract Document increased by the same amount of Products as the quantity of overshipments; (ii) (keep a portion of the over shipped Products and elect to have the quantities of Products under the applicable Contract Document increased by the same amount of Products as the portion of over shipped Products retained by Buyer; and return the unretained portion of the over shipped Products to Seller at Seller's sole cost and expense; or (iii) return all of the over shipped Products to Seller at Seller's sole cost and expense. In case of undershipments of any Products, Seller shall, if so requested by Buyer, immediately ship, at Seller's sole cost and expense, to the destination and by the time designated by Buyer the additional Products needed to fully complete the applicable Buyer requirements. Alternatively, Buyer may elect to have the quantities of Products under the applicable Contract Documents reduced by the same number of Products as the quantity of any under shipment; provided, however, that following an election by Buyer to reduce the quantities of Products under the applicable Contract

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Document, Buyer shall continue to be entitled to any volume discount pricing or tiered pricing, if applicable, as if Buyer had purchased the quantity of Products that were under shipped.

- b. Forecasts. Forecasts are Buyer's best estimates of its needs for a quantity of Products, and are transmitted to Seller for purposes of planning and supply chain fulfillment, but are not binding on Buyer. Buyer and Seller acknowledge that forecasting shall be based upon corresponding Forecasts received from Buyer's Customer, and specific forecasting and release procedures for the Products at issue shall be established in the Purchase Order. Seller agrees to comply with the reasonable forecasting and release requirements of Buyer's Customer to ensure continuous fulfillment of Customer supply chain requirements and minimum obsolescence.
8. DELAYS. Delivery dates indicated on Purchase Orders and Releases are firm and must be honored. Time is of the essence of the Contract. If any delays occur, expected or not, Seller must inform Buyer of the situation and give a revised delivery date and reason for delay. In the event delivery is delayed more than ten (10) days from the date specified in the applicable Contract Document, Buyer may: 1) cancel the Contract without further liability; 2) purchase replacement Products from a Third Party; and/or 3) charge all costs, damages, and expenses resulting from the delay to Seller.
9. FORCE MAJEURE. Neither party shall be responsible for failure or delay due to causes beyond its control affecting the delivery of the Products. These causes shall include, but not be restricted to, fire, storm, flood, earthquake, explosion, accident, acts of any public enemy, war, rebellion, insurrection, sabotage, terrorism, epidemic, pandemic, quarantine restrictions, transportation embargoes, failures or delay in transportation due to extreme weather or other catastrophe, fuel or energy shortages, power interruptions or failures, acts of God, acts, rules, regulations, orders or directives of any government or political subdivision, agency or instrumentality thereof, or the order of any court, regulatory, or arbitral body of competent jurisdiction (collectively, "Force Majeure Events"). Labor disruptions affecting Seller's work force, or those of its sub-suppliers, shall not be events of Force Majeure. In the event that a Force Majeure Event lasts for more than thirty (30) days, the party whose performance is not affected by the Force Majeure Event may cancel the Contract without penalty and seek an alternative source or customer for the Products as the case may be, upon ten (10) business days' notice. Seller's inability to obtain raw materials, fuel, or other supplies shall not be a Force Majeure Event unless such inability is caused by a natural disaster. The imposition (or announcement of a potential future imposition) of a quota, new or higher import tax, tariff, tariff-rate quota, or other surcharge applicable to the Products (a "Charge") or any temporary or permanent measure by the federal or any state government of the United States (or if the United States is not the place of destination, then the government of the place of destination), whether promulgated by legislation, policy or other means, which results in: (a) an increase to Buyer in the cost of purchase; (b) Buyer's inability to claim, as a business expense deduction, its cost of imported Products; or (c) any limitation or restriction on the ability of Buyer to purchase Products, after the acceptance of the Order shall, at Buyer's option, be deemed a Force Majeure Event. Buyer shall notify Seller of its intention to exercise the option and cancel the Contract without penalty within ten (10) business days of the imposition of the Charge or measure. All such notices shall be given by electronic mail, with a confirmation copy by regular mail.
10. CANCELLATION/CHANGE/TERMINATION FOR CONVENIENCE. Buyer reserves the right, for any reason, at any time, to cancel any portion of the Purchase Order which Seller has not shipped or to make changes in the specifications, amount, type, etc., of the Products. Upon such cancellation or change, and subject to the other provisions hereof, Buyer shall pay Seller only the following amounts, without duplication, in final satisfaction of all obligations relating to the Purchase Order: (a) any amounts owing for conforming Products received by Buyer prior to cancellation or change and accepted in accordance with the Purchase Order; (b) the reasonable direct out-of-pocket costs incurred by Seller in connection with Products covered by the Purchase Order and not shipped prior to cancellation or change; provided that the Seller shall use its best efforts to resell or re-use Products or components not shipped; and (c) an equitable price adjustment for any changes. In all instances, Seller shall not make changes to the Specifications or any revisions thereto, shall not make changes to the Products, shall not change its production or quality control processes or change the facility manufacturing the Products, absent Buyer's written consent.
11. ERRORS. Stenographic and clerical errors are subject to correction and Buyer shall not be bound by inadvertent mistakes.
12. PAYMENT TERMS. Net 30 unless otherwise specified in the Purchase Order. All invoices from Seller shall include Buyer's Purchase Order number on them.
13. URGENT DELIVERY. If urgent delivery is needed due to delays, other than delays occasioned by the conduct of Buyer, Seller will be responsible for additional charges associated with expedited shipment of the Products being delayed. Should Buyer require delivery in advance of the date specified in the Contract, Seller will use reasonable best efforts to comply with any Buyer requests, the additional costs of such accelerated delivery shall be for Buyer's account.
14. WARRANTY. In addition to any other warranties provided by law or otherwise, Seller warrants that each Product shall: (i) be first quality, new production and conform to the Contract Documents in all respects; (ii) conform to all specifications, drawings, samples; descriptions furnished and/or specified by Buyer; (iii) be merchantable and fit for the purpose for which it is intended; and (iv) be free from all defects in design and workmanship.
 - a. Seller represents and warrants that good title to all of the Products shall be vested in Buyer, free and clear of any and all liens, encumbrances and future obligations or restrictions of any kind.

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- b. In the event of a breach of warranty, in addition to all other remedies hereunder or under applicable law or in equity, Buyer may: (i) cancel all or any portion of the Purchase Order; (ii) require the Seller to repair or replace any or all Products, at Buyer's option and at Seller's sole expense; (iii) return nonconforming Products to Seller and request that Seller investigate the nonconformity and submit an action plan to Buyer to correct the nonconformity in a timely manner, at Seller's sole cost and expense; (iv) require the Seller to pay all transportation and other charges arising from delivery, storage or return of the affected Products; and/or (v) purchase replacement Products from a Third Party and charge the same to Seller.
 - c. OEM/Customer Warranty Requirements/Warranty Period/Cost-Sharing. Seller represents that it is aware that Buyer is a processor and/or supply chain provider and not the End User of the Products and Seller has access to copies of the terms and conditions of the Customer and any other Customers, including the OEM, as applicable to the Products and all Goods made from the Products. Seller warrants that it is familiar with such terms and conditions, including, but not limited to the Customers' applicable warranty and delivery requirements, and the relevant provisions of any Customer Supplier Quality Manual. Seller shall comply with all warranty and quality requirements imposed upon Buyer by the Customer and shall be liable for all charges imposed on the Buyer by the Customer on account of Seller's non-performance of its obligations to Buyer. These charges may include but are not limited to: (1) the cost of defective Products; (2) labor and material costs for the removal of defective Products and installation of replacement Products; (3) costs of work performed by third parties for sorting, removal and replacement of defective Products; (4) taxes and related costs; and (5) loss of production or down time, and lost profits. Seller will participate in any warranty cost settlement program, customer satisfaction program, or procedure required by Customer, and meet any financial obligations imposed on account of a breach of its warranty obligations.
 - d. Seller Quality. Seller has adopted industry standard quality procedures such as Advanced Product Quality Planning (APQP) and Design Failure Mode and Effects Analysis (DFMEA). If the OEM has adopted a Third-Party Quality Standard, Seller warrants that the Products and its operations are compliant with such standard. Seller will fulfill the requirements of any OEM quality manual and/or Buyer quality manual applicable to the Products and provided to Seller, and shall participate in any required OEM quality program. Seller is responsible for implementing its own quality compliance system, in accordance with industry best practices and which may be reviewed and/or audited by Buyer. The Customer is an intended third-party beneficiary of the Contract. In the event a Customer's terms and conditions provide for additional rights of the Buyer beyond those provided here, the Customer's terms and conditions shall control.
 - e. All warranties of Seller, express and implied, and remedies of Buyer, in this Section 14 or elsewhere, shall survive the delivery, inspection, testing, acceptance and payment for the Products.
15. **RECALLS.** This Section 15 applies to any voluntary or government-mandated offer by the OEM (or Buyer/Customer) to purchasers to remedy an alleged defect that affects safety or to address an alleged failure of a Product (or a Customer's product incorporating a Product) to comply with an applicable safety standard or guideline, including field service actions (each, a "Recall"). Seller's obligations in the event of a Recall are not subject to any time limitation.
- a. **Decision to Recall.** Seller acknowledges that Buyer may not be the End User of the Products and the decision whether to initiate a Recall that is not mandated by the government may be made by the End User, OEM, Customer, or Buyer. Buyer may be obligated to participate in any Recall initiated by the Customer, and Seller shall likewise be required to participate. Buyer's decision, or that of the OEM, its Customer or End User to contest any determination by any governmental agency or authority will not waive or diminish any rights of Buyer under this Section 15. a.
 - b. **Seller Liability for Recall, Damages.** Seller will be liable for all costs and damages resulting from a Recall if the Recall results in whole or in part from a failure of the Products to conform to the Seller's warranties and covenants set forth herein, which shall be deemed to include warranties given by Buyer to the Customer, or other Product defect. Seller shall hold Buyer harmless and defend and indemnify Buyer against all charges imposed by the Customer or OEM on account of a Recall due to a defect in the design or manufacture of the Products. Such charges shall include, but not be limited to, charges resulting from reimbursements to distributors of the products into which the Products are subsumed, the cost of replacement Products, labor charges, and disbursements to consumer End Users.
 - c. **Seller's Duty to Notify.** Seller shall promptly apprise Buyer of any Recall, defect, or non-compliance affecting Products intended for use in Vehicles identical to, or substantially similar to, the Products, in accordance with the requirements of Title 49 of the Code of Federal Regulations, 49 CFR § 573.6 et seq., and shall provide all information to allow Buyer and Customers to comply with such regulations. Seller shall supply any quarterly reports required by 49 CFR § 573.7, or any information requested to enable Buyer or Customers to provide such reports. Seller shall promptly advise Buyer of any information provided to NHTSA regarding the Products or substantially similar parts, whether provided by Seller or other entities of which it is aware. Seller shall notify Buyer of the identity of persons on its safety committee or otherwise responsible for reviewing complaints and analyzing data regarding potential problems with the Products.

16. **INTELLECTUAL PROPERTY.**

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- a. Buyer IP. Buyer does not grant Seller any rights to the Intellectual Property of Buyer, the OEM, or any other Customers (collectively, "Buyer Party IP") other than the limited right to use such Buyer Party IP strictly and solely for the purpose of manufacture, supply, performance, production, repair of any Products, or as otherwise necessary for Seller's performance under the Contract. This limited right to use shall not be deemed a license. Without limiting the generality of the foregoing, Seller will not use Buyer Party IP to make products for a third party or sell unique OEM Products to a third party. Either party has the right to develop, manufacture, purchase, use, sell or market products or services competitive to those offered by Seller, so long as there is no infringement of the Intellectual Property Rights of the other party.
- b. Created IP. Any Intellectual Property created by Seller that results from design, engineering, consulting, or development services charged to Buyer ("Created IP") shall belong solely to Buyer. Approved Specifications shall be considered Created IP. Seller shall promptly disclose any such Created IP to Buyer, and Seller agrees to assign all worldwide Intellectual Property Rights in such Created IP to Buyer or to any Customer designated by Buyer. All works of authorship, including software, computer programs and databases (including object code, micro code, source code, and data structures), and all enhancements, modifications and updates and all other written work products or materials, which are created by Seller specifically for the purpose of performing under the Contract, are "works made for hire" and the sole property of Buyer. To the extent that such works do not qualify as works made for hire under the applicable law, Seller 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 applicable law, Seller hereby grants to Buyer, to the maximum extent legally permissible, an exclusive (including the exclusion of Seller), royalty-free, worldwide, fully-paid, irrevocable, perpetual license (including the right to grant sublicenses) in and to all such works of authorship.
- c. Warranty. Seller warrants that the Products, including all work, materials, products, services, equipment, Products, subsumed production processes, and other items provided by Seller pursuant to the Contract, which are not of Buyer's design, shall be free from claims of infringement (including misappropriation) of third-party intellectual property rights and that any use or sale of such items by Buyer, its Customers, dealers, distributors and users of the Products (and/or goods incorporating the Products) shall be free from any such claims of infringement. Unless otherwise disclosed and accepted in writing by Buyer, Seller warrants that there is no open-source code in any information technology included in the Products.
- d. IP Indemnity. Seller shall defend, reimburse, indemnify and hold Buyer, the OEM, and each other Customer, and their respective directors, officers, employees, agents, subcontractors and representatives (including any respective successors or assigns) harmless from and against any and all losses arising out of the actual or alleged infringement of or by any Product manufactured, produced, performed (including repairs) or supplied by Seller or a seller party of a third-party Intellectual Property Right or right of confidentiality, privacy or publicity. If such a claim results, or is likely to result, in an injunction or other order that would prevent Seller from manufacturing, producing, performing or supplying, or Buyer or its designees (including Customers, dealers, distributors or affiliates, including any global affiliate of Buyer) from using, distributing, selling, leasing, maintaining, modifying, copying or creating derivative works of, an applicable Product, Seller shall, at Buyer's sole election and at Seller's sole cost and expense: (a) secure a license of the applicable intellectual property that permits Seller to continue manufacturing, producing, performing or supplying, or Buyer and its designees (and each global affiliate of Buyer, if any) to continue using, distributing, selling, leasing, maintaining, modifying, copying or creating derivative works of, the Product; (b) if requested by Buyer and solely in conformity with any requirements of Buyer, modify the Product so it becomes non-infringing, so long as the modification does not materially alter the operation or performance of the Product, as determined by Buyer in its sole discretion; or (c) replace the Product with a non-infringing but functionally equivalent Product, equivalency to be determined by Buyer in its sole discretion.
- e. License. Seller grants Buyer a royalty free, non-exclusive, worldwide perpetual license to use any of Seller's Intellectual Property ("Seller IP") embodied in the Products. Seller grants Buyer and its Customers a royalty-free, non-exclusive, worldwide perpetual license to use Seller IP to repair, reconstruct, remanufacture, re-flash or re-build the Products. Seller grants to Buyer and its Customers a permanent, paid-up license to use, repair, modify and sell any operating software incorporated in the Products in conjunction with the use or sale of the Products. For the avoidance of doubt, if Seller ceases manufacturing operations or no longer offers the Products to Buyer, Buyer may use any Intellectual Property Rights embodied in the Products to continue to offer the Products to its Customers, in order to meet ongoing production and service part obligations.
- f. Temporary License. In the event that the Seller is not ready or able to supply the Buyer with the Products in the amount required on the date required, at the request of Buyer, Seller shall assign any necessary Intellectual Property Rights together with know-how required to manufacture the Products on a temporary basis ("Emergency Production"). These rights of use shall be sublicensable to an alternate supplier chosen by Buyer. The rights of use specified in this Section 16 f. shall only last for the period that is required and appropriate for Emergency Production.
- g. Buyer Trademarks. The Seller will not incorporate any of the OEM's, Customer's and/or Buyer's logos, trademarks, trade names or unique part numbers on any other products manufactured or distributed by the Seller, including aftermarket Products, except as may be provided under the Purchase Order or other written document executed by Buyer, or as may be required to comply with a government requirement.

17. INDEMNIFICATION.

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- a. Allocation of Risks. Seller assumes all risks of injuries, death, sickness, or disease to persons, or damage to property wherever located, arising or incurred in connection with the Products or Seller's performance under these terms or the Contract, including those arising or incurred in connection with the negligent performance, willful misconduct or breach of these terms or the Contract by Seller (including any of its Subcontractors) or the directors, officers, members, managers, employees, agents, or representatives of any of the foregoing (each such party a "Seller Party" and all such parties collectively referred to as the "Seller Parties"). Seller expressly waives any and all statutory or legal immunity it might be entitled to as an employer under workers' compensation laws or any other employee benefit law.
- b. Indemnification. In addition to Seller's indemnification obligations otherwise set forth in these terms, including as set forth in Sections 16. d. and 17. a., Seller shall defend, reimburse, indemnify and hold Buyer, its Customer, and their respective officers, directors, agents, representatives, contractors, employees, consultants, successors and assigns (each, a "Buyer Indemnitee" and collectively, the "Buyer Indemnified Parties") harmless from and against any and all contractual and non-contractual liabilities, losses, claims, demands, causes of action, damages, fines, penalties, interest, deficiencies, awards, and expenses, including reasonable attorneys' fees, consultant fees, legal expenses and costs to enforce these terms or the Contract, civil claims, criminal claims, administrative claims, labor, social security and employment claims, and all claims for personal injury and property damage (both tangible and intangible) (each a "Loss" and collectively "Losses"), based upon, relating to, arising from, or which are alleged to have been caused by Seller or a Seller Party in connection with, any of the following:
 - i. Breach of the Warranties contained in Section 14, including but not limited to defects or non-conformities of the Products;
 - ii. Non-performance of any obligation, including any breach or default, under these Terms or the Contract;
 - iii. Use of Buyer's property;
 - iv. Use or occupancy of any Buyer premises;
 - v. Non-compliance with or violation of any manufacturing and legal requirements while carrying out its obligations under these terms or the Contract;
 - vi. Seller's activities on Buyer's premises;
 - vii. Any services or other actions undertaken by Buyer to correct or remedy any Recall attributable, in whole or part, to Seller;
 - viii. Failure to remit or pay any foreign, international, federal, state, provincial, or local sales, use, value added, excise duty, or any other taxes or contributions of any nature, as and when due, or failure to file any return, form, or information that seller or any seller party may be required to file with any government agency pursuant to applicable manufacturing and legal requirements, in each case to the extent such failure results in taxes, contributions, interest, or penalties assessed against a Buyer Indemnitee;
 - ix. Labor and employment claims or allegations made by any officer, employee, contractor or other agent of Seller or a Seller Party, including those involving or based on (i) payment when due of wages and benefits; (ii) withholding of all payroll taxes, including unemployment insurance, workers' compensation, the federal insurance contributions act (FICA) and the federal unemployment tax act (FUTA); (iii) compliance with the U.S. immigration reform control act; (iv) compliance with any applicable manufacturing or legal requirements relating to employment or hiring by Seller or a Seller Party in connection with any Products; and (v) co-employment or joint employment in connection with any Products.
- c. Third-Party Claims. The parties will cooperate in the investigations and analysis required for the defense of a Third-Party Claim.
 - i. If a Buyer Indemnitee becomes aware of any dispute, action or suit involving a third party (each, a "Third-Party Claim") with respect to which such Buyer Indemnitee reasonably believes Seller shall have an obligation pursuant to Section 17. b. to defend, reimburse, indemnify, or hold such Buyer Indemnitee harmless, then the Buyer Indemnitee shall notify Seller of the Third-Party Claim; provided that any delay or failure to notify Seller shall not relieve Seller of its obligations under these Terms or the Contract. Following delivery of the notice, Seller shall notify the Buyer Indemnitee as to whether Seller elects to conduct and control the defense or resolution of the Third-Party Claim; provided that such election by Seller shall serve as an affirmation that Seller accepts responsibility to defend, reimburse, indemnify, and hold the Buyer Indemnitee harmless from the Losses. Upon request Seller shall provide evidence acceptable to the Buyer Indemnitee that Seller has adequate financial resources to fulfill its obligations under this Section 17. c.
 - ii. Unless and until Seller delivers the foregoing notice that it elects to conduct and control the defense or resolution of the Third-Party Claim, the Buyer Indemnitee shall have the right to defend, contest, settle or compromise such Third-Party Claim in the exercise of its sole discretion and such defense or settlement

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shall be subject to, and the Buyer Indemnitee shall receive reimbursement and indemnification as set forth in, the provisions of this Section 17. If Seller provides the foregoing notice, then, subject to Buyer Indemnitee's right to assume sole control of the resolution or defense of the Third-Party Claim as set forth in Section 17. c. (iv) below, Seller shall have the right to conduct and control, at its sole cost and expense and with counsel of its choice (which counsel must be reasonably satisfactory to the Buyer Indemnitee and/or any affected Customer or OEM), the defense or resolution of such Third-Party Claim, and the Buyer Indemnitee shall reasonably cooperate in connection therewith. If Seller elects to assume the defense of a Third-Party Claim, Seller shall diligently conduct the defense and keep the Buyer Indemnitee fully apprised of the status thereof. The Buyer Indemnitee may participate in the defense of such Third-Party Claim that is defended by Seller with counsel of its choice, and the fees and expenses of the Buyer Indemnitee's counsel shall be paid or reimbursed by Seller as set forth in the provisions of this Section 17. c.

- iii. Subject to Section 17. c. (iv) below, Seller shall not have any right or authority to compromise or settle such Third-Party Claim without the Buyer Indemnitee's prior written consent unless (i) the compromise or settlement would not involve any finding or admission of any violation by the Buyer Indemnitee of any manufacturing or legal requirement or any rights of any person or entity, or admission of guilt, wrongdoing or culpability; (ii) the Buyer Indemnitee receives a full and unconditional release of and from all claims that may be made against any of the Buyer Indemnified Parties by the third party asserting the Third-Party Claim with respect to, related to, or arising out of the asserted facts on which the Third-Party Claim is based; and (iii) the sole relief provided is monetary damages that are paid in full by Seller (and there is no imposition of any obligation on any of the Buyer Indemnified Parties, nor any limit on the ability of any of the Buyer Indemnified Parties to conduct its business). No Buyer Indemnitee shall have any liability with respect to any compromise or settlement of such claims effected without its prior written consent.
 - iv. Notwithstanding the foregoing, the Buyer Indemnitee may, by notice to Seller, assume the exclusive right to defend, compromise, settle or resolve such Third-Party Claim, at Seller's sole cost and expense, if: (i) the Buyer Indemnitee determines in good faith that defense of the Third-Party Claim by counsel selected by Seller would be inappropriate for reasons of existing or potential conflict of interest or because the Buyer Indemnitee has defenses available to it that are distinct from or in conflict with defenses available to Seller or another Buyer Indemnitee; (ii) the Buyer Indemnitee determines that there is a reasonable possibility that the Third-Party Claim may adversely impact it, including damage to reputation, brand or business prospects; or (iii) the Third-Party Claim is asserted by or on behalf of a person or entity that is a, direct or indirect, seller to, or customer of, the Buyer Indemnitee or seeks an injunction or other equitable relief.
 - v. Seller shall pay or reimburse the applicable Buyer Indemnitee monthly for the costs of investigation and defense, including reasonable attorney's fees and other costs actually incurred. Any indemnification for Losses shall be made promptly upon request therefor by a Buyer Indemnitee. If an indemnity or reimbursement payment made by Seller to Buyer is subject to any tax, Seller shall also be liable an amount an amount equal to such tax payable, including any interest and penalty imposed thereon.
 - vi. For purposes of statutes of limitation, Buyer's indemnification claims under this Section 17 shall not accrue until the indemnifiable liability accrues.
18. **REPLACEMENT AND SERVICE PRODUCTS.** Seller shall make Products available to Buyer for fifteen (15) years for Buyer's current and/or past automotive model service requirements (or those of its Customers) at the last Contract price with any adjustments, as reasonably determined by Buyer, based on quantity of production, changes in the cost of labor and materials, additional costs for special packaging, shipping, and handling, and/or other related services.
19. **DEFAULT.** Seller shall be in default hereunder if: (a) Seller does not comply with the Contract in all material respects; (b) Seller makes an assignment for the benefit of creditors, or proceedings in bankruptcy or insolvency are instituted by or against Seller, and such proceedings are not discharged within sixty (60) days of the date of filing; (c) Seller fails to provide Buyer with adequate assurance of Seller's ability to perform its obligations under the Contract within ten (10) days of written notice by Buyer of Buyer's concern that Seller's financial or other condition or progress on the Contract endangers timely performance. Upon any default hereunder, in addition to all other remedies hereunder or under applicable law or in equity, Buyer may cancel all or any part of the Contract without liability except to pay the contract price for Products delivered prior to notice of cancellation, purchase replacement Products from a third party, and recover from Seller on demand any and all increased costs and/or other damages relating to said default. Buyer's remedies shall be cumulative. The remedies reserved to Buyer under the Contract shall be cumulative and additional to any other remedies provided by law or equity. Resort to any remedy by Buyer, as set forth in these Terms or otherwise, shall not be deemed an election of remedies or a waiver of any breach, claim, or other remedies.
20. **RETURN PART POLICY.** Seller is responsible for replacing any defective or non-conforming Products. If a Product constitutes an assembly of parts and a need for a replacement of a defective or non-conforming part arises, Seller is responsible for any additional expenses related to such a return.
21. **COMPLIANCE WITH LAWS.**

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- a. **Legal Compliance.** Seller agrees to comply with all applicable foreign, federal, state, provincial, territorial, and local laws, rules, regulations, and ordinances (“Applicable Laws”) in connection with the design, purchase, manufacture, sale, delivery, and use of the Products, or to the activities occurring under the Contract, including, without limitation, the Foreign Corrupt Practices Act, the Patriot Act, the Money Laundering Control Act, and the United Kingdom Bribery Act of 2010. Seller shall obtain or make all approvals and filings, and, upon request, Seller will submit to Buyer evidence of such compliance. All invoices must carry the following certificate, and Seller agrees to comply with the referenced statute as to all Products: “We hereby certify that these Products were produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act, as amended, and the regulations and orders of the United States Department of Labor issued under Section 14 thereof.” Seller and the Products shall comply with all applicable data privacy laws and regulations including, without limitation, the California Consumer Privacy Act, the Illinois Biometric Information Privacy Act, and the EU General Data Protection Regulation. At the request of Buyer, Seller will certify its compliance with Applicable Laws in a form reasonably requested by Buyer or Customers.
 - b. **Equal Employment Opportunity.** The parties hereby incorporate by reference the requirements of 41 C.F.R. §§ 60-1.4(a), 60-300.5(a), 60-741.5(a) and if applicable, 29 C.F.R. Part 471, Appendix A to Subpart A. The Seller shall abide by the requirements of 41 C.F.R. §§ 60-1.4(a), 60-300.5(a), 60-741.5(a) and 29 C.F.R. Part 471, Appendix A to Subpart A. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin.
22. **FORCED LABOR/ENVIRONMENTAL RESPONSIBILITY.** Seller warrants that neither Seller nor any of its Subcontractors will use any illegal or involuntary labor of any type in manufacturing Products for sale to Buyer, including, but not limited to, child, slave, or prisoner labor. Seller has received a copy of Buyer’s Supplier Code of Conduct and Social Responsibility (the “SCCSR”) and acknowledges its responsibilities to comply with the provisions of the SCCSR regarding forced and child labor, environmental and sustainability practices, and support of local communities in locations where it does business. The SCCSR is incorporated herein. Upon request by Buyer, Seller shall provide clear and convincing evidence that the Products have been produced in compliance with the requirements of the SCCSR. In fulfilling Buyer’s Purchase Orders, Seller shall follow procedures promulgated by the U.S. Customs and Border Protection to ensure due diligence of the labor practices of its Subcontractors, effective supply chain tracing, and supply chain management of Products imported into the United States. Without limiting the generality of the foregoing, Seller may be required to trace the origin of all material used in its Products to the raw material source, and to confirm the compliant labor practices of all Subcontractors.
23. **ENVIRONMENTAL, SOCIAL AND GOVERNANCE DIRECTIVES.** Buyer, or its Customers may, from time to time, adapt policies and procedures intended to meet Sustainable Development goals (collectively, “ESG Directives”). Buyer may require Seller to adopt reasonable policies and procedures consistent with such ESG Directives in its production of Products for Buyer, and to report from time to time on its progress in meeting Buyer or Customer requirements relating to the ESG Directives.
24. **PRODUCT AND CHEMICAL DISCLOSURE.** Buyer reserves the right to request 100% disclosure of material and chemical composition as necessary to meet regulatory reporting requirements. Seller shall provide product material content reports through the Safety Data Sheets (SDS), or other means identified by Buyer, for all Products, components and raw materials sold to Buyer, to the extent required by law. Seller shall: 1) comply with the UN Globally Harmonized System of Classification and Labeling of Chemicals (“GHS”), 29 CFR 1910.1200 and other applicable regulations; 2) package all Products containing hazardous substances with labeling, hazard statements and precautionary statements as required by GHS; 3) provide Buyer with compliant SDS under 29 C.F.R. 1910.1200 (g) for all Products containing hazardous substances; and 4) comply with all applicable regulations promulgated by the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, including regulations under 49 C.F.R. 100-185. Seller shall also comply with the International Material Data System.
25. **TITLE TRANSFER.** Unless otherwise expressly agreed in writing by Seller and Buyer, title to the Products shall be conveyed by Seller to Buyer at the point that the risk of loss of the Products passes from Seller to Buyer under the applicable provision of Incoterms 2020, or, in its absence, other provisions of the Contract.
26. **CUSTOMS TRADE PARTNERSHIP AGAINST TERRORISM (C-TPAT) PROGRAM.** U.S. Customs and Border Protection (“CBP”) has created the Customs Trade Partnership Against Terrorism (“C-TPAT”) program in which the U.S. Government and business will work to protect the supply chain from the introduction of terrorist contraband (weapons, explosives, biological, nuclear or chemical agents, etc.) in shipments originating from off-shore of the United States to Buyer, drop shipments to its sub-tier suppliers, or drop shipments to its customers originating from off-shore of the United States. Seller will comply with applicable Minimum Security Criteria established by CBP. Seller will inform Buyer if Seller is accredited under supply chain security programs such as C-TPAT, AEO (Authorized Economic Operator) or PIP (Partners in Protection) and obtain any necessary authorization to carry out its obligations hereunder. Seller agrees to ensure the physical integrity and security of all shipments under the Contract against the unauthorized introduction of harmful or dangerous materials, drugs, contraband, or weapons (including weapons of mass destruction), or introduction of unauthorized personnel in transportation conveyances or containers. Seller’s security measures shall include, but are not limited to, physical security of manufacturing, packing, and shipping areas, restrictions on access of unauthorized personnel to such areas; personnel screening to the maximum limits of law or regulations in Seller’s or manufacturer’s country; and development, implementation, and maintenance of procedures to protect the security and integrity of all shipments.

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27. OFAC. RESTRICTED PERSONS. Seller is and will remain in compliance with the requirements of Executive Order No. 13224, 66 Fed Reg. 49079 (September 25, 2001) (the "Order") and other similar requirements contained in the rules and regulations of the Office of Foreign Asset Control, Department of the Treasury ("OFAC") and in any enabling legislation or other Executive Orders in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the "Orders"). Seller warrants, represents, and covenants that it: (a) is not listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the "Lists"); (b) has not been determined by competent authority to be subject to the prohibitions contained in the Orders; (c) is not and will not become owned or controlled by, nor act for or on behalf of, any person or entity on the Lists or any other person or entity that has been determined by competent authority to be subject to the prohibitions contained in the Orders; (d) is not knowingly engaged in, and will not knowingly engage in, any dealings or transactions or be otherwise associated with such persons or entities on the Lists or that has been determined by competent authority to be subject to the prohibitions contained in the Orders; and (e) shall cooperate with Buyer in providing such additional information and documentation on Seller's legal or beneficial ownership, policies, procedures and sources of funds as Buyer reasonably deems necessary or prudent solely to enable it to comply with Orders or anti-money laundering laws as now in existence or hereafter amended.
28. EXPORT CONTROLS. Seller hereby certifies that it understands its obligations to comply with International Traffic in Arms Regulations ("ITAR") and the Export Administration Regulations ("EAR") and the terms of any U.S. Department of State or U.S. Department of Commerce export license or export or temporary import exemption/exception applicable to the Contract. Seller shall exercise strict control covering the disclosure of and access to technical data, information and other items received under the Contract in accordance with U.S. export control laws and regulations, including but not limited to the ITAR. Seller agrees that no technical data, information or other items provided by Buyer in connection with the Contract shall be provided to any Non-U.S. Persons or to a foreign entity, including without limitation, a foreign employee or subsidiary of Seller (including those located in the U.S.), without the express written authorization of Buyer and Seller's obtaining of the appropriate export license, technical assistance agreement or other requisite authorization for ITAR-controlled technical data or items.
29. CONFLICT-FREE MINERALS. Seller warrants that Products sold to Buyer do not contain conflict minerals as defined by the Wall Street Reform and Consumer Protection Act and implementing regulations. Seller will supply documentation demonstrating that purchased Products are conflict-free within fourteen (14) days of such a request by Buyer. Seller will include contractual language in agreements with suppliers used to source finished goods or inputs used to manufacture goods for Buyer prohibiting the use of conflict minerals and requiring suppliers to supply documentation demonstrating that purchased goods are conflict-free within fourteen (14) days of such a request by Buyer.
30. CYBERSECURITY.
- a. Seller shall: 1) keep and maintain the Buyer's information in such a manner and using such a degree of care as is appropriate to avoid unauthorized access, use, disclosure and/or modification; 2) implement administrative, physical and technical safeguards to protect its electronic information technology systems ("IT Systems") that are no less rigorous than accepted industry practices and shall ensure that all such safeguards, including the manner in which information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws; and 3) limit access to Buyer's identifiers, such as its employer identification number, banking information and account numbers to personnel with a need to know such information. Seller shall timely notify Buyer in event of a security breach, which for purposes of this Agreement means any act or omission that compromises: 1) the security, confidentiality, or integrity of its IT Systems; 2) the physical, technical, or administrative or organizational safeguards put in place by Seller that maintain the security, confidentiality, or integrity of its IT Systems; and/or 3) the Products or other deliverables provided by Seller to Buyer. Software used or delivered in connection with the Contract may not contain any features which Seller could have detected in accordance with the current state of the art and which endanger the integrity, trustworthiness and availability of the Products, other hardware and/or software, or data. Seller shall: 1) assist Buyer and provide requested information to Buyer to the extent permitted by applicable law in the event of a security breach or other cybersecurity incident; 2) adopt other reasonable cybersecurity measures identified by Buyer; and 3) upon request from Buyer, demonstrate compliance with this Section 30 through a third-party audit or other reasonable measure selected by Buyer. If Seller is found to be non-compliant, such audit will be at Seller's expense.
 - b. Personal Data. For purpose of these Terms, "Personal Data" is: 1) information that relates to an identifiable natural person (including Buyer's employees, Customers and consumers) that directly or indirectly can identify that person; or 2) personal data according to national, federal, state, and international laws and regulations now or later in effect. Seller shall process any Personal Data in accordance with all Applicable Laws. Seller shall not provide any Products which transmit Personal Data of End Users without proper disclosure and End User consent. Without limiting the generality of the foregoing, Seller in its operations, and in the manufacture of the Products, shall comply with the General Data Protection Regulation of the European Union, the California Consumer Privacy Act, and the California Privacy Rights Act.
 - c. Seller must maintain a reasonable, risk-based program, supported by appropriate policies and procedures, to ensure the cybersecurity of any Product that includes software, hardware, and/or other electronic components, and such product cybersecurity program must provide for security by design, vulnerability management, governance, and other elements identified by Buyer. Such program must be consistent with industry best practices. Upon request from Buyer or its

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Customer Seller shall at its expense, demonstrate compliance with this Section 30. c. through a third-party audit or other reasonable measure selected by Buyer or its Customer.

31. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL BUYER BE LIABLE TO SELLER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES INCIDENT TO, ARISING OUT OF, IN CONNECTION WITH, OR RESULTING FROM ITS PERFORMANCE OR FAILURE TO PERFORM, OR THE FURNISHING, PERFORMANCE OR USE OF ANY PRODUCTS OR MATERIALS PROVIDED PURSUANT HERETO, OR SERVICES RENDERED, WHETHER OCCASIONED, BROUGHT ABOUT, CAUSED, OR DUE TO A BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR OTHERWISE, OF BUYER, ITS AGENTS, DIRECTORS, OFFICERS, EMPLOYEES, OR SUBCONTRACTORS.
32. **ENTIRE AGREEMENT.** The Contract constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior oral or written representations or agreements by the parties with respect to the subject matter of the Contract, including but not limited to Buyer's request for quotation and Seller's quotation unless specifically incorporated in the Contract. No subsequent terms, conditions, understandings, or agreements purporting to modify the terms of the Contract will be binding unless in writing and signed by both parties.
33. **APPLICABLE LAW AND DISPUTE RESOLUTION.**
- a. **Choice of Law.** The Purchase Order, the Contract and any contracts relating hereto or formed hereunder, unless otherwise stipulated or agreed to in writing, shall be construed according to and governed by the internal laws of the State of New York and without the application of any presumption against a party as draftsman. The provisions of the United Nations Convention on Contracts for the International Sale of Goods, and any conflicts of law provision that would require application of another choice of law, are excluded.
 - b. **Disputes.** Any and all disputes, claims or causes of action arising out of or relating to the Contract or the Products (including, without limitation, any alleged violation of the Contract, any controversy relating to the interpretation or enforceability of this Section 33, the arbitrability of any dispute, or any claim that any of these Terms (or any part of the Contract at large) is invalid, illegal or otherwise voidable or void) (collectively, "Disputes") shall be resolved in accordance with the procedures specified in this Section 33 b., which shall constitute the sole procedures for the resolution of any such Disputes:
 - i. **Negotiation.** The parties shall attempt promptly and in good faith to resolve any Dispute by negotiation between senior party representatives not having day to day responsibilities for the transactions underlying the Dispute;
 - ii. **Mediation.** If any Dispute should arise between the parties which, in either party's good faith judgment, cannot be resolved through negotiation, the parties shall endeavor to settle the Dispute by mediation. Either party may request in writing that the other party mediate the Dispute; such notice shall set forth the subject of the Dispute and the relief requested ("Dispute Notice"). Unless the parties agree, the mediation shall be conducted by a mediator affiliated with and under the rules of JAMS. If an organization/mediator and applicable rules have not been agreed upon within such ten-day period, then the Dispute shall be mediated in accordance with the JAMS Mediation Procedure and a single mediator shall be chosen by JAMS.
 - iii. **Arbitration.** If the Dispute is not resolved through mediation within the ninety (90) days following the Dispute Notice, or if either party confirms in writing that it has no wish to engage in mediation, either party may serve the other party with a written demand for binding arbitration. Unless the parties otherwise agree, the arbitration shall be conducted by and under the commercial arbitration rules of JAMS except as follows. The arbitration shall be conducted by a panel of three (3) arbitrators. The party initiating the arbitration shall designate its selected arbitrator in its demand for arbitration. The other party shall have ten (10) business days after its receipt of the demand for arbitration to designate its selected arbitrator. The arbitrators selected by the parties shall then agree upon a third arbitrator within fifteen (15) business days of the selection of the second arbitrator. If either or both of the parties fails to appoint an arbitrator as required in this Section 33. B. iii, or if the party-selected arbitrators cannot agree on the third arbitrator, then JAMS shall appoint the number of arbitrators required to yield a total of three (3) arbitrators. The third arbitrator shall be the Chairperson of the Arbitration Panel.
 - iv. **Damages.** The arbitrators shall not award to either party damages of a different nature than, or in excess of, the damages available to such party under the Contract. The award of the arbitrator(s) shall be made in writing and shall contain the reasons or grounds therefor. Proceedings to enforce the award of the arbitrators shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq., to the exclusion of other Applicable Laws inconsistent therewith, and judgment upon such award may be entered by any court having jurisdiction thereof.
 - v. The parties shall each bear their own attorneys' fees and legal costs and expenses. The parties shall share the cost of the arbitral forum. Notwithstanding the foregoing, if Buyer is forced to reimburse any of the Customers for their attorneys' fees, Seller shall reimburse Buyer for all such attorneys' fees.
 - vi. The place of mediation or arbitration shall be New York, New York.
 - c. **Provisional Remedies; Legal Action.** Notwithstanding the provisions of this Section 33, a party may file a complaint limited to seeking provisional judicial relief pending the outcome of mediation or arbitration. If any legal action or court proceeding (each, a "Lawsuit") becomes necessary to seek provisional equitable relief, or to enforce the

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provisions of this Section 33 or to enforce the award of the arbitration, such Lawsuit shall be brought exclusively either (i) in any state court of competent jurisdiction located in Scott County, Kentucky; (ii) in the United States District Court for the Eastern District of Kentucky; or (iii) in a jurisdiction outside of the U.S.A. where Seller is present, but only if commenced by Buyer. The parties expressly consent, and waive any objections to subject matter jurisdiction, personal jurisdiction and venue in such courts. The parties expressly agree that, notwithstanding the designation of both state and federal courts for jurisdiction and venue, neither party is waiving its right, as permissible under 28 U.S.C. §1441 (a)-(f), to remove matters originally filed in the designated state court to the designated federal court, as specified in this section 33 c. Accordingly, the parties further acknowledge and agree that, should a Lawsuit be filed in state court in Scott County, Kentucky, and should the Lawsuit be properly removable under 28 U.S.C. §1441, neither party shall object to the removal and transfer of the matter pursuant to 28 U.S.C. § 1404 to the United States District Court for the Eastern District of Kentucky.

- d. Confidentiality. All negotiations and proceedings, and all information used, submitted, or exchanged, in mediation or arbitration shall be and remain confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. For the avoidance of doubt, the commencement of any Lawsuit shall not affect Seller's obligations under the Contract regarding Buyer's Confidential Information.
 - e. OEM or Customer Proceedings. Notwithstanding the foregoing provisions, should the OEM or any of the other Customers assert a claim against Buyer relating to the Products or to Seller's performance under the Contract, and should the OEM or other of the Customers initiate any kind of a dispute resolution procedure, including, without limitation, a senior party negotiation, mediation, arbitration, or Lawsuit against Buyer arising out of such claim (each, a "DR Proceeding"), Seller agrees to: (1) be joined as a party or impleaded in each such DR Proceeding if Buyer so elects; (2) otherwise participate in such DR Proceeding as Buyer so elects; and (3) waive any defense or objection to venue and jurisdiction in each such DR Proceeding unless Buyer agrees otherwise in writing.
 - f. Any arbitration or Lawsuit initiated by Seller must be commenced no later than one (1) year after the breach or other event from which Seller's claim accrues.
 - g. Tolling. Each party agrees that any applicable limitations period, whether arising from the Contract, Applicable Laws, or otherwise, will be tolled and suspended beginning when a party provides a Dispute Notice to the other party or when the parties begin negotiations under Section 33 b. i., whichever is earlier. Tolling and suspension of the limitations period will continue until: (a) the parties resolve the dispute as evidenced by a written settlement agreement; or (b) 45 days after a binding arbitration decision is rendered, whichever is earlier. Notwithstanding the foregoing, in the absence of a notice from one party to the other to submit the Dispute to binding arbitration, either party may provide the other party with notice that it desires the running of the limitations period to recommence. Such limitations period will recommence 45 days thereafter.
34. CONFIDENTIALITY. Seller acknowledges that the information transmitted by Buyer to Seller in the course of performance of the Contract or previously includes proprietary and confidential information of Buyer and/or Customers (the "Confidential Information"), regardless of whether such information is marked or identified as confidential, and is or has been delivered to Seller on a confidential and nonpublic basis for the purpose of performing the Contract only. Additionally, all Contract Documents are among the Confidential Information. Seller agrees to keep all Confidential Information in strictest confidence, and further agrees not to disclose or permit its disclosure to others, or use it for other than the purpose of fulfillment of the Contract. Seller shall: (i) disclose Confidential Information within Seller's organization only to those employees who have a need to know it in order to fulfill Seller's obligations under the Contract and who have agreed to maintain its confidentiality; and (ii) secure the Confidential Information from being divulged to third parties not employed by Seller without the prior written consent of Buyer, including by having all recipients acknowledge the confidential status of such Confidential Information and agree to the same restrictions as those which bind Seller under this Section 34. This obligation of confidentiality shall survive termination of the Contract and will continue for the longest of (i) a period of five years from the date of disclosure of the Confidential Information or (ii) a period ending three years after termination or expiration of the Contract or (iii) the duration for which the Confidential Information remains a trade secret. Notwithstanding the preceding sentence, Buyer reserves the right to extend the period of confidentiality at its reasonable discretion. The restrictions and obligations of this Section 34 will not apply to information that: (a) is already publicly known at the time of its disclosure by Buyer; (b) after disclosure by Buyer becomes publicly known through no fault of Seller; (c) Seller can establish by written documentation was properly in its possession prior to disclosure by Buyer or was independently developed by Seller without use of or reference to the Confidential Information; or (d) is required to be disclosed pursuant to law, regulation or lawful order or process, in which event, however, Seller shall promptly notify Buyer upon Seller's receipt of such demand for disclosure so as to permit Buyer to oppose or limit such disclosure before it happens, unless such notice is unlawful. Notwithstanding anything to the contrary in these Terms, any separate prior confidentiality or nondisclosure agreement between the parties will remain in effect except as expressly modified in a subsequent writing, and to the extent of a conflict between the express terms of such prior agreement relating to Buyer's or Customers' Confidential Information and this Section 34, the terms of such prior agreement will control with respect to the Confidential Information. Either party may make disclosures: (x) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney solely for the purpose of reporting or investigating a suspected violation of law; or (y) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal, in accordance with the Defend Trade Secrets Act.

35. ADVERTISING/MARKETING.

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- a. Advertising. Without Buyer’s prior written consent in each instance or as required for the Products, Seller shall not (i) use or permit use of the name of the Buyer or Customer, the words “Georgetown Metal Processing” or any similar word, trademark, trade dress, service mark, logo, or other proprietary designations of Buyer and its Customers, whether registered or unregistered, in the description or marketing of Products produced, distributed or sold (or services performed or otherwise provided) by or on behalf of Seller (including by any of its Subcontractors) or (ii) advertise, publicize, state, or publish that Buyer or any of its affiliates is a customer of Seller or has endorsed Seller or its Subcontractors in any way.
 - b. Marketing Claims. The Seller will not disclose or imply in its marketing efforts that any of the Seller's other products are equivalent to the Products purchased by the Buyer unless proven and agreed in advance in writing by the Buyer.
36. INSURANCE. Seller further agrees to obtain, at its own cost and expense, insurance against all liability arising from any of its acts or omissions under the Contract, including commercial general liability, products liability, completed operations liability and contractual indemnity liability, naming itself and the Buyer as insured as their interests may appear in the amount of at least ten million dollars (\$10,000,000) per occurrence and twenty million dollars (\$20,000,000) aggregate annual limit. Such policies shall waive subrogation against Buyer, and against any Customers if Buyer requests same. Such policies shall contain endorsements that the insurance is primary and not excess over any other insurance that Buyer shall obtain. Buyer may require Seller to increase the amount of coverage or modify the coverages required by this Section 36 if Buyer determines that such increase or modifications are necessary to provide adequate protection to Buyer, or if Customer requires additional coverage of Buyer. Seller shall furnish Buyer, within five (5) business days of any Buyer request, a certificate or certificates from Seller’s insurance carrier(s) evidencing such insurance and including an endorsement naming Buyer and its affiliates (including without limitation, its parent and subsidiary companies) as additional insureds and providing that Buyer shall receive ninety (90) days prior written notice by the insurance carrier(s) of any change, expiration, cancellation or reduction in any such coverage.
37. ASSIGNMENT. The Contract may not be assigned or transferred by Seller without the written consent of the Buyer. Any assignment by Seller in derogation of this Section 37 shall be void. Buyer may assign the Contract to: 1) any subsidiary; 2) any corporation or entity acquiring all or substantially all of the assets of Buyer; and/or 3) its Customer for the Products.
38. NO WAIVER. Failure by Buyer in any instance to insist upon the strict performance of any one or more of the obligations of the Seller under the Contract or to exercise any election herein contained, shall in no manner be, or be deemed to be, a waiver by the Buyer of any of the Seller’s defaults or breaches hereunder or of any rights and remedies by reason of such defaults or breaches, or a waiver or relinquishment for the future of the requirement of strict performance of any and all obligations hereunder.
39. ENFORCEABILITY. If any provision of the Contract shall be invalid or unenforceable as against Buyer or Seller or under certain circumstances, the remainder of the Contract and the applicability of such provision to other persons or circumstances shall not be affected thereby and each provision of the Contract shall, except as otherwise herein provided, be valid and enforced to the fullest extent permitted by law.
40. SURVIVAL. Any other provision of these Terms or the Contract which by its nature extends beyond the expiration, termination or cancellation of the Contract shall remain in full force and effect until fulfilled or performed and shall inure to the benefit of and be binding upon Seller and Buyer and their respective permitted successors and assigns.

Seller, by its designated representative, acknowledges that it has reviewed and accepted these Terms.

Accepted: _____ (Seller)

By: _____

Title: _____

Date: _____